

EXHIBIT 1

Washington Disputed Issues List – August 9, 2006 - Eschelon/Qwest ICA Arbitration - Docket Number _____

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ¹
<p>Issue 1-1</p> <p>Section 1.7.2 and Exhibits N and O</p> <p>See (a) to (e) below for related issues in 7.4.7, Exhibits C and I, and 9.23.9.4.3/24.4.4.3 (first sentence)</p> <p>Interval Changes</p> <p>(1 of 2 options for 1.7.2)</p>	<p>PROPOSAL #1</p> <p><u>1.7.2 If the Commission orders, or Qwest chooses to offer and CLEC desires to accept, intervals longer than those set forth in this Agreement, including Exhibit C, the Parties shall amend this Agreement under one (1) of the two (2) options set forth in Section 1.7.1 (an interval Advice Adoption Letter or interval interim Advice Adoption Letter terminating with approval of negotiated Amendment) pertaining to the new interval (rather than new product) (or as otherwise ordered by the Commission). The forms of such letters are attached hereto as Exhibits N - O).</u></p>	<p>A central theme underlying this and a large number of the other disputed issues is whether the disputed term must be contained in the contract, or whether it is sufficient to include references to sources outside of the contract, such as Qwest’s PCAT or its SIG or its website, where certain provisions may be found. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i>, ¶32) It is crucial that the Commission recognize that references to non-contractual sources provide: 1) No binding commitment on the part of Qwest; 2) No certainty for CLECs; 3) No mechanism for Commission filing. In other words, they defeat the</p>	<p>SAME FOR BOTH PROPOSALS:</p> <p><u>1.7.2 Notwithstanding any other provision in this agreement, the attached Exhibit C will be modified pursuant to the CMP process without requiring the execution of an amendment.</u></p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause</p>

¹ KEY: BLACK = CLOSED; RED = DISPUTED. Black text in either of the “Proposed Language” columns indicates language that is agreed upon and thus closed, and red text indicates disputed (open) language. The highlighted (red) language in each column shows the modifications that the party proposes (and to which the other party disagrees). Therefore, the color highlighting shows the language that is at impasse with respect to the statement of issue described in the first column.

² This column includes the Issue Number; ICA Section or Exhibit Number; and Statement of Issue/Title.

³For proposals that are numbered or labeled as an “option,” Eschelon offers any one of the proposals equally as a counter to Qwest’s proposal. Proposals labeled as “alternatives” are plead in the alternative. For proposals labeled as an “alternative,” Eschelon offers the first proposal but Eschelon offers the other language in the alternative, if the ALJ or Commission rejects that alternative. (In either case, yellow shading may be used to highlight the differences between the proposals.)

⁴ Eschelon has used short forms for citations. For the full citations, please see the attached Appendix listing the full citations.

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	<p><u>1.7.2.1. Notwithstanding any other provision in this Agreement, the intervals in Exhibit C may be shortened pursuant to the Change Management Process (CMP) without requiring the execution or filing of any amendment to this Agreement.</u></p>	<p>purposes of entering into a contract for a term that must be amended and approved to reflect agreed upon changes. The devil is in the details, and addressing those details now will promote administrative efficiency and avoid later disputes. Unless a term is in the contract, that term can be changed by Qwest, over Eschelon’s objection and without Commission permission. Qwest’s resistance to including terms in the contract signals that Qwest will, indeed, change those terms if and when it sees fit, regardless of the affect on Eschelon’s business. Therefore, if the Commission concludes that a term should not be unilaterally changed and should be available for opt-in, it must order that term to be included in the contract.</p> <p>Intervals are particularly significant because they impact timing of delivering service to customers. Changes in intervals critically impact the way a company does business, particularly when the interval is lengthened. Lengthening of intervals forces a carrier to provide worse service to its</p>		<p>Qwest to incur costs it is entitled to recover under the Act.</p>

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		<p>customers (who must wait longer for service) while also incurring costs and spending resources on adjusting internal systems and processes to adjust to the longer interval. (For a shorter interval, service improves and, if necessary, a longer interval may still be requested until internal adjustments are made.) The only interval changes required by the CMP document to go through CMP are changes specifically to intervals “in Qwest’s SIG.” [<i>CMP Document</i>, §5.4.3 (SIG interval reductions) & §5.4.5 (SIG interval increases).] If an interval in the ICA conflicts with an interval in the SIG, the CMP Document provides that the ICA controls. (<i>CMP Document</i> §1.0.)</p> <p>For these reasons, the ICA should contain applicable intervals and require amendment and Commission approval when intervals are lengthened. Eschelon’s first proposal requires ICA amendment when intervals are lengthened and allows use of CMP when shortened. Amending for intervals is not burdensome because Eschelon’s language uses</p>		

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		<p>established streamlined procedures to amend. Eschelon’s proposed Section 1.7.2 and Exhibits N and O largely mirror Section 1.7.1 and Exhibits L and M, which contain such streamlined procedures, except that the new language relates to intervals rather than products.</p> <p>Eschelon’s language is necessary to ensure that the Commission considers and approves a longer interval before it goes into effect. The Commission must determine that the longer interval still meets the FCC’s tests in ¶ 44 of the <i>NY 271 Order</i> for the provision of UNEs on terms that are just, reasonable, and nondiscriminatory - in “substantially the same time and manner” for an element with a retail analogue and offering a “meaningful opportunity to compete” when no retail analogue. The FCC stated specifically that the latter test is no less rigorous than the first. (<i>Id.</i> ¶ 55) When Qwest previously tried to move from a 5-day to a 9-day loop interval by simultaneously lengthening the interval for its retail customers, for example, in Minnesota, the</p>		

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Issue 1-1 Section 1.7.2 (2 of 2 options)	<p>PROPOSAL #2</p> <p><u>1.7.2 If the Commission orders, or Qwest chooses to offer and CLEC desires to accept intervals different from those set forth in this Agreement, including Exhibit C, the Parties shall amend this Agreement under one (1) of the two (2) options set forth in Section 1.7.1 (an interval Advice Adoption Letter or interval interim Advice Adoption Letter</u></p>	<p>Commission rejected Qwest’s parity argument and found that the 5-day loop interval allowed competitors a meaningful opportunity to compete. (<i>MN ALJ 271 Order</i>; see also <i>WA 271 Order ¶125</i>.) The Minnesota Commission approved the ALJ’s finding that Qwest cannot make intervals “unreasonable by lengthening the intervals for provision of retail service.” (<i>MN ALJ 271 Order ¶125</i>) Eschelon objects to lengthening such intervals. Qwest should not be allowed to lengthen such an interval in CMP over objection and without amendment or Commission approval.</p> <p>Given the importance of intervals, the Commission may desire that all interval changes require Commission approved amendments. If so, Eschelon provides a second language option, which requires ICA amendment whether an interval is lengthened or shortened. This option also uses, for intervals, the established streamlined procedures that have been applicable in the past to new products (see Section 1.7.1) to</p>	<p>SAME FOR BOTH PROPOSALS:</p> <p><u>1.7.2 Notwithstanding any other provision in this agreement, the attached Exhibit C will be modified pursuant to the CMP process without requiring the execution of an amendment.</u></p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs</p>

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	<p><u>terminating with approval of negotiated Amendment) pertaining to the new interval (rather than new product) (or as otherwise ordered by the Commission). The forms of such letters are attached hereto as Exhibits N -O).</u></p>	<p>reduce any burden associated with such amendments.</p>		<p>should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
<p>Issue 1-1 (a) Section 7.4.7 Intervals for the provision of Interconnection trunks</p>	<p>7.4.7 Intervals for the provision of Interconnection trunks will conform to the performance objectives set forth in Section 20. <u>Intervals are set forth in Exhibit C.</u> Any changes to the Interconnection trunk intervals will be made <u>as described in Section 1.7.2 through the Change Management Process (CMP) applicable to the PCAT, pursuant to Exhibit G.</u> Operational processes within Qwest work centers are discussed as part of the CMP. Qwest agrees that CLEC shall not be held to the requirements of the PCAT.</p>	<p>The Interconnection trunk intervals proposed by Eschelon in Exhibit C are identical to the intervals that Qwest provides for Interconnection trunks today. Eschelon's proposal requires no change by Qwest. In contrast, a change in Interconnection trunk intervals would significantly affect Eschelon's business and may affect its meaningful opportunity to compete. If Qwest seeks such a change, Qwest may obtain a change in Interconnection trunk intervals under Eschelon's proposal by amending the ICA (using the streamlined process per 1.7.2 or through Dispute resolution per Section 5.30), subject to Commission approval.</p>	<p>7.4.7 Intervals for the provision of Interconnection trunks will conform to the performance objectives set forth in Section 20. Intervals are set forth in Exhibit C. Any changes to the Interconnection trunk intervals will be made as described in Section 1.7.2 through the Change Management Process (CMP) applicable to the PCAT, pursuant to the procedures set forth in Exhibit G. Operational processes within Qwest work centers are discussed as part of the CMP. Qwest agrees that CLEC shall not be held to the requirements of the PCAT.</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause</p>

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Issue 1-1 (b) Exhibit C Group 2.0 UDIT Rearrange- ments	<p><u>Rearrangements</u> Eschelon proposes deletion of Qwest proposed footnote in Exhibit C: For UDIT rearrangements see Qwest's wholesale website for the Service Interval guide</p> <p>(NOTE – See Exhibit C for intervals)</p>	<p>The UDIT rearrangement intervals proposed by Eschelon in Exhibit C are identical to the intervals that Qwest provides for UDIT rearrangements today. Eschelon's proposal requires no change by Qwest. Under Eschelon's proposal, Qwest may obtain changes to those intervals by amendment and with Commission involvement, but not unilaterally.</p>	<p><u>Rearrangements</u> Qwest proposed footnote in <u>Exhibit C: For UDIT rearrangements see Qwest's wholesale website for the Service Interval guide</u></p>	<p>Qwest to incur costs it is entitled to recover under the Act.</p> <p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
Issue 1-1 (c) Exhibit C Group 9.0 (LIS Trunking)	<p>(NOTE: Eschelon proposes to include the LIS Trunking intervals in Exhibit C – see Exhibit C</p>	<p>See discussion of Section 7.4.7 above (subpart to Section 1.7.2).</p>	<p>(NOTE: Qwest proposes deletion of entire Section 9.0 of Exhibit C (LIS Trunking Service Intervals) – see Exhibit C</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP</p>

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Issue 1-1 (d) Exhibit I, Section 3 ICB Provisioning Intervals	<p><u>3.1.1 For the following products and services, for which the interval is ICB, Qwest shall provide the ICB due date interval to CLEC as follows:</u></p> <p><u>3.1.1.1 No later than seventy-two (72) hours after the application date for:</u></p> <ul style="list-style-type: none"> <u>a) 25 or more 2/4 wire analog loops;</u> <u>b) 25 or more 2-wire non-loaded loops;</u> <u>c) 25 or more 4-wire</u> 	<p>Section 3.1 of Exhibit I (“Individual Case Basis”) states that Qwest will provide an ICB interval within 20 business days, unless the ICA contains a “specific provision” for when the ICB interval will be provided. Currently, Qwest provides an ICB interval for certain products in the Firm Order Confirmation (FOC). The FOC arrives in much less than 20 business days. The intervals in Eschelon’s proposed language for ICB provisioning intervals are</p>	<p><u>3.2 For ICB intervals for those standard products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, Qwest shall make every attempt to provide an FOC to CLEC pursuant to the guidelines contained in the Service Interval Guide.</u></p>	<p>process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p> <p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP,</p>

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	<p><u>non-loaded loops</u>; d) <u>25 or more xDSL-I capable loops</u>; e) <u>9 or more conditioned loops for 2/4 wire non-loaded, ADSL compatible, xDSL-I, ISDN; and</u> f) <u>25 or more lines Quick Loop and Quick Loop with LNP.</u></p> <p><u>3.1.1.2. No later than one-hundred and ninety two (192) hours after the application date for:</u></p> <ul style="list-style-type: none"> a) <u>25 or more DS0 UDITs;</u> b) <u>25 or more DS0 EEL/Loop Mux;</u> c) <u>4 or more DS3 UDITs; and</u> d) <u>4 or more DS3 EEL/Loop Mux</u> 	<p>identical to the intervals in which Qwest provides FOCs for these products today. Eschelon's proposal requires no change by Qwest. A "specific provision" for when Qwest will provide the ICB interval is needed in the ICA, pursuant to Section 3.1 of Exhibit I, to ensure that Qwest provides these ICB intervals in the FOC and not after the much longer default 20 day period that was not intended for this situation. Section 9.2.4.3.1.2 of the ICA provides in agreed upon language that, for certain loop products, Qwest will return an FOC to CLEC within 72 hours from order receipt. It states that: "Such FOC will provide CLEC with a firm Due Date commitment . . . " There is no exception for ICB due dates. Eschelon's proposed language connects the dots between Section 9.2.4.3.1.2 of the ICA and Section 3.1 of Exhibit I to include a "specific provision" that Qwest will provide the ICB intervals within the FOC time period and not the much longer default 20 business day time period.</p>		<p>not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
Issue 1.1(e)	9.23.9.4.3 [24.4.4.3]	For the reasons discussed at Section	9.23.9.4.3 [24.4.4.3] <u>Standard</u>	See Qwest's position statement for

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Section 9.23.9.4.3 (First Sentence) Intervals for Loop Mux Combinations (LMC) ICA vs SIG	<p>Standard Service intervals for LMC(s) are set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale. For UNE Combinations with appropriate retail analogues, the provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</p>	<p>1.7.2 above, the ICA should contain applicable intervals and require amendment and Commission approval when intervals are modified. The remainder of this language is the same as in Section 9.23.5.3 (UNE Combination Ordering Process) in the Qwest-AT&T ICA approved by this Commission and the same section of the Washington SGAT.</p> <p>With respect to Sections 9.23.4.4.3 and 9.23.6.2, Qwest proposes to limit the AT&T/SGAT term “UNE Combinations” to only “EELS” based on its argument that Loop-Mux is not a UNE Combination. See Section 9.23.9 above for Eschelon’s position.</p>	<p>Service intervals for LMC(s) are set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale. For UNE Combinations with appropriate retail analogues, the provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</p>	<p>Issue 1-1 above. For the reasons stated above, intervals belong in the Service Interval Guide (SIG). Regarding the remainder of Section 9.23.9.4.3 [24.4.4.3], see Issue 9-61(a) below.</p>
Issue 1-2 Intentionally Left Blank				
RATE APPLICATION				
Issue 2-3	2.2 – Disputed portion (issue 1):	Section 2.2 addresses changes in	2.2 – Disputed portion (issue 1):	Qwest's language is crafted to avoid

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Section 2.2 ⁵ Application of Rates in Exhibit A (1 of 2 issues in 2.2)	<p><u>The rates in Exhibit A and when they apply are addressed in Section 22.</u></p> <p><u>2.2 – Entire provision:</u> 2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed,</p>	<p>law. The parties disagree as to Qwest’s two proposed insertions (for the second, <i>see</i> next row). Regarding the first issue, Section 22.0 (“Pricing”) already deals with the application of rates in Exhibit A and does so in more detail than Qwest’s proposed single sentence here. Most of Section 22.0 is agreed upon and closed. The issues that remain open will be decided in this arbitration with respect to Section 22.0 and need not also be litigated with respect to this Section 2.2. Despite the greater clarity on the subject already provided by Section 22.0, Qwest proposes to insert one sentence here that only partially addresses those issues. Its sentence conflicts with closed provisions in Section 22.0. For example, Section 22.4.1.2 states: “Such Commission-approved rates shall be effective as of the date required by a legally binding order of the Commission.” Section</p>	<p><u>Rates in Exhibit A include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission.</u></p> <p><u>2.2 – Entire provision:</u> 2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or</p>	<p>ambiguity if a Commission order does not specifically state a true-up requirement as part of a cost docket order. Qwest will concur with an order that requires true-up of past billing. In the absence of such order, the appropriate implementation process is to apply the ordered rates prospectively from the implementation date of the order.</p>

⁵ Section 2.2 contains two disputed issues (Application of Rates in Exhibit A; and Effective Date of Legally Binding Changes). The full language of Section 2.2 is provided in this matrix for only the first of these two issues. The second issue is addressed separately below, but only the disputed portion of Section 2.2 (an excerpt, instead of repeating the whole provision again) is shown in the Proposed Language columns. This format will likewise be used elsewhere in the matrix, where there is more than one disputed issue in a particular section.

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	<p>stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute resolution provision of this Agreement. It is expressly understood that this Agreement</p>	<p>22.4.1.2 does not attempt to pre-judge whether the rates will be applied on a prospective basis and leaves that issue to the discretion of the Commission to decide at the appropriate time. Qwest's new proposal in Section 2.2, in contrast, attempts to create an unnecessary presumption or default. The ambiguity created by Qwest's proposal is likely to lead to additional litigation. Eschelon proposes to either remain silent on this issue in Section 2.2 (by deleting Qwest's proposed insertion) or, as an option, to include Eschelon's proposed sentence that simply refers the reader to Section 22.0, where the issue is dealt with more completely.</p>	<p>modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute resolution provision of this Agreement. It is expressly understood that this Agreement will be amended as set forth in this</p>	

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	<p>will be amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement, except where CLEC notifies Qwest in writing that an amendment is not required. <u>The rates in Exhibit A and when they apply are addressed in Section 22.</u> Rates in Exhibit A include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. When a regulatory body or court issues an order causing a change in law and that order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any <u>any</u> resulting <u>a</u>Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. <u>In the event neither Party</u></p>		<p>Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement, except where CLEC notifies Qwest in writing that an amendment is not required. The rates in Exhibit A and when they apply are addressed in Section 22. <u>Rates in Exhibit A include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. When a regulatory body or court issues an order causing a change in law and that order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting <u>a</u>Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. <u>In the event neither Party</u></u></p>	

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	<p>terms and conditions, unless otherwise ordered. In the event neither Party provides notice within thirty (30) Days, the effective date of the legally binding change shall be the effective date of the amendment unless the Parties agree to a different date. While any negotiation or Dispute resolution is pending for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this Section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.</p>		<p><u>provides notice within thirty (30) Days, the effective date of the legally binding change shall be the effective date of the amendment unless the Parties agree to a different date.</u> While any negotiation or Dispute resolution is pending for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this Section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.</p>	
<p>EFFECTIVE DATE OF LEGALLY BINDING CHANGES Issue 2-4</p>	<p>... When a regulatory body or court issues an order causing a</p>			
<p>Section 2.2</p>	<p>Section 2.2 expressly provides that, when a change of law occurs, the ICA "shall be amended to reflect such legally binding modification or</p>		<p>... <u>When a regulatory body or court issues an order causing a</u></p>	<p>Many change of law orders do not provide clear implementation dates and require the parties to negotiate changes to the Interconnection</p>

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Effective Date of Legally Binding Changes (2 of 2 issues in Section 2.2)	<p>change in law and that order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting aAny amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. In the event neither Party provides notice within thirty (30) Days, the effective date of the legally binding change shall be the effective date of the amendment unless the Parties agree to a different date. . . .</p>	<p>change.” This mandatory language requiring such an ICA amendment is agreed upon. Without Qwest’s proposed changes, Section 2.2 would also provide that any such amendment “shall be deemed effective on the effective date” of the change in law, unless otherwise ordered. Under Qwest’s proposal, when a change in the law will be given effect may depend on whether one party gives the other party notice of the change. Thus, Qwest’s proposal creates an opportunity for Qwest to delay the implementation of adverse rulings. If, for example, Qwest is a party to a proceeding and Eschelon (or another CLEC that has opted into the ICA) is not, and Qwest receives an adverse result, Qwest’s language would allow Qwest to delay the effectiveness of that adverse ruling by simply not notifying CLECs of the ruling. Eschelon’s proposal, in contrast, provides that the effective date to be governed by the bodies issuing the applicable orders. If Qwest believes that an order does not clearly state an effective date, Qwest may ask the regulatory body or court to set one. Also, Qwest’s</p>	<p>change in law and that order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting aAmendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. <u>In the event neither Party provides notice within thirty (30) Days, the effective date of the legally binding change shall be the effective date of the amendment unless the Parties agree to a different date.</u> . . .</p>	<p>Agreement. Generally, one party or the other is advantaged by the change in law and the other party would be advantaged by delaying implementation. Qwest’s proposed language accomplishes at least two primary goals: (1) it removes the incentive for either party to delay negotiations of a change in law; and (2) it eliminates the possibility, and subsequent significant financial impact, of either party attempting to apply a change in law retroactively over a long timeframe.</p>

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		<p>new proposal is unclear in at least two respects. First, it is unclear whether an order that, by its terms, is “effective immediately” would be treated as including a “specific implementation date” under Qwest’s proposal. Second, Qwest’s insertion that begins with the phrase “In the event neither Party provides notice” does not refer back to the previous insertion, so it is unclear whether that sentence only applies in circumstances when the “order does not include a specific implementation date” or not. Qwest’s language adds unnecessary ambiguity about subjects that are already adequately addressed in closed language in Sections 2.2 and 22.</p>		
DESIGN CHANGES				
Issue 4-5 Section 9.2.3.8 & 9.2.4.4.2 See (a) to (c) below for related	<p><u>9.2.3.8 Design Change rates for Unbundled Loops</u></p> <p>9.2.4.4.2 Charges, as set forth in Exhibit A, apply for the following modifications to existing orders unless the need for such change is caused by</p>	<p>Neither the current Qwest-Eschelon ICA nor the SGAT has any language authorizing Design Change charges for loops. The SGAT authorizes Qwest to charge Design Change charges for dedicated transport but not loops. (<i>Compare</i> SGAT Section</p>	<p>9.2.3.8 Design Change rates for Unbundled Loops</p> <p>9.2.4.4.2 Charges, as set forth in Exhibit A, apply for the following modifications to existing orders unless the need for such change is caused by Qwest:</p>	<p>Eschelon's proposal would improperly limit Qwest's ability to assess design change charges to design changes involving transport. Although there may be circumstances under which Qwest would have to perform design changes for loops, Eschelon would</p>

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sections: 9.2.3.9, 9.6.3.6, And Exhibit A at 9.20.13 “Design Change”	Qwest: a) Design Change; and b) Expedited order.	9.6.4.1.4(c) with SGAT Section 9.2.4.) Qwest’s Design Change cost study refers to ASRs and other indicia of transport but not loops. If there is a charge, it should be a separate, lower charge for loops as opposed to transport. In any event, unlike Qwest’s proposed charge, the charge for a change in the design of a loop, if any, should be lower than the charge for installing the loop in the first place. Qwest refers to “closed language” at Section 9.2.4.4.2 of the ICA as its proposal. Section 9.2.4 relates to ordering for unbundled loops, as opposed to Section 9.2.3, which relates to rate elements. Section 9.2.4.4.2 provides: “Charges, as set forth in Exhibit A, apply for the following modifications to existing orders unless the need for such change is caused by Qwest: (a) Design Change.” This provision, in the ordering section, states that charges apply but does not list the rate elements (see 9.2.3 “Unbundled Loop Rate Elements”) or the rate (which, when applicable, is found in Exhibit A). Historically, there has been no charge for design	a) <u>Design Change; and</u> b) Expedited order.	prevent Qwest from assessing a charge for that work. In other words, it appears that Eschelon is attempting to obtain loop-related design changes without paying for them, in violation of Qwest’s right to recover the costs it incurs. Further, Eschelon appears to admit that there are costs associated with loop design changes, as shown by its statement that if there is a charge for these changes, it should be less than the charge for transport design changes. Eschelon provides no support for its assertion that the costs and charges for loop-related design changes are less than those associated with transport-related design changes.

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		<p>changes for unbundled loops, as the only rate only applied to design changes for transport. [<i>E.g.</i>, compare SGAT Section 9.2.4.1 (ordering for loops, with no design change language) with SGAT Section 9.6.4.1.4(c) (ordering for transport, with design change language.) Qwest nonetheless recently began to unilaterally charge for design changes for loops, without obtaining any ICA amendment or cost case ruling allowing it to do so. (See Issue 4-5.) Although Eschelon objects to that practice, Eschelon has shown great flexibility in offering to agree in Section 9.2.4.4.2 to allow Qwest to charge for design changes for loops on a going forward basis, <i>provided that “Design Change” is clearly defined to identify true changes in design and any charge is reasonable and cost-based.</i> There is no reason to also litigate the issues of the rate element and rate with respect to Section 9.2.4.4.2 when they will be decided with respect to Issues 4-5(a)-(d). With respect to the appropriate rate for the corresponding provision in Exhibit A, Eschelon agrees to pay a</p>		

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Issue 4-5(a)	9.2.3.9 <u>CFA Change – 2/4/ Wire Loop Cutovers. Connecting Facility Assignment (CFA) changes for Coordinated Installation Options for 2-Wire and 4-Wire analog (voice grade) Loops (excluding the Batch Hot Cut Process) on the day of the cut, during test and turn up. When this charge applies, the Design Change rate for Unbundled Loops does not apply.</u>	cost-based rate. See Issue 4-5(d). Qwest proposes to charge the same expensive rate for Design Changes for all Connecting Facility Assignment (“CFA”) changes, regardless of circumstance. In contrast, Eschelon has identified in this language certain CFA changes to which such a charge should not apply. These CFA changes occur for analog loop hot cuts on the day of cut during test and turn up (excluding batch hot cuts). If a CFA cannot be used and a new CFA is assigned during a cutover, the costs are not as high as in other situations because both parties’ personnel are already participating in the loop cutover. In such situations, the Qwest central office (“CO”) technician is already available and working on the cutover. It requires less additional work, and there is little if any extra time involved, to change pairs in such situations, as compared to circumstances requiring Design Changes when the CO technician must be separately dispatched, for example. Pair changes to install or repair service are part of a long-	9.2.3.9 CFA Change – 2/4 Wire Loop Cutovers. Connecting Facility Assignment (CFA) changes for Coordinated Installation Options for 2-Wire and 4-Wire analog (voice grade) Loops (excluding the Batch Hot Cut Process) on the day of the cut, during test and turn-up. When this charge applies, the Design Change rate for Unbundled Loops does not apply.	Eschelon’s proposal under which Qwest would be prohibited from assessing a design charge improperly assumes that Qwest does not have to perform work and does not incur costs for connecting facility assignment (“CFA”) changes that occur with coordinated installations. Eschelon bases this assumption on the fact that with a coordinated installation, a Qwest technician is already in the central office and thus no additional costs for the CFA are incurred. The flaw in Eschelon’s position is that it fails to recognize that regardless whether a Qwest technician is in the central office, Qwest must perform work to implement the CFA in its operation support systems that are used for provisioning. The presence of a technician in the central office does not eliminate or in any way reduce the work Qwest must perform to enter the CFA into these downstream operation support systems. Eschelon’s proposal would improperly prevent Qwest from recovering the costs and assessing a charge for this work.

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		<p>standing standard industry practice. Historically, Qwest has not charged separately for such pair (CFA) changes. If any charge is allowed in this context, it should be minimal. (Eschelon’s inclusion of this language does not require any rate at this time, as Exhibit A could indicate “no charge” or include an Interim Rate set by the Commission.) The ICA should specifically state that, in these circumstances, the separate Design Change rate does not apply, to avoid ambiguity and potential double recovery.</p>		<p>Eschelon’s proposal also is flawed because Eschelon contends, apparently in the alternative, that any charge should be minimal. However, Eschelon apparently has not proposed a charge and has not attempted to explain whether a “minimal charge” it is willing to accept would permit Qwest to recover its costs. Further, if Eschelon is proposing a new charge, the charge is not in Qwest's billing or provisioning systems could constitute a proposed change in process. A change in process should not be addressed in this arbitration involving only Qwest and Eschelon but, instead, should be addressed in a forum that permits all carriers with an interest in this issue to provide input.</p>
<p>Issue 4-5(b) Section 9.6.3.6 Design Change rate for UDIT</p>	<p><u>9.6.3.6 Design Change rates for UDITs are contained in Exhibit A of this Agreement.</u></p>	<p>The Commission has previously approved a design change rate for UDITs. Eschelon agrees to pay that rate. Regarding Qwest’s proposal to forego the Commission approved rate for Qwest’s federal tariff rate, see Issue 9-31. (Section 9.1.2). Qwest also refers to “closed language” at Section 9.6.4.1.4 of</p>	<p>9.6.3.6 Design Change rates for UDITs are contained in Exhibit A of this Agreement. Note: See the agreed to language at 9.6.4.1.4</p>	<p>Eschelon’s reference in this section to “design change rates for UDITs” improperly implies that Qwest is only permitted to assess design charges for transport. As discussed above in connection with Section 9.2.3.8, Qwest may also be required to perform design changes for other products, including loops. If Qwest</p>

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Issue 4-5 (c) Exhibit A Section 9.20.13 Design Change Charge	<p>9.20.13 Design Change (Transport) 9.20.13.1.1 Manual <u>\$53.65</u> <u>E</u></p> <p>9.29.13.1.2 Mechanized <u>\$50.45</u> <u>E</u></p> <p><u>9.20.13.2 Loop</u> <u>\$30.00</u> <u>I</u></p> <p><u>9.20 13.3 CFA.....</u> \$ 5.00 <u>I</u></p>	<p>the ICA as its proposal. Section 9.6.4 relates to UDIT ordering, as opposed to Section 9.6.3, which relates to UDIT rate elements. This is the common convention in the ICA (see Issue 4-5(b)). There is no reason to also litigate the issues of the rate element and rate with respect to Section 9.6.4.1.4 when they will be decided with respect to Issues 4-5(a)-(d). With respect to the appropriate rate for the corresponding provision in Exhibit A, Eschelon agrees to pay a cost-based rate. See Issue 4-5(d).</p> <p>The Design Change charge ordered by this Commission applies only to transport rate elements. Eschelon's addition to the title of 9.20.13 clarifies this rate application. Regarding Qwest's proposal to forego the Commission approved rate for Qwest's federal tariff rate, see Issue 9-31 (Section 9.1.2).</p> <p>Regarding design changes for loops (9.20.13.2), if the Commission approves a cost-based rate, Eschelon agrees to pay that rate. In the interim, Eschelon proposes a rate of \$30.00, which is</p>	<p>9.20.13 Design Change (Transport) 9.20.13.1.1 Manual \$53.65 E</p> <p>9.29.13.1.2 Mechanized \$50.45 E</p> <p>9.20.13.2 Loop \$30.00 +</p> <p>9.20.13.3 CFA..... \$ 5.00 +</p>	<p>performs that work, it is entitled to assess an appropriate charge.</p> <p>In addition, issues relating to the charges and activities for UDIT are already addressed in Section 9.6.4.1.4. Because these issues are already addressed through agreed language in Section 9.6.4.1.4, there is no need for Eschelon's objectionable language in this section of the ICA.</p> <p>Eschelon should be responsible for the same charges other CLECs pay.</p>

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Issue 5-6 Section 5.4.2 Discontinuation of Order Processing (1 of 2 options)	<p>PROPOSAL #1: 5.4.2 With the Commission's <u>approval</u>, One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. The Billing Party will notify the other Party in writing and the Commission on a confidential basis at least ten (10) business days prior to discontinuing the processing of</p>	<p>appropriately less than the Commission approved rate for transport of \$50.45 because of the differences between loops and transport. Given that the approved rate for basic installation of the entire loop is \$37.53, an interim rate of \$30.00 for design changes to that loop is very reasonable.</p> <p>Regarding Eschelon's proposed interim rate of \$5.00 for CFA changes, <i>see</i> Issue 4-5(b).</p> <p>Section 5.4.2 allows Qwest to discontinue processing all orders "for the relevant services" if CLEC does not make "full payment" of undisputed amounts. It is important to understand the breadth of this provision. The provision is not limited to particular orders but could, for example, lead to the disruption of all customer loop orders, even when most of the payment had been made (but not in "full"). The refusal to process all orders for relevant services is a very serious step that could vitally affect the ongoing viability of the party who can not get its orders processed. It could also have a</p>	<p>SAME FOR BOTH PROPOSALS: 5.4.2 With the Commission's approval, One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. The Billing Party will notify the other Party in writing and the Commission on a confidential basis at least ten (10) business days prior to discontinuing the processing of</p>	<p>It is critical that Qwest have the ability to collect unpaid undisputed bills. Eschelon's proposal would unduly slow that process down. A CLEC can and CLECs have filed for protection with the Commission in the event it feels Qwest is improperly taking this action.</p>

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	<p>orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to Section 5.4.5. The Billing Party shall resume order processing without unreasonable delay upon receipt of full payment of all charges, and payment of a deposit, if any, for the relevant services not disputed in good faith under this Agreement. Both Parties agree, however, that this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that</p>	<p>significant negative effect on current and potential end user customers. For example, Washington customers who are initiating or converting service may find themselves without service on the planned date of service.</p> <p>Qwest has other remedies, such as late payment fees and Dispute resolution, available to it. Before a party implements a step as serious and disruptive as discontinuance of order processing for relevant services, the Commission should be involved on behalf of the public interest. Therefore, Eschelon's first and preferred proposal is to require Commission approval before a party may discontinue order processing under these circumstances.</p>	<p>orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to Section 5.4.5. The Billing Party shall resume order processing without unreasonable delay upon receipt of full payment of all charges, and payment of a deposit, if any, for the relevant services not disputed in good faith under this Agreement. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to</p>	

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.		seek equitable relief, including injunctive relief and specific performance.	
DISCONTINUATION OF ORDER PROCESSING Issue 5-6 Section 5.4.2 Discontinuation of Order Processing (2 of 2 options)	PROPOSAL #2: 5.4.2 One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. . . . <u>If the billed Party asks the Commission to prevent discontinuance of order processing and/or rejection of orders (e.g., because delay in submitting dispute or making payment was reasonably justified due to inaccurate or incomplete Billing), the Billing Party will continue order processing while the proceedings are pending, unless the Commission orders</u>	Because the disruption of customer orders is such a serious step, Commission involvement is required. If the Commission declines to require approval in every case in which a party seeks to discontinue processing of all orders for relevant service due to non- or partial payment, the Commission should ensure that it will have an opportunity to act on the public's behalf before the services of end user customers are disrupted in those cases when a party seeks Commission relief. The language in Eschelon's second option allows the Commission this opportunity by providing that, if Commission intervention is sought, the Billing Party will continue order processing while the proceedings are pending, unless the Commission orders otherwise.	SAME FOR BOTH PROPOSALS: 5.4.2 One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. . . . If the billed Party asks the Commission to prevent discontinuance of order processing and/or rejection of orders (e.g., because delay in submitting dispute or making payment was reasonably justified due to inaccurate or incomplete Billing), the Billing Party will continue order processing while the proceedings are pending, unless the Commission orders otherwise. . . .	It is critical that Qwest have the ability to collect unpaid undisputed bills. Eschelon's proposal would unduly slow that process down. A CLEC can and CLECs have filed for protection with the Commission in the event it feels Qwest is improperly taking this action.

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Issue 5-7 Section 5.4.3 & see (a) below related section 5.1.13 Commission approval for disconnects	5.4.3 <u>With the Commission's approval pursuant to Section 5.13.1, The</u> the Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Days following the Payment Due Date. For Resale products pursuant to Section 6, the billed Party will pay the applicable tariffed non-recurring charge less the wholesale discount set forth in Exhibit A, required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, if any, shall become due. If the Billing Party does not disconnect the billed	This section concerns the circumstances under which Qwest may disconnect Eschelon's service, including service to its end user customers, for non-payment. Here the need for Commission oversight is even greater than in the preceding section, concerning the discontinuance of order processing. Not only would such a drastic measure likely very seriously, if not fatally, harm Eschelon's business, it would be extremely disruptive, to say the least, for Eschelon's customers, who would lose their telephone service as a result. Before Qwest takes such a step, it should have the obligation to first seek to the permission of the Commission, in order to be sure that the interests of the public are adequately protected. Eschelon's proposed language for this section contains a cross-reference to Section 5.13.1, to clarify that, if Qwest seeks to disconnect service, it must first obtain the Commission's permission. In light of the interests	5.4.3 <u>With the Commission's approval pursuant to Section 5.13.1, I</u> the Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Days following the Payment Due Date. For Resale products pursuant to Section 6, the billed Party will pay the applicable tariffed non-recurring charge less the wholesale discount set forth in Exhibit A, required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, if any, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date	If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs. There is no rational or reasonable basis for Eschelon's attempt to put the Commission in a position of micro-managing the parties' industry-standard business practices.

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	<p>Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice, <u>if disconnection has been approved by the Commission</u>. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party may request a deposit (or recalculate the deposit) as specified in Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves</p>	<p>at stake, this language is reasonable. In Minnesota, where the Commission requires approval for disconnection, Qwest agreed to this language and thus the issue did not need to be arbitrated. Qwest will have a process, therefore, for providing notice to a commission before disconnection that it could also use in Washington.</p>	<p>specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice, if disconnection has been approved by the Commission. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party may request a deposit (or recalculate the deposit) as specified in Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>	

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Issue 5-7(a) Section 5.13.1 Commission approval prior to disconnection	<p>the right to seek equitable relief, including injunctive relief and specific performance.</p> <p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after written notice thereof, the other Party <u>must notify the Commission in writing and</u> may seek relief in accordance with the Dispute resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect. <u>Neither Party shall disconnect service to the other Party without first obtaining Commission approval.</u> To the extent that either Party disputes, pursuant to Section 21.8, any amount due hereunder, the Party's</p>	<p>Eschelon has proposed language to be included in this Section that would assure that the Commission is kept adequately informed of alleged defaults under the ICA. This will allow the Commission to monitor disputes, and become involved in them to the extent necessary and appropriate, for the protection of the public interest.</p> <p>Eschelon's proposal also includes a provision requiring that Qwest seek and obtain the Commission's approval before disconnecting Eschelon's service. The rationale for this provision is discussed above, in connection with Section 5.4.3 (Issue 5-7).</p>	<p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after written notice thereof, the other Party must notify the Commission in writing and may seek relief in accordance with the Dispute resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect. Neither Party shall disconnect service to the other Party without first obtaining Commission approval. To the extent that either Party disputes, pursuant to Section 21.8, any amount due hereunder, the Party's withholding of such disputed amounts pursuant to</p>	<p>If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs. There is no rational or reasonable basis for Eschelon's attempt to put the Commission in a position of micro-managing the parties' industry-standard business practices.</p>

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DEPOSITS			Section 21.8 shall not constitute a default under this Section 5.13 during the pendency of such dispute.	
Issue 5-8 Section 5.4.5 De Minimus Amount (1 of 3 issues in 1 st Eschelon proposal for 5.4.5)	<p>5.4.5 Disputed portion (issue 1): “Repeatedly Delinquent” means <u>non-</u><u>de minimus</u> amount received more than thirty (30) Days after the Payment Due Date . . .</p> <p><u>Entire provision:</u> 5.4.5 Each Party will determine the other Party’s credit status based on previous payment history as described below or, if the Parties are doing business with each other for the first time, based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence or the Party is Repeatedly Delinquent in making its payments, or the Party is being reconnected after a disconnection of service or</p>	<p>Eschelon has proposed language that would trigger the deposit requirement only when there is a failure to pay an undisputed “non-de minimus” amount. Qwest opposes the “de minimus” limitation. The amount of a deposit under this provision is substantial – two months’ worth of charges. It is unreasonable that this requirement should be triggered when, as a result of an error for example, a payment is off by a few dollars. A deposit should be required when the test is truly met and there is a legitimate concern about a company’s ability to pay future charges. Such a concern does not arise when the amount that is not paid is de minimus.</p>	<p>5.4.5 Disputed portion (issue 1): “Repeatedly Delinquent” means payment of any undisputed non-de minimus amount received more than thirty (30) Days after the Payment Due Date . . .</p> <p><u>Entire provision:</u> 5.4.5 Each Party will determine the other Party’s credit status based on previous payment history as described below or, if the Parties are doing business with each other for the first time, based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence or the Party is Repeatedly Delinquent in making its payments, or the Party is being reconnected after a disconnection of service or</p>	<p>If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs.</p>

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	<p>discontinuance of the processing of orders by the Billing Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or reconnection of service.</p> <p>“Repeatedly Delinquent” means payment of any undisputed <u>non-de minimus</u> amount received more than thirty (30) Days after the Payment Due Date, <u>for three (3) consecutive months. or more times during a twelve (12) month period</u> on the same Billing account number. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is Repeatedly Delinquent as described above for all services. The deposit may be a surety bond</p>		<p>orders by the Billing Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service.</p> <p>“Repeatedly Delinquent” means payment of any undisputed non-de minimus amount received more than thirty (30) Days after the Payment Due Date, for three (3) consecutive months. or more times during a twelve (12) month period on the same Billing account number. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is Repeatedly Delinquent as described above for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing</p>	

Issue#/ Section# ¹	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ¹
	<p>if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met, <u>unless the billed Party challenges the amount of the deposit or deposit requirement (e.g., because delay in submitting or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.</u></p>		<p>Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met, unless the billed Party challenges the amount of the deposit or deposit requirement (e.g., because delay in submitting disputes or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.</p>	
<p>Issue 5-9 Section 5.4.5 Definition of Repeatedly Delinquent</p>	<p>PROPOSAL #1 (issue 2): 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, <u>for three (3) consecutive months, or more times during a twelve</u></p>	<p>The parties have agreed that a deposit may be required where payment is “Repeatedly Delinquent.” They disagree about how this standard should be defined. Qwest proposes that a payment be considered ‘Repeatedly Delinquent’ when payment of “any”</p>	<p>SAME FOR ALL PROPOSALS: 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, for three (3) consecutive months or more times during a <u>twelve (12) month period</u> on the</p>	<p>If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs.</p>

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(2 of 3 issues in 1 st Eschelon proposal for 5.4.5) (1 of 2 options)	(12) month period -on the same Billing account number. . . .	undisputed amount is received more than thirty days after the due date three or more times within a twelve-month period. This standard allows Qwest to require a deposit under some circumstances when there is no genuine question about a party's ability to pay. Under Qwest's proposal, for example, if a CLEC were to pay a portion of the amount due late in months one and two, make timely payments in the full amount for nine consecutive months, and then pay a portion of the amount due late in month twelve, Qwest could demand a large security deposit. Such a scenario does not provide any evidence of the financial stress that gives rise to a legitimate need for payment "security." In contrast, a standard that more accurately captures such circumstances would be if payment is received more than thirty days after the due date for three consecutive months. Qwest already uses this "three consecutive month" standard in other contracts. For example, ATI, which was recently acquired by Eschelon, has the three consecutive month standard in its current ICA with Qwest in	same Billing account number. . . .	

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		<p>Washington. (<i>ATI ICA</i>, §26.4.4.) In addition, in a recent filing in Utah, McLeod quoted the definition of “Repeatedly Delinquent” in §26.4.4 of its ICA with Qwest as meaning “being thirty (30) days or more delinquent for three (3) consecutive months.” (<i>McLeod Brief</i>) In Idaho, Qwest agreed to the three consecutive month standard with a company called Wavesent, even though Wavesent filed an arbitration petition on other issues. (<i>Wavesent Petition</i>.) Qwest has also had agreements with other carriers (such as wireless and paging companies) with the three consecutive month standard. The three consecutive month standard better meets the objective of the deposit provision. Qwest’s proposed language, in contrast, would allow Qwest to demand a deposit even when late payment is an isolated occurrence.</p>		
Issue 5-9 Section 5.4.5 Definition of Repeatedly	<p>PROPOSAL #2 (issue 2): 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date,</p>	<p>Eschelon’s second option for the definition of ‘Repeatedly Delinquent’ is the same as Qwest’s definition, except that Eschelon proposes six months instead of twelve. The undesirable scenario</p>	<p>SAME FOR ALL PROPOSALS: 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, three (3) or more times during</p>	<p>If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs.</p>

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Delinquent (2 of 3 issues 1 st Eschelon proposal for 5.4.5) (2 of 2 options)	three (3) or more times during a <u>six (6) month</u> period on the same Billing account number. . . .	described under option one above would not occur with this definition, because the CLEC with nine consecutive months of timely payment in full would not fall within the definition. At the same time, Qwest would be protected in circumstances when late payment might reasonably be viewed as creating a legitimate concern about ability to pay that would justify a deposit.	a <u>twelve (12) month</u> period on the same Billing account number. . . .	
Issue 5-10 Intentionally left Blank				
Issue 5-11 Section 5.4.5 Disputes Before Commission (3 of 3 issues in 1 st Eschelon proposal for 5.4.5)	5.4.5Required deposits are due and payable within thirty (30) Days after demand and conditions being met, <u>unless the billed Party challenges the amount of the deposit or deposit requirement (e.g., because delay in submitting disputes or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.</u>	The parties have agreed on language that provides that a required deposit will be due within thirty days of demand. Eschelon has proposed an exception for situations when the party on whom the demand is made challenges with the Commission either whether a deposit is required on the amount of the deposit. In such an instance, the deposit would be due as ordered by the Commission. This exception gives effect to the parties' right to bring disputes to the Commission for resolution. (See Section 5.18.1.)	5.4.5Required deposits are due and payable within thirty (30) Days after demand and conditions being met, unless the billed Party challenges the amount of the deposit or deposit requirement (e.g., because delay in submitting disputes or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.	If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs.

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<p>Issue 5-12</p> <p>Section 5.4.5</p> <p>Deposit Requirement (Eschelon Proposal #3)</p>	<p>PROPOSAL #3:</p> <p>5.4.5 Each Party <u>has with</u> determined the other Party's credit status based on previous payment history <u>or credit reports such as Dun and Bradstreet. If a Party has not established satisfactory credit with the other Party according to the above provisions or the Party is repeatedly delinquent in making its payments, or the If a</u> Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. <u>The Billing Party may also require a deposit for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21 of this Agreement, for the relevant services provided under this Agreement within ninety (90)</u></p>	<p>Eschelon proposes a third option that, unlike the other two, does not hinge on the definition of Repeatedly Delinquent. Instead, this option provides an opportunity for the Commission to review a party's payment history and determine whether "all relevant circumstances warrant a deposit." This option provides the Commission with flexibility to determine contested deposit requirements on a case-by-case basis if and when such cases arise.</p>	<p>SAME FOR ALL PROPOSALS:</p> <p>Each Party will determine the other Party's credit status based on previous payment history as described below or, if the Parties are doing business with each other for the first time, based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence or the Party is Repeatedly Delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. <u>The Billing Party may also require a deposit for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21 of this Agreement, for the relevant services provided</u></p>	<p>If a bill is undisputed, Eschelon should pay it. If Eschelon fails to make full payment regularly, it should be treated in the same fashion as other CLECs.</p>

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	<p><u>Days following the Payment Due Date, if the Commission determines that all relevant circumstances warrant a deposit. “Repeatedly delinquent” means any payment received thirty (30) Days or more after the Payment Due Date, three (3) or more times during a twelve (12) month period on the same Billing account number. Accounts with amounts disputed under the dispute provisions of this agreement shall not be included as Repeatedly Delinquent based on amounts in dispute alone. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is repeatedly delinquent as described above for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and</u></p>		<p><u>under this Agreement within ninety (90) Days following the Payment Due Date, if the Commission determines that all relevant circumstances warrant a deposit. “Repeatedly delinquent” means any payment received thirty (30) Days or more after the Payment Due Date, three (3) or more times during a twelve (12) month period on the same Billing account number. Accounts with amounts disputed under the dispute provisions of this agreement shall not be included as Repeatedly Delinquent based on amounts in dispute alone. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is repeatedly delinquent as described above for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and</u></p>	

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	<p>conditions acceptable to the Billing Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met.</p>		<p>Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met.</p>	
<p>REVIEW OF CREDIT STANDING Issue 5-13 Section 5.4.7 Review of credit standing (1 of 2 options)</p>	<p>PROPOSAL #1: <u>5.4.7 Intentionally Left Blank.</u></p>	<p>Qwest has proposed a provision that would allow a Billing Party to review the other party’s credit standing and increase the amount of the deposit. Because this provision contains no criteria or standards defining when this provision may be invoked, it would effectively nullify the limitations set out in Section 5.4.5 on a party’s ability to demand a deposit. Qwest’s proposal does not describe the “credit history” that would be subject to review, the conditions that might justify such a review, or the circumstances that would warrant a modification. There is no limitation on ability to increase a</p>	<p>SAME FOR BOTH PROPOSALS: <u>5.4.7 The Billing Party may review the other Party’s credit standing and increase the amount of deposit required but in no event will the maximum amount exceed the amount stated in Section 5.4.5.</u></p>	<p>It is reasonable that Qwest may modify its deposit requirements based on the amount of financial risk at stake.</p>

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		<p>deposit amount when the Billed Party is current in its payments. Such an unlimited ability to demand an increase in the amount of a deposit would be an open invitation to arbitrary action.</p> <p>This Section is also inconsistent with Section 5.4.5 in another way. Section 5.4.7, as proposed by Qwest, states that the amount of the deposit, when increased, may not exceed the maximum amount provided for under Section 5.4.5. That Section, however, provides no method for calculation of a maximum when the amount of a deposit is to be modified. Under Section 5.4.5, “The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the first three (3) months, from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is Repeatedly Delinquent as described above for all services.” (Emphasis added.)</p> <p>For a deposit increase under Section 5.4.7, there would be no “triggering event” that could be used to select</p>		

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Issue 5-13 Section 5.4.7 Review of credit standing (2 of 2 options)	<p>PROPOSAL #2: 5.4.7 The Billing Party may review the other Party's credit standing and increase the amount of deposit required <u>if approved by the Commission</u> but in no event will the maximum amount exceed the amount stated in Section 5.4.5.</p>	<p>three months for purposes of computing an average. Because of its inconsistency with the general deposit requirement set out in Section 5.4.5, Eschelon recommends that Section 5.4.7 be deleted and left blank. The provision is unnecessary in any event. The only legitimate need to modify a deposit that has been identified is recalculation of the deposit based upon financial standing, and that is already covered in Section 5.4.6.</p>	<p>SAME FOR BOTH PROPOSALS: 5.4.7 The Billing Party may review the other Party's credit standing and increase the amount of deposit required, if approved by the Commission but in no event will the maximum amount exceed the amount stated in Section 5.4.5.</p>	<p>It is reasonable that Qwest may modify its deposit requirements based on the amount of financial risk at stake.</p>
Issue 5-14 Intentionally Left Blank Issue 5-15 Intentionally Left Blank Section 5.13.1 See				

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Issue 5-7(a) above				
COPY OF NON- DISCLOSURE AGREEMENT				
Issue 5-16 Section 5.16.9.1 Non-disclosure Agreement	<p>5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a non-disclosure agreement which states that, upon threat of termination, the aforementioned personnel may</p>	<p>Forecasting information is highly competitively sensitive and the parties have reasonably agreed that this information should not be disclosed to Qwest employees who are in a position to use it to Eschelon's competitive disadvantage. Accordingly, Section 15.16.9.1 of the agreement identifies Qwest employees who may, and who may not, have access to confidential information regarding Eschelon's forecasts. The parties agree that Qwest employees to whom Eschelon's forecasts and forecasting information are disclosed will be required to execute a nondisclosure agreement covering the information. They disagree as to whether Qwest must provide Eschelon with a signed copy of each non-disclosure agreement within ten days of execution. Eschelon's proposal to receive copies of executed non-disclosure</p>	<p>5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a non-disclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss</p>	<p>Providing nondisclosure agreements imposes an unreasonable burden.</p>

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	<p>not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. <u>Qwest shall provide CLEC with a signed copy of each non-disclosure agreement executed by Qwest personnel within ten (10) Days of execution.</u> Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.</p>	<p>agreements reflects the common practice in other contexts under which the parties exchange signature pages of confidentiality protective agreements so that a party will be aware of who is receiving its confidential information and will be in a position to raise objections if necessary. If Qwest does not provide Escheion with copies of executed nondisclosure agreements, Eschelon will have insufficient information to object if sensitive information is provided to a Qwest employee not authorized by the ICA to receive it. Eschelon thus will have no way to confirm that its confidential information is being adequately protected. Qwest has already agreed that employees will sign the agreement. Eschelon's proposal to require Qwest to provide a copy of that existing executed agreement imposes little, if any, burden on Qwest.</p>	<p>such information with those not authorized to receive it except as specifically authorized by law. <u>Qwest shall provide CLEC with a signed copy of each non-disclosure agreement executed by Qwest personnel within ten (10) Days of execution.</u> Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.</p>	
Issue 6-17 Intentionally Left Blank				

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Section 6.6.4 – See Section 12.4.1.8 (issue 12-80)				
Section 7.3.5.2 See Section Issue 12-67 (a)-(f) below				
Section 7.4.7 - See Section 1.7.2 above (issue 1-1)				
TRANSIT RECORD CHARGE AND BILL VALIDATION				
Issue 7-18 Section 7.6.3.1 Application of Transit Record Charge	<u>7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic the billed party may request sample 11-01-XX records for specified offices. These records will be provided by the transit provider in EMI mechanized format to the billed party at no charge, because the records will not be used to bill a Carrier. The billed party will limit requests for sample 11-01-XX data to a maximum of once every six months, provided that Billing is</u>	Section 7.6 governs transit records and applies when Qwest or CLEC acts as a transit provider. It allows transit providers to exchange records to allow them to bill other carriers for transit traffic. Section 7.6.3 provides that there may be a charge for doing so. Eschelon is not a transit provider, and it does not use these records for billing carriers. The ongoing exchange of records anticipated by this language and upon which a charge may be based does not apply, therefore, to	7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic the billed party may request sample 11-01-XX records for specified offices. These records will be provided by the transit provider in EMI mechanized format to the billed party at no charge, because the records will not be used to bill a Carrier. The billed party will limit requests for sample 11-01-XX data to a maximum of once every six months, provided that Billing is accurate.	Eschelon's switch is capable of recording the originating calls that Eschelon routes to Qwest therefore, Eschelon is aware of the destination for such calls. Eschelon can validate Qwest billing with Eschelon's own data.

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	<p><u>accurate.</u></p>	<p>Eschelon’s periodic need for samples of these records.</p> <p>Why does Eschelon occasionally need to review sample records? Qwest bills Eschelon for transit traffic, and Eschelon periodically needs to verify those bills. Section 21.8.4.3 contains language (similar to that in Section 5.4.4 of the SGAT) stating that the parties will “promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party.” It is reasonable for Eschelon to request sample records on occasion to verify Qwest’s bills. This is a cost of doing business for Qwest, which benefits from the payments that Eschelon makes to Qwest for the transit traffic. Because Section 7.6.3 contains no exception for the types of requests made pursuant to Section 21.8.4.3, Eschelon proposes to add a provision that explicitly states that there is no charge for sample records used to verify Qwest’s bills to CLEC. This provision will help eliminate ambiguity and avoid potential disputes about the application of the</p>		

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Issue 7-19 Section 7.6.4 Transit Record Bill Validation Detail	<p><u>7.6.4 Qwest will provide the non-transit provider, upon request, bill validation detail including but not limited to: originating and terminating CLLI code, Operating Company Number, originating and terminating state jurisdiction, number of minutes being billed, rate elements being billed, and rates applied to each minute.</u></p>	<p>charge in Section 7.6.3, which was not intended for this situation. Eschelon has reasonably proposed that it will limit its request for sample records to a maximum of once every six months, provided that billing is accurate, to address any concern that a carrier opting into the ICA may try to use the exception to obtain records for another purpose.</p> <p>As discussed with respect to Section 7.6.3.1 above, Qwest bills Eschelon for transit traffic. Eschelon’s proposed Section 7.6.4 states that Qwest, as the transit provider, will provide Eschelon with backup detail so Eschelon may verify that these charges are valid. CLECs need backup detail to verify charges. Qwest should not be allowed to deny CLECs this opportunity to verify whether its charges are legitimate. The verification task is burdensome. A CLEC that takes it on must be given the information needed to do so. Eschelon has listed the information needed to verify these bills.</p>	<p>7.6.4 Qwest will provide the non-transit provider, upon request, bill validation detail including but not limited to: originating and terminating CLLI code, originating and terminating Operating Company Number, originating and terminating state jurisdiction, number of minutes being billed, rate elements being billed, and rates applied to each minute.</p>	<p>Eschelon’s switch is capable of recording the originating calls Eschelon delivers to Qwest and the destination for such calls. Eschelon can validate Qwest billing with Eschelon’s own data.</p>
COLLOCATION AVAILABLE INVENTORY				

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<p>Issue 8-20</p> <p>Section 8.1.1.10.1.1.1</p> <p>Collocation Available Inventory</p> <p>Posting of Previous Quotes for Sites</p>	<p><u>8.1.1.10.1.1.1 Notwithstanding any other provision of this Agreement, if Qwest prepares a QPF for a posted Collocation site and for any reason the posted Collocation site is returned to Qwest inventory, Qwest will post the quoted price from the QPF on the inventory list for that site and, for future requests for that site, will waive the QPF, as the quote has already been prepared, unless Qwest establishes a change in circumstance affecting the quoted price.</u></p>	<p>When making a “new” versus “used” purchase decision, a buyer considers several factors, but price is almost always a key factor. Qwest offers essentially “used” collocations for sale through its “collocation available inventory” website list of available collocation sites, but those listings include no price. There is not even an estimate. When a collocation site is no longer being used by a CLEC and that site is returned to Qwest, the site is then posted on Qwest’s website as available inventory that is available for purchase by other CLECs. Eschelon has proposed language providing that, when Qwest prepares a quote and charges a QPF in connection with that quote, for a posted Collocation site and the site is subsequently returned to Qwest inventory, Qwest will post the quoted price from the QPF and will waive the QPF for future quote requests.</p> <p>This provision does not require Qwest to go to any particular effort to prepare a quote. Rather, Eschelon’s proposal is reasonable because it only requires Qwest to</p>	<p>8.1.1.10.1.1.1 Notwithstanding any other provision of this Agreement, if Qwest prepares a QPF for a posted Collocation site and for any reason the posted Collocation site is returned to Qwest inventory, Qwest will post the quoted price from the QPF on the inventory list for that site and, for future requests for that site, will waive the QPF, as the quote has already been prepared, unless Qwest establishes a change in circumstance affecting the quoted price.</p>	<p>There is no legal basis to order Qwest to post prices or previous quotes for this product, given that Qwest has no legal obligation to offer this product. Posting of previous quotes for a given site is not warranted in any case given that price will depend on what the ordering CLEC requires with regard to power, augments, etc., not on what a previous CLEC might have requested in a quote. Further, Eschelon is equally able to determine an expected price for a given site based on the Exhibit A rates in Eschelon’s ICA, and has offered no justification to shift this burden to Qwest. In fact, Eschelon is in a better position to estimate what a given site will cost, because it knows what it will order, and Qwest does not. The price will depend on what the requesting CLEC orders, and will therefore vary by request. The current process, whereby a CLEC applies and receives a quote, is reasonable. Eschelon also argues that Qwest should not be entitled to charge a quote preparation fee (“QPF”) when it prepares a quote for a site where Qwest previously</p>

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		<p>post pricing information that it has already available to it as a result of having previously prepared a quote. Further, because Qwest has already charged for the preparation of the quote, the requirement that Qwest waive the fee for subsequent quotes reasonably prevents Qwest from receiving double recovery.</p> <p>Sections 8.2.10.3.2 provides that all services that were previously connected to the Collocation will be disconnected before the site is posted and that Qwest will inventory and post all Reusable and Reimbursable Elements. That work has been done before a quote is even prepared and the items posted will be the same for any requesting carrier. Also, Section 8.2.10.3.3 states that, if CLEC requests modifications to the Qwest posted site, the ICA terms relating to Augments will apply. If a CLEC was not identical to the Qwest posting, Qwest would treat it as an Augment. Therefore, any claim by Qwest that it cannot post the quote because CLECs do not order identical configurations is inconsistent with this closed</p>		<p>prepared a quote for a different CLEC. That quote for the previous CLEC, however, was based on the specific request of that CLEC, and the QPF charged there recovers Qwest's costs of preparing that quote, even if that prior CLEC decided not to proceed with the order. Qwest is also entitled to recover its costs of preparing subsequent quotes, and Eschelon is incorrect in suggesting that there is some potential for "double recovery" here. If the first CLEC decides not to proceed with its order and the site is returned to inventory, and a subsequent CLEC places an order for that site, then Qwest is entitled to recover its costs to prepare a different quote for the different request of that different CLEC. Finally, this issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that</p>

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Issue 8-20a Section 8.2.10.4.3 Collocation Available Inventory Charges for augment application	8.2.10.4.3 CPMC will verify whether the requested site is still available for acquisition by conducting a feasibility study within ten (10) Days after receipt of the application. If the site is not available the CPMC will notify the CLEC in writing. If the site is available a site survey will be arranged with the CLEC and Qwest State Interconnect Manager (SICM). Upon completion of the survey Qwest will prepare a quote based on the site inventory and any requested modifications to the site. CLEC must pay in full one hundred percent (100%) of the quoted non-recurring charges to Qwest	language. Section 8.2.10.4.3 provides that Qwest may charge Qwest will verify whether a collocation site posted on Qwest’s available inventory site is still available for acquisition by conducting a feasibility study. If the site is available, a site survey will be arranged. Upon completion of the survey, “Qwest will prepare a quote based on the site inventory and any requested modifications to the site” (emphasis added). It then states that “CLEC will be charged a special site assessment fee for work performed up to the point of expiration or non-acceptance of the quote.” This language also appears, for example, in the Qwest-Covad	8.2.10.4.3 CPMC will verify whether the requested site is still available for acquisition by conducting a feasibility study within ten (10) Days after receipt of the application. If the site is not available the CPMC will notify the CLEC in writing. If the site is available a site survey will be arranged with the CLEC and Qwest State Interconnect Manager (SICM). Upon completion of the survey Qwest will prepare a quote based on the site inventory and any requested modifications to the site. CLEC must pay in full one hundred percent (100%) of the quoted non-recurring charges to Qwest within thirty (30) Days of receipt of the	processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act. When a CLEC requests an augment in association with ordering an available inventory site, Qwest must perform certain planning and engineering work in order to determine how to provision that augment request. The QPF recovers the cost of this planning and engineering work. Qwest is entitled to recover its costs. Eschelon contends that Qwest's language is inconsistent with the language in 8.2.10.4.3 stating that the quote Qwest prepares will be based on the site inventory and any requested modifications. This language in Section 8.2.10.4.3, however, merely clarifies what the quote will cover, and how and when it will be

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	<p>within thirty (30) Days of receipt of the quote. If Qwest does not receive the payment within such thirty (30) Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a special site assessment fee for work performed up to the point of expiration or non-acceptance of the quote. See Section 8.3.11.3.2--If CLEC requests an augment application then CLEC will be a charged a QPF instead of the special site assessment fee. Upon receipt of the full payment for the quoted non-recurring charges, Qwest will begin the establishment of the site records and the complete the job build-out. The interval shall be forty-five (45) Days for completion of the site from receipt of payment. In the event that CLEC requires Qwest to install additional services to the existing site, the interval will revert to the intervals defined in the assuming CLEC's Interconnect Agreement.</p>	<p>ICA recently approved by this Commission (in Sections 8.2.8.4.2-8.2.8.4.3). Now, Qwest proposes to introduce a new sentence that states that Qwest may charge the higher augment fee instead of the special site assessment fee "if CLEC requests an augment application." (Presumably, Qwest means to say an augment, and not an application, as there is not a several thousand dollar fee for requesting a form application.) The special site assessment fee, however, already includes "any requested modifications." Qwest's proposal is inconsistent with the ICA's language and is not cost based.</p>	<p>quote. If Qwest does not receive the payment within such thirty (30) Day period, the quote will expire and the requested site will be returned to Qwest inventory. The CLEC will be charged a special site assessment fee for work performed up to the point of expiration or non-acceptance of the quote. See Section 8.3.11.3.2. <u>If CLEC requests an augment application then CLEC will be a charged a QPF instead of the special site assessment fee.</u> Upon receipt of the full payment for the quoted non-recurring charges, Qwest will begin the establishment of the site records and the complete the job build-out. The interval shall be forty-five (45) Days for completion of the site from receipt of payment. In the event that CLEC requires Qwest to install additional services to the existing site, the interval will revert to the intervals defined in the assuming CLEC's Interconnect Agreement.</p>	<p>prepared. If a CLEC requests modifications, the quote will include the charges for those modifications. It does not address the issue of cost recovery for preparing the quote where modifications are requested. That is addressed in Section 8.3.11.3.2, as stated in undisputed language within Section 8.2.10.4.3. It is quite clear that Section 8.2 of the Agreement (including Section 8.2.10.4.3.) sets forth general terms, as it is entitled "General Terms - Collocation Available Inventory." It is equally clear that Section 8.3 establishes rate elements, as it is entitled "rate elements." Section 8.3.11 (which includes Section 8.3.11.3.2) is specifically entitled "Rate Elements-- Collocation Inventory." Section 8.3.11.3.2 expressly and unequivocally states that when a CLEC requests modifications to a site in its application, the QPF will apply. Qwest's proposed language in Section 8.2.10.4.3 regarding the process to prepare a quote merely clarifies and reiterates, consistent with the more specific rate element provision in Section 8.3.11.3.2, that</p>

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POWER				Qwest will charge the QPF if a CLEC requests modifications-- consistent with Section 8.3.11.3.2.
Issue 8-21 Section 8.2.1.29.2.1 See (a)-(d) below for related issues for sections 8.2.1.29.2.2 8.3.1.6 8.3.1.6.1 8.3.1.6.2 & subparts (a)&(b)	8.2.1.29.2.1 CLEC orders DC power plant in increments of twenty (20) amps per feed minimum. If CLEC orders an increment larger than sixty (60) amps, engineering practice normally terminates such feed on a power board. Qwest measures power usage on the power board, as described in Section 8.2.1.29.2.2 below. If CLEC orders an increment of sixty (60) amps or less, the power feed will normally appear on a Battery Distribution Fuse Board (BDFB). No power usage measurement occurs at a BDFB.	Qwest proposes to use the term “power usage” to support its position that there are two charges, but only one of them is adjusted based on usage readings. Eschelon disagrees for the reasons stated below. See Eschelon’s position statement for Issue 8-21(b) (Section 8.3.1.6).	8.2.1.29.2.1 CLEC orders DC power plant in increments of twenty (20) amps per feed minimum. If CLEC orders an increment larger than sixty (60) amps, engineering practice normally terminates such feed on a power board. Qwest measures power <u>usage</u> on the power board, as described in Section 8.2.1.29.2.2 below. If CLEC orders an increment of sixty (60) amps or less, the power feed will normally appear on a Battery Distribution Fuse Board (BDFB). No power usage measurement occurs at a BDFB.	Qwest must engineer and provision its power plant as ordered to be able to provide the power requested by a CLEC. Qwest’s language would allow Eschelon to elect to have its actual DC Power usage measured, and billed on a measured basis. Qwest’s charge for power plant, however, is different than its charge for power usage, and cannot be adjusted based on a CLEC’s actual power consumption. If a CLEC orders a 100 amp power connection, then that is what Qwest provisions, and it charges on that basis. A CLEC may only use 40 amps for a given period of time, but that does not alter the fact that Qwest provisioned the CLEC’s order for 100 amps-- as requested by the CLEC. Power usage can be measured and billed based on actual consumption, and that is what Qwest’s language accomplishes. There is legitimate basis, however, to adjust power plant based on usage. A 100 amp connection is
-48 Volt Power Measurement				

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				<p>provisioned to be able to provide 100 amps of power at all times-- pursuant to the CLEC's request-- and remains so month to month, regardless of how much power the CLEC actually uses. If a CLEC determines that it requires less or more power it may submit an appropriate augment request to make that change, and this will change its monthly DC power plant charge. Failing that, however, Qwest will bill DC power plant ordered at 100 amps at that 100 amp rate, because that is what Qwest has provisioned and that is what Qwest delivers to the CLEC-- the capability to always draw 100 amps over that connection.</p> <p>Eschelon's contention that this issue is the "same" issue as presented in certain complaint actions filed by McLeod in several states is not correct. While both deal with -48 Volt DC Power and the question of whether power measurement should apply to both DC Power Plant and DC Power Usage, or just the latter, the McLeod matters are primarily based on the construction of contract amendment language not at issue here.</p>

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Issue 8-21 (a)	<p>8.2.1.29.2.2 Measurement of power Usage at the Power Board – Unless CLEC requests power measurement, power will not be measured. Qwest will bill CLEC power usage based on the amount of power ordered unless power measurement is requested and until a reading is taken pursuant to this Section. Qwest will measure power usage at the power board on a semi-annual basis. However, Qwest also agrees to take a reading within thirty (30) Days of a written CLEC request. Qwest will perform a maximum of four (4) readings per year for a particular Collocation site. CLEC is required to have its equipment in place prior to making any request for Qwest measure power usage. If the initial measurement is zero, CLEC must notify Qwest when its equipment is in place and allow Qwest an additional reading to measure power. Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly power usage rate to CLEC's actual use based</p>	<p>Regarding us of the term “power usage,” Qwest proposes to use the term “power usage” to support its position that there are two charges, but only one of them is adjusted based on usage readings. Eschelon disagrees for the reasons stated below. See Eschelon’s position statement for Issue 8-21(b) (Section 8.3.1.6).</p> <p>The other open issue in this section relates to commencement of usage charges. Qwest’s proposal appears designed to prevent CLECs from requesting power measurement before installing equipment (so that the measure is zero) and then afterward installing equipment and obtaining up to six months of zero usage charges. Eschelon agrees that should not occur. Eschelon’s proposal also accounts, however, for another unfair situation. Until power is measured, Qwest charges based on amount ordered. If CLEC is not using the power ordered (such as due to a vendor delay in installing equipment), CLEC should be able to obtain measurement and not pay for power not used. Eschelon’s language treats both</p>	<p>8.2.1.29.2.2 Measurement of power Usage at the Power Board – Unless CLEC requests power measurement, power will not be measured. Qwest will bill CLEC power usage based on the amount of power ordered unless power measurement is requested and until a reading is taken pursuant to this Section. Qwest will measure power usage at the power board on a semi-annual basis. However, Qwest also agrees to take a reading within thirty (30) Days of a written CLEC request. Qwest will perform a maximum of four (4) readings per year for a particular Collocation site. CLEC is required to have its equipment in place prior to making any request for Qwest measure power usage. If the initial measurement is zero, CLEC must notify Qwest when its equipment is in place and allow Qwest an additional reading to measure power. Based on these readings, if CLEC is utilizing less than the ordered amount of power, Qwest will reduce the monthly power usage rate to CLEC's actual use based on the reading from the date of CLEC's measuring request on a</p>	<p>Eschelon objects to language stating that Eschelon must have its equipment in place before it requests a reading for purposes of DC power usage measuring. Qwest does not understand Eschelon's position on this issue. It would make little sense to take a power reading before Eschelon has placed any equipment, as, without equipment, Eschelon would be drawing no power.</p>

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	<p>on the reading from the date of CLEC's measuring request on a going forward basis until the next reading. If CLEC is utilizing more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use. Once Qwest receives a CLEC measuring request, it will bill the actual power usage rate based on the reading from the date of the CLEC's measuring request, on a going forward basis, until the next reading.</p>	<p>situations fairly. Qwest's language protects Qwest but does not account for CLEC's concern.</p>	<p>going forward basis until the next reading. If CLEC is utilizing more than the ordered amount, Qwest will increase the monthly usage rate to the CLEC's actual use. Once Qwest receives a CLEC measuring request, it will bill the actual power usage rate based on the reading from the date of the CLEC's measuring request, on a going forward basis, until the next reading.</p>	
<p>Issue 8-21 (b) Section 8.3.1.6 -48 Volt Power Measurement</p>	<p>8.3.1.6 -48 Volt DC Power. There are two -48 Volt DC Power charges, as described below, one for -48 Volt DC Power Plant and one for -48 Volt DC Power Usage. <u>Both Power Charges described in this Section are adjusted based on usage readings when power is measured.</u></p>	<p>The central difference between the parties' proposals on this power issue is whether measured usage is adjusted based on usage readings for both power charges (called power plant and power) or only the latter charge. This issue is discussed in complaints by McLeod against Qwest in several states (Minnesota Docket Number P421/C06-691). If the same issue will be resolved in those complaints in a manner sufficient to indicate the appropriate ICA language for use here before the conclusion of this arbitration, Eschelon is willing to discuss a separate schedule for</p>	<p>8.3.1.6 -48 Volt DC Power. There are two -48 Volt DC Power charges, as described below, one for -48 Volt DC Power Plant and one for -48 Volt DC Power Usage. Both Power Charges described in this Section are adjusted based on usage readings when power is measured.</p>	<p>Qwest must engineer and provision its power plant as ordered to be able to provide the power requested by a CLEC. Qwest's language would allow Eschelon to elect to have its actual DC Power usage measured, and billed on a measured basis. Qwest's charge for power plant, however, is different than its charge for power usage, and cannot be adjusted based on a CLEC's actual power consumption. If a CLEC orders a 100 amp power connection, then that is what Qwest provisions, and it charges on that basis. A CLEC may only use 40 amps for a given period of time, but that does</p>

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		<p>addressing this issue that would allow the parties to account for resolution of that matter in the language of the ICA. Qwest does not agree. In any event, the Commission should adopt Eschelon's language. Section 252(d) mandates that rates be based on costs. When power is measured, actual usage reflects costs and should be used for cost-based charges. Qwest's proposal results in discriminatory treatment, with Qwest paying less for power than CLECs.</p>		<p>not alter the fact that Qwest provisioned the CLEC's order for 100 amps-- as requested by the CLEC. Power usage can be measured and billed based on actual consumption, and that is what Qwest's language accomplishes. There is legitimate basis, however, to adjust power plant based on usage. A 100 amp connection is provisioned to be able to provide 100 amps of power at all times-- pursuant to the CLEC's request-- and remains so month to month, regardless of how much power the CLEC actually uses. If a CLEC determines that it requires less or more power it may submit an appropriate augmentation request to make that change, and this will change its monthly DC power plant charge. Failing that, however, Qwest will bill DC power plant ordered at 100 amps at that 100 amp rate, because that is what Qwest has provisioned and that is what Qwest delivers to the CLEC-- the capability to always draw 100 amps over that connection. Eschelon's contention that this issue is the "same" issue as presented in certain complaint actions filed by</p>

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Issue 8-21 (c) Section 8.3.1.6.1 -48 Volt Power Measurement	<p>8.3.1.6.1 <u>There are two -48V DC Power charges: (1) The -48 Volt DC Power Plant charge provides -48 Volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Plant Charge recovers the cost of the capacity of the power plant available for CLEC's use. (2) The -48 Volt DC Power Usage Charge, which is also specified in Exhibit A. Both -48V DC Power charges may be either non-measured or measured, as follows:</u></p>	<p>See Eschelon's position statement for Issue 8-21(b).</p>	<p>8.3.1.6.1 <u>There are two -48V DC Power charges: (1) The -48 Volt DC Power Plant charge provides -48 Volt DC power to CLEC collocated equipment and is fused at one hundred twenty-five percent (125%) of request. The DC Power Plant Charge recovers the cost of the capacity of the power plant available for CLEC's use. (2) The -48 Volt DC Power Usage Charge, which is also specified in Exhibit A. Both -48V DC Power charges may be either non-measured or measured, as follows:</u></p>	<p>McLeod in several states is not correct. While both deal with -48 Volt DC Power and the question of whether power measurement should apply to both DC Power Plant and DC Power Usage, or just the latter, the McLeod matters are primarily based on the construction of contract amendment language not at issue here.</p> <p>Qwest must engineer and provision its power plant as ordered to be able to provide the power requested by a CLEC. Qwest's language would allow Eschelon to elect to have its actual DC Power usage measured, and billed on a measured basis. Qwest's charge for power plant, however, is different than its charge for power usage, and cannot be adjusted based on a CLEC's actual power consumption. If a CLEC orders a 100 amp power connection, then that is what Qwest provisions, and it charges on that basis. A CLEC may only use 40 amps for a given period of time, but that does not alter the fact that Qwest provisioned the CLEC's order for 100 amps-- as requested by the CLEC. Power usage can be</p>

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				<p>measured and billed based on actual consumption, and that is what Qwest's language accomplishes. There is legitimate basis, however, to adjust power plant based on usage. A 100 amp connection is provisioned to be able to provide 100 amps of power at all times-- pursuant to the CLEC's request-- and remains so month to month, regardless of how much power the CLEC actually uses. If a CLEC determines that it requires less or more power it may submit an appropriate augment request to make that change, and this will change its monthly DC power plant charge. Failing that, however, Qwest will bill DC power plant ordered at 100 amps at that 100 amp rate, because that is what Qwest has provisioned and that is what Qwest delivers to the CLEC-- the capability to always draw 100 amps over that connection. Eschelon's contention that this issue is the "same" issue as presented in certain complaint actions filed by McLeod in several states is not correct. While both deal with -48 Volt DC Power and the question of whether power measurement should</p>

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Issue 8-21 (d) Section 8.3.1.6.2 and subparts (a) & (b)	8.3.1.6.2. The -48 Volt DC Power Usage Charge recovers the cost of the CLEC's power usage. -48 Volt DC Power Usage can be provided and charged on a non-measured basis, or, in some cases specified below, on a measured basis.	See Eschelon's position statement for Issue 8-21(b) and, regarding terminology, Issue 8-21.	8.3.1.6.2 <u>The -48 Volt DC Power Usage Charge recovers the cost of the CLEC's power usage. -48 Volt DC Power Usage can be provided and charged on a non-measured basis, or, in some cases specified below, on a measured basis.</u>	apply to both DC Power Plant and DC Power Usage, or just the latter, the McLeod matters are primarily based on the construction of contract amendment language not at issue here.
-48 Volt Power Measurement	a) Non-Measured -48 Volt DC Power Usage Charge – Qwest will apply the -48 Volt Power Usage charge for the quantity of power ordered by the CLEC. Qwest will not adjust the billed usage based upon power usage readings. This applies to all CLEC orders for -48 Volt DC Power which are equal to or less than sixty (60) amps. Qwest will apply the -48 Volt DC Power Usage Charge for the quantity of power ordered by CLEC. Qwest will not adjust the billed usage based upon actual usage. -power usage readings. This charge also		a) Non-Measured -48 Volt DC Power Usage Charge – <u>Qwest will apply the -48 Volt Power Usage charge for the quantity of power ordered by the CLEC. Qwest will not adjust the billed usage based upon power usage readings. This applies to all CLEC orders for -48 Volt DC Power which are equal to or less than sixty (60) amps. Qwest will apply the -48 Volt DC Power Usage Charge for the quantity of power ordered by CLEC. Qwest will not adjust the billed usage based upon actual usage. -power usage readings. This charge also</u>	Qwest must engineer and provision its power plant as ordered to be able to provide the power requested by a CLEC. Qwest's language would allow Eschelon to elect to have its actual DC Power usage measured, and billed on a measured basis. Qwest's charge for power plant, however, is different than its charge for power usage, and cannot be adjusted based on a CLEC's actual power consumption. If a CLEC orders a 100 amp power connection, then that is what Qwest provisions, and it charges on that basis. A CLEC may only use 40 amps for a given period of time, but that does not alter the fact that Qwest provisioned the CLEC's order for 100 amps-- as requested by the CLEC. Power usage can be measured and billed based on actual consumption, and that is what Qwest's language accomplishes. There is legitimate basis, however,

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	<p> billed usage based upon actual usage. power usage readings. This charge also applies to all CLEC orders for -48 Volt DC Power Usage which are greater than sixty (60) amps, unless CLEC orders -48 Volt DC Power Measurement, in which case CLEC will be charged for Measured -48 Volt DC Power Usage as described in Section 8.3.1.6.2(b) below.</p> <p> b) Measured -48 Volt DC Power Usage Charge – This measured power usage charge applies, if elected by CLEC, on a per amp basis to all orders of greater than sixty (60) amps. For orders of greater than sixty (60) amps, CLEC may elect DC Power Usage pursuant to this provision by ordering -48 Volt DC Power Measurement. Qwest will initially apply the -48 Volt DC Power Usage Charge to the quantity of power ordered by CLEC. Qwest will determine read the actual power usage as described in Section 8.2.1.29.2.2 and will charge based on the power usage at the time of the reading, on a going forward basis, until the next reading.</p>		<p>applies to all CLEC orders for -48 Volt DC Power Usage which are greater than sixty (60) amps, unless CLEC orders -48 Volt DC Power Measurement, in which case CLEC will be charged for Measured -48 Volt DC Power Usage as described in Section 8.3.1.6.2(b) below.</p> <p> b) Measured -48 Volt DC Power Usage Charge – This measured power usage charge applies, if elected by CLEC, on a per amp basis to all orders of greater than sixty (60) amps. For orders of greater than sixty (60) amps, CLEC may elect Measured -48 Volt DC Power Usage pursuant to this provision by ordering -48 Volt DC Power Measurement. Qwest will initially apply the -48 Volt DC Power Usage Charge to the quantity of power ordered by CLEC. Qwest will determine read the actual power usage as described in Section 8.2.1.29.2.2 and will charge based on the power usage at the time of the reading, on a going forward basis, until the next reading.</p>	<p>to adjust power plant based on usage. A 100 amp connection is provisioned to be able to provide 100 amps of power at all times--pursuant to the CLEC's request--and remains so month to month, regardless of how much power the CLEC actually uses. If a CLEC determines that it requires less or more power it may submit an appropriate augment request to make that change, and this will change its monthly DC power plant charge. Failing that, however, Qwest will bill DC power plant ordered at 100 amps at that 100 amp rate, because that is what Qwest has provisioned and that is what Qwest delivers to the CLEC--the capability to always draw 100 amps over that connection. Eschelon's contention that this issue is the "same" issue as presented in certain complaint actions filed by McLeod in several states is not correct. While both deal with -48 Volt DC Power and the question of whether power measurement should apply to both DC Power Plant and DC Power Usage, or just the latter, the McLeod matters are primarily based on the construction of</p>

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	8.2.1.29.2.2 and will charge based on the power -usage at the time of the reading, on a going forward basis, until the next reading. <u>There is a minimum charge of one amp.</u>		There is a minimum charge of one amp.	contract amendment language not at issue here.
For section 8.2.3.9 see Issue 8-24				
Issue 8-22 Sections 8.3.9.1.3 & 8.3.9.2.3 -48 Volt power QPF	8.3.9.1.3 <u>Intentionally Left Blank</u>	In situations when a CLEC has paid Qwest to reserve power, there should be no Quote Preparation Fee (QPF). The CLEC has paid Qwest a monthly charge for the reservation, so Qwest should not be altering that which was reserved. It should stand ready for CLEC's use, because that is what the CLEC is paying for. Qwest's QPF represents many hours of work. Such work should not be required due to the reservation.	8.3.9.1.3 <u>DC Power Reduction QPF: Includes the cost of performing a feasibility study and producing the quote for fulfilling the DC Power Reduction request. It covers the project, order and support management, engineering and planning associated with the administrative functions of processing the request.</u> 8.3.9.2.3 <u>DC Power Restoration QPF: Includes the cost of performing a feasibility study and producing the quote for fulfilling the DC Power Restoration request. It covers the project, order and support management, engineering and planning associated with the administrative functions of processing the request.</u>	As stated in Qwest's proposed language, the QPF associated with a CLEC's request for power reduction or power restoration recovers the costs of performing a feasibility study and producing the quote related to the CLEC's request. It covers the project, order and support management, engineering and planning associated with the administrative function of processing the request. Qwest is entitled to recover its costs. Further, Eschelon's position statement suggest that this is a dispute related to the Qwest's costs to complete this activity. Issues related to appropriate cost recovery, and involving cost studies and other cost-based evidence, should be resolved in a cost docket.

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Issue 8-23 Section 8.3.9.2.1 -48 Volt Power Restoration Charges	8.3.9.2.1 DC Power Restoration With Reservation. <u>CLEC will be charged the DC Power Reduction/Restoration Charge. When power is restored, nonrecurring charges will be assessed on an ICB basis for the work required to restore the power-utilizing standard power rate elements for power usage, labor and cabling charges.</u>	Charges should not be ICB when CLEC has paid to reserve power. The activities for restoring power should be similar to the activities for reducing power.	8.3.9.2.1 DC Power Restoration With Reservation. <u>CLEC will be charged the DC Power Reduction/Restoration Charge. When power is restored, nonrecurring charges will be assessed on an ICB basis for the work required to restore the power utilizing standard power rate elements for power usage, labor and cabling charges.</u>	Qwest charges for this activity on an ICB basis because the work required to complete a CLEC's DC Power Restoration request will vary from request to request, and therefore an ICB charge is appropriate. Qwest is entitled to recover its costs. Further, Eschelon's position statement suggest that this is a dispute related to the Qwest's costs to complete this activity. Issues related to appropriate cost recovery, and involving cost studies and other cost-based evidence, should be resolved in a cost docket.
Issue 8-24 Section 8.2.3.9 NEBS Standards	8.2.3.9 Qwest will determine and notify CLEC, in the manner described below, within ten (10) Days of CLEC submitting its Collocation application if Qwest believes CLEC's listed equipment does not comply with NEBS Level 1 safety standards or is in violation of any Applicable Laws or regulations, all equally applicable to Qwest. If CLEC disagrees, CLEC may respond within ten (10) Days of receipt of such notice from Qwest. If,	The majority of this section deals with situations in which Qwest believes that CLEC activities or equipment involved in a collocation installation do not comply with applicable safety standards or are in violation of applicable laws or regulations. In such a case, Qwest has a severe remedy available: it can stop all installation work related to the activities or equipment at issue until the situation is remedied or the CLEC demonstrates that Qwest was mistaken. Eschelon has agreed to these provisions as	8.2.3.9 Qwest will determine and notify CLEC, in the manner described below, within ten (10) Days of CLEC submitting its Collocation application if Qwest believes CLEC's listed equipment does not comply with NEBS Level 1 safety standards or is in violation of any Applicable Laws or regulations, all equally applicable to Qwest. If CLEC disagrees, CLEC may respond within ten (10) Days of receipt of such notice from Qwest. If, during installation, Qwest	Eschelon bears the burden of confirming that the equipment it seeks to collocate complies with applicable NEBS requirements, and Eschelon's proposed language would inappropriately shift this burden to Qwest. Eschelon is just as capable as Qwest of determining whether its equipment satisfies NEBS requirements. Further, this issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the

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	<p>during installation, Qwest determines CLEC activities or equipment <u>other than those listed in the Collocation application</u> do not comply with the NEBS Level 1 safety standards listed in this Section or are in violation of any Applicable Laws or regulations all equally applied to Qwest, Qwest has the right to stop all installation work related to the activities or equipment at issue until the situation is remedied or CLEC demonstrates that Qwest's determination was incorrect. Qwest shall provide written notice of the non-compliance to CLEC and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or</p>	<p>necessary safety measures to protect personnel and property during installations. Eschelon does not, however, believe that Qwest should be able to cease work on implementing a collocation installation if it learns in the <i>application process</i> that the CLEC contemplates installing equipment that Qwest believes to be sub-standard. Eschelon proposes two sentences at the beginning of the section that ensure that Qwest will notify the CLEC in writing in such an instance and begin a dialog with the CLEC regarding the equipment as necessary. Qwest should not wait until the CLEC is incurring the expense of installing the equipment to notify CLEC of its objections. Therefore, Eschelon includes a 10-day time frame for Qwest to provide notice to the CLEC of the perceived problem. The onus is on Qwest to promptly read the CLEC's application and notify it of any potential problems for two reasons: 1) Qwest makes the determination that the CLEC's equipment may not comply, opening the situation up to possible work stoppage; and 2) Qwest requires the CLEC to include</p>	<p>determines CLEC activities or equipment other than those listed in the Collocation application do not comply with the NEBS Level 1 safety standards listed in this Section or are in violation of any Applicable Laws or regulations all equally applied to Qwest, Qwest has the right to stop all installation work related to the activities or equipment at issue until the situation is remedied or CLEC demonstrates that Qwest's determination was incorrect. Qwest shall provide written notice of the non-compliance to CLEC and such notice will include: (1) identification of the specific equipment and/or installation not in compliance; (2) the NEBS 1 safety requirement that is not met by the equipment and/or installation; (3) the basis for concluding that CLEC equipment and/or installation does not meet the safety requirement; and (4) a list of all equipment that Qwest locates at the Premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that Qwest contends CLEC's equipment fails to meet. If</p>	<p>Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>

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	<p>exceeds the safety standard that Qwest contends CLEC's equipment fails to meet. If such conditions pose an immediate threat to the safety of Qwest employees, interfere immediately with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. If time permits, Qwest shall first provide CLEC a meaningful opportunity to respond and, if necessary, remedy the situation. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission or a court of competent jurisdiction.</p>	<p>a list of all planned equipment in the collocation application, so it is incumbent upon Qwest to use that list to put the CLEC on notice of any potential issues. In any event, if work is stopped, it should only be the work related to the activities or equipment at issue.</p>	<p>such conditions pose an immediate threat to the safety of Qwest employees, interfere immediately with the performance of Qwest's service obligations, or pose an immediate threat to the physical integrity of the conduit system, cable facilities or other equipment in the Premises, Qwest may perform such work and/or take action as is necessary to correct the condition at CLEC's expense. If time permits, Qwest shall first provide CLEC a meaningful opportunity to respond and, if necessary, remedy the situation. In the event CLEC disputes any action Qwest seeks to take or has taken pursuant to this provision, CLEC may pursue immediate resolution by the Commission or a court of competent jurisdiction.</p>	
Issue 8-25 Intentionally Left Blank				
Issue 8-26				

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Issue 8-27 Intentionally Left Blank				
Issue 8-28 Intentionally Left Blank				
OPTIONED CONTIGUOUS SPACE				
Issue 8-29 Section 8.4.1.8.7.3 Optioned Contiguous Space	<p>8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest will make its best effort to notify CLEC if Qwest, its Affiliates or CLECs require the use of CLEC's contiguous space. Upon notification, CLEC will have seventy-two (72) hours <u>seven (7) Days</u> to indicate its intent to submit a Collocation application or Collocation Reservation. CLEC may choose to terminate the contiguous space Option or continue without the contiguous provision.</p>	<p>Note: Qwest has indicated that it tentatively agrees with Eschelon's language but has not confirmed closure yet. If Qwest confirms, this issue will be closed (with 7 Days in 8.2.6.1.2 and 8.4.1.8.7.3).</p> <p>The parties dispute how much time Eschelon should have to decide to exercise an option in a first right of refusal situation. Qwest proposes 72 hours. If Qwest provides notice on a Friday, this means that Eschelon will have only one business day to make a decision. Particularly for small CLECs that may opt in to this ICA and have one collocation engineer working applications, that is a short amount of time. In contrast, Eschelon</p>	<p>8.4.1.8.7.3 Where contiguous space has been Optioned, Qwest will make its best effort to notify CLEC if Qwest, its Affiliates or CLECs require the use of CLEC's contiguous space. Upon notification, CLEC will have seventy-two (72) hours <u>seven (7) Days</u> to indicate its intent to submit a Collocation application or Collocation Reservation. CLEC may choose to terminate the contiguous space Option or continue without the contiguous provision.</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems</p>

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Issue 30 Intentionally Left Blank		proposes that CLECs have 7 calendar days to decide. CLECs pay Qwest charges for the space option. The option should be meaningful. Eschelon also offers to provide Qwest the same amount of time (7 days) when Qwest has a right of first refusal (in Section 8.2.6.1.2).		or processes and would cause Qwest to incur costs it is entitled to recover under the Act.
Sections 9.1.1.1.1 & 9.1.1.1.1.1 See Issue 9-58(e) (Section 9.23.4.4.3.1) below	<p><u>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</u></p> <p><u>9.1.1.1.1.1 When a UNE and another service are Commingled, the service interval for the Commingled arrangement will be the longer interval of the two facilities being Commingled.</u></p>	For Eschelon’s position statement, see Issue 9-58(e) (Section 9.23.4.4.3.1) below.	<p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</p> <p>9.1.1.1.1.1 When a UNE and another service are Commingled, the service interval for the Commingled arrangement will be the longer interval of the two facilities being Commingled.</p>	Qwest’s position relating to the merits of Eschelon’s proposed Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 is set forth below in connection with Issue 58 and Sections 9.23 and 24.3.2. In addition to the flaws in the merits of its position, Eschelon’s proposed Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 are duplicative in that they address the same subjects that Eschelon addresses in Section 9.23.4 and related sub-sections. For example, Eschelon addresses service intervals for commingled arrangements in both Section 9.1.1.1.1 and 9.23.4.4.3.1. Similarly, it addresses ordering and

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				<p>billing procedures for commingled arrangements in Section 9.1.1.1.1.2 and again in Sections 9.23.4.5.4 and 9.23.4.6.6. These repetitive ICA provisions create unnecessary confusion, and, accordingly, Sections 9.1.1.1.1, 9.1.1.1.1, and 9.1.1.1.2 should be eliminated in their entirety.</p> <p>In addition to being duplicative of other Eschelon proposals, these proposed ICA provisions are inappropriately set forth in a general section of the Agreement containing general terms and conditions relating to UNEs. It is confusing and inconsistent with the overall organization of the ICA to include specific terms and conditions relating to commingling in a section of the Agreement that is intended to define the broad terms and conditions that apply to UNEs. For this additional reason, Sections 9.1.1.1.1, 9.1.1.1.1, and 9.1.1.1.2 should be eliminated from the ICA.</p> <p>In contrast to Eschelon's confusing approach, Qwest addresses specific issues relating to commingling in</p>

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Sections 9.1.1.1.1 & 9.1.1.1.1.2 – See Issue 9-58(d) (Section 9.23.4.5.1) below	<p><u>9.1.1.1.1.2 When a UNE or UNE Combination is connected or attached with a non-UNE wholesale service, unless it is not Technically Feasible or the Parties agree otherwise, CLEC may order the arrangement on a single service request; if a circuit ID is required, there will be a single circuit ID; and all chargeable rate elements for the Commingled service will appear on the same BAN. If ordering on a single service request, using a</u></p>		<p>9.1.1.1.1.2 When a UNE or UNE Combination is connected or attached with a non-UNE wholesale service, unless it is not Technically Feasible or the Parties agree otherwise, CLEC may order the arrangement on a single service request; if a circuit ID is required, there will be a single circuit ID; and all chargeable rate elements for the Commingled service will appear on the same BAN. If ordering on a single service request, using a single identifier, and including all</p>	<p>the section of the ICA titled "Commingling." Specifically, per mutual agreement of the parties, Section 24 is titled "Commingling," and it set forths the parties' general commingling rights and obligations. In proposed Section 24.3.2, for example, Qwest includes language establishing the service intervals for commingled EELs. These and other specific sections relating to commingling are appropriately included in the section of the Agreement devoted to commingling and should not be addressed in different sections with duplicative provisions.</p> <p>Please see the position statement set forth in Issue 58(d).</p>

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<p>NONDISCRIMINATORY ACCESS TO UNES</p> <p>Issue 9-31</p> <p>Section 9.1.2</p> <p>Miscellaneous functions as part of access to UNES</p>	<p><u>single identifier, and including all chargeable rate elements on the same BAN is not Technically Feasible, Qwest will identify and relate the elements of the arrangement on the bill and include in the Customer Service Record for each component a cross reference to the other component, with its billing number, unless the Parties agree otherwise.</u></p>		<p>chargeable rate elements on the same BAN is not Technically Feasible, Qwest will identify and relate the elements of the arrangement on the bill and include in the Customer Service Record for each component a cross reference to the other component, with its billing number, unless the Parties agree otherwise.</p>	
	<p>9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element. <u>Access to Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, e.g., design</u></p>	<p>After filing of the petition in the Minnesota arbitration, Qwest revealed a new agenda to charge tariff rates for activities that have been to date handled as access to UNES provided at TELRIC rates. Qwest did not raise this issue in the cost case or these ICA negotiations, so Eschelon only learned of it later through Qwest's new rate proposals, in which Qwest referred to the tariff instead of Commission approved rates. Despite all of the work that was done in the 271 proceedings relating to</p>	<p>9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element. Access to Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, e.g., design changes, maintenance of</p>	<p>Eschelon only recently provided the disputed language in this section to Qwest and has not discussed it in negotiations. Qwest is therefore uncertain about Eschelon's purpose in proposing the language. However, on its face, the language is plainly unlawful and improper for at least two reasons.</p> <p>First, it has long been established that the Act only requires an ILEC to provide access to its <i>existing</i> network, not access to "a yet unbuilt superior one." <i>Iowa Utils. Bd. v.</i></p>

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	<p><u>changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders</u>. Qwest shall perform for CLEC those Routine Network Modifications that Qwest performs for its own End User Customers. The requirement for Qwest to modify its network on a nondiscriminatory basis is not limited to copper loops and applies to all unbundled transmission facilities, including Dark Fiber transport pursuant to Section 9.7. Where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in “substantially the same time and manner” to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network</p>	<p>nondiscriminatory access to UNEs, now that Qwest has its interLATA authority, Qwest has started to claim that design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders design changes (as well as other activities) are “not UNEs” and Qwest will charge its tariff rate (even when the Commission has previously approved a TELRIC rate) for these activities. Qwest has indicated that it may change its rate proposal for purposes of arbitrations but it reserves the right to claim that the Commission does not have oversight over these rates because they should be tariff rates. If Qwest had not tipped its hand, the parties could have expended the resources to go through the entire arbitration and cost case without a ruling on this issue, leaving Qwest to claim that the results have a very different meaning that Eschelon had understood. Eschelon’s language in Section 9.1.2 will clarify this issue and provide certainty and administrative efficiency. The parties should know the meaning of the language and rates approved</p>	<p>service including trouble isolation, additional dispatches, and cancellation of orders—Qwest shall perform for CLEC those Routine Network Modifications that Qwest performs for its own End User Customers. The requirement for Qwest to modify its network on a nondiscriminatory basis is not limited to copper loops and applies to all unbundled transmission facilities, including Dark Fiber transport when available pursuant to Section 9.7. Where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in “substantially the same time and manner” to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the Network Element, except when the provisions herein indicate that a</p>	<p>FCC, 120 F.3d 753, 813 (8th Cir. 1997). Under Eschelon’s proposed language, Qwest could be required to build new facilities and to provide access to “a yet unbuilt superior network.” For example, the undefined requirement for Qwest to “add to” UNEs could obligate Qwest to build new facilities and to go beyond the routine network maintenance that ILECs must provide. Similarly, Eschelon does not define the meaning of “changing the UNE,” thereby leaving the door open to changes that go beyond routine network maintenance.</p> <p>Second, through this proposal, Eschelon also may be attempting to obtain modifications to UNEs without paying for them. Although it is not clear from the proposed language, Eschelon’s proposal may assume that the price it pays to lease a UNE from Qwest entitles it to repairs, changes, additions, and modifications without further payment. That result would clearly violate Qwest’s legal right to recover the costs it incurs to provide access to UNEs and</p>

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	<p>Element, CLEC shall have exclusive use of the Network Element, except when the provisions herein indicate that a Network Element will be shared. Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality requirements.</p>	<p>through this Section 252 arbitration. Qwest's position is contrary to the law. Qwest must provide not only the UNE but also meaningful access to the UNE. In its <i>First Report and Order</i> at ¶268, the FCC found that the requirement to provide "access to UNEs" must be read broadly, concluding that the Act requires that UNEs "be provisioned in a way that would make them useful" and "[t]he ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element." The FCC's rules regarding access to unbundled elements prescribe that an ILEC must provide a carrier purchasing UNEs not only the physical facility, but also all the capabilities of providing service, such as add/move/change, provisioning and maintenance and repair. Section 51.307(c) provides: "An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of</p>	<p>Network Element will be shared. Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality requirements.</p>	<p>interconnection, since UNE rates do not include the costs of these activities.</p>

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		<p>the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.” In addition, Section 51.313(c) provides: “An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems.”</p> <p>Eschelon’s proposed language reflects these obligations and needs to be added to the ICA to avoid disputes in light of Qwest’s expressed intention to unilaterally require payment of tariff rates, even when the Commission has approved TELRIC rates.</p>		
Issue 9-32 Intentionally left blank NETWORK MAINTENANCE AND MODERNIZATION				

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Issue 9-33	<p><u>9.1.9 Disputed portion (Issue 1):</u> Such changes may result in minor changes to transmission parameters <u>but will not adversely affect service to any End User Customers.</u> <u>(In the event of emergency, however, see Section 9.1.9.1 and,</u> (for retirement of copper loops, see section 9.2.1.2.3).</p>	<p>Network maintenance and modernization language approved by this Commission in the same section of other Qwest-CLEC ICAs, as well as allowed to go into effect in the Washington SGAT, states: “Such changes may result in <i>minor</i> changes to transmission parameters” (emphasis added). With Eschelon’s language included, the section allows Qwest to maintain and modernize its network, <i>so long as the maintenance or modernization does not disrupt or disable a CLEC’s heretofore reliable, working circuit in the name of modernization.</i> Eschelon’s proposed clarification does not arise from an idle concern, as this dispute shows. Qwest is taking the position that a network modification, and resulting change in the transmission parameters of a UNE, may be considered “minor” even if the change results in a loss of service. The customer whose previously working service is permanently disabled would hardly describe this as modernization with a minor impact, however.</p>	<p><u>9.1.9 Disputed portion (Issue 1):</u> Such changes may result in minor changes to transmission parameters <u>but will not adversely affect service to any End User Customers.</u> <u>(In the event of emergency, however, see Section 9.1.9.1 and,</u> (for retirement of copper loops, see section 9.2.1.2.3).</p>	<p>Qwest maintains and modernizes its network consistent with ANSI standards and as contemplated by the Act or FCC rules. The service to be measured for purposes of application of ANSI standards is the service Qwest provides to Eschelon, not the service Eschelon provides to its customers. This focus is proper since Eschelon, not Qwest, ultimately controls the service that Eschelon’s customers receive. Eschelon’s proposed standard improperly focuses on the service Eschelon provides to its customers, not on the service Qwest provides to Eschelon.</p>
<p>Affect on End User Customers (1 of 4 issues in Sections 9.1.9 & 9.1.9.1)</p>	<p><u>9.1.9 & 9.1.9.1 Entire provision:</u> 9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters <u>but will not adversely affect service to any End User Customers.</u> <u>(In the event of emergency, however, see Section 9.1.9.1 and,</u> (for retirement of copper loops, see section 9.2.1.2.3). Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC. Qwest shall provide CLEC advance</p>	<p>Eschelon’s intent is not to hold</p>	<p>transmission parameters but will not adversely affect service to any End User Customers. (In the event of emergency, however, see Section 9.1.9.1 and, (for retirement of copper loops, see section 9.2.1.2.3). Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC. Qwest shall provide CLEC advance notice of network changes pursuant to applicable FCC rules, including</p>	<p>Eschelon’s proposed requirement that any modernization or maintenance must “not adversely affect service to any End User customers” also is flawed because it is not tied to ANSI standards and FCC rules and is too vague to be capable of reliable and predictable contract implementation. Eschelon’s failure to tie the phrase “adversely affect service” to any measurable standard creates considerable ambiguity about whether a change in the network</p>

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	<p>notice of network changes pursuant to applicable FCC rules, including changes that will affect (i) CLEC's performance or ability to provide service (ii) network interoperability or (iii) the manner in which Customer Premises equipment is attached to the public network. Changes that affect network interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Such notices will contain the location(s) at which the changes will occur, <u>including if End User identification and End User identification and End User identification and End User information, and any other information required by applicable FCC rules.</u> Qwest provides such disclosures on an Internet web site. In the event that Qwest intends to dispatch personnel to the Premises of a CLEC End User Customer, for the purpose of maintaining or modernizing the Qwest network, Qwest shall provide CLEC with email</p>	<p>Qwest to a strict or extreme standard under which service will never be adversely affected inadvertently. This is clear from both the next sentence (i.e., the parenthetical) and the subsection (9.1.9.1). In the parenthetical, Eschelon refers to both emergency situations (see 9.1.9.1) and retirement of copper loops (see 9.2.1.2.3) to narrow the scope of the reference to "any" end users in the previous sentence. In either of the cases mentioned in the parenthetical, service to end users will be adversely affected. The reference to "emergencies" establishes that the service should not have been affected but, because something has gone wrong (<i>i.e.</i>, the change did not turn out to be "minor"), procedures will be in place to restore the service. In contrast, for retirement of copper loops, impact to service is anticipated (<i>i.e.</i>, not an "emergency") so this subject is dealt with in a separate section of the ICA designed to address this different scenario, which is not "minor."</p>	<p>changes that will affect (i) CLEC's performance or ability to provide service (ii) network interoperability or (iii) the manner in which Customer Premises equipment is attached to the public network. Changes that affect network interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Such notices will contain the location(s) at which the changes will occur, including if End User identification and End User identification and End User information, and any other information required by applicable FCC rules. Qwest provides such disclosures on an Internet web site. In the event that Qwest intends to dispatch personnel to the Premises of a CLEC End User Customer, for the purpose of maintaining or modernizing the Qwest network, Qwest shall provide CLEC with email notification no less than three (3) business days in advance of the Qwest dispatch and within three (3) business days after completing the</p>	<p>has a negative effect and, as a result, will inevitably lead to disputes between the parties. In addition, Eschelon's language fails to recognize that end users could be adversely affected by Qwest's maintenance and modernization because of the equipment and technologies Eschelon may be using in its network. Qwest of course should not be held responsible for adverse effects on service resulting from Eschelon's use of equipment and technologies that are not compatible with Qwest's modernization of its network.</p>

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	<p>notification no less than three (3) business days in advance of the Qwest dispatch and within three (3) business days after completing the maintenance or modernization activity. In the event of an emergency (e.g., no dial tone), Qwest need not provide CLEC with advance email notification but shall notify CLEC by email within three (3) business days after completing the emergency or modernizing activity. No charges apply to dispatches described in this Section 9.1.9 and 9.1.9.1. Qwest repair center personnel will provide the status on emergency maintenance or modernizing activity to the extent they are aware of such status in the same manner as would be provided for Qwest's own end users. CLEC may contact their Service Manager to request additional information so that CLEC may, for example, communicate with its End User Customer(s).</p> <p>Qwest may contact their Service Manager to request additional information so that CLEC may, for example, communicate with its End User Customer(s).</p> <p>9.1.9.1 In the event of an emergency (e.g., no dial tone), Qwest need not provide CLEC with advance email notification but shall notify CLEC by email within three (3) business days after completing the emergency maintenance or modernizing activity. In such</p>		<p>maintenance or modernization activity. <u>In the event of an emergency (e.g., no dial tone), Qwest need not provide CLEC with advance email notification but shall notify CLEC by email within three (3) business days after completing the emergency maintenance or modernizing activity.</u> No charges apply to dispatches described in this Section 9.1.9 and 9.1.9.1. <u>Qwest repair center personnel will provide the status on emergency maintenance or modernizing activity to the extent they are aware of such status in the same manner as would be provided for Qwest's own end users. CLEC may contact their Service Manager to request additional information so that CLEC may, for example, communicate with its End User Customer(s).</u></p> <p>9.1.9.1 <u>In the event of an emergency (e.g., no dial tone), Qwest need not provide CLEC with advance email notification but shall notify CLEC by email within three (3) business days after completing the emergency maintenance or modernizing activity.</u> In such</p>	

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	<p><u>but shall notify CLEC by email within three (3) business days after completing the emergency maintenance or modernizing activity. In such emergencies, once Qwest personnel involved in the maintenance or modernization activities are aware of an emergency affecting multiple End User Customers, Qwest shall ensure its repair center personnel are informed of the network maintenance and modernization activities issue and their status so that CLEC may obtain information from Qwest so that CLEC may, for example, communicate with its End User Customer(s).</u></p>		<p>emergencies, once Qwest personnel involved in the maintenance or modernization activities are aware of an emergency affecting multiple End User Customers, Qwest shall ensure its repair center personnel are informed of the network maintenance and modernization activities issue and their status so that CLEC may obtain information from Qwest so that CLEC may, for example, communicate with its End User Customer(s).</p>	
<p>Issue 9-34 Sections 9.1.9, 9.1.9.1 Network Maintenance and Modernization Activities –</p>	<p>9.1.9 . . . Such notices will contain the location(s) at which the changes will occur, <u>including if End User Customer specific, the circuit identification and End User Customer address information, and any other information required by applicable FCC rules. . . .</u></p>	<p>The second issue in Section 9.1.9 relates to the FCC’s requirement that ILECs provide CLECs advance notice of network changes pursuant to applicable FCC rules. In 47 C.F.R. § 51.327, the FCC provides a list of items that such a public notice of network changes must include. The rule states that the list is a minimum and is not all-inclusive. Part (a)(4) of § 51.327</p>	<p>9.1.9 . . . Such notices will contain the location(s) at which the changes will occur, including if End User Customer specific, the circuit identification and End User Customer address information, and any other information required by applicable FCC rules. . . .</p>	<p>Qwest will provide notice of changes to its network, including the location of changes, consistent with the requirements of applicable FCC rules. Eschelon’s proposal improperly converts the requirement for Qwest to provide notice of the locations of network changes into a requirement for Qwest to identify the Eschelon customers who could be affected by</p>

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<p>Location at Which Changes Occur (2 of 4 issues in Sections 9.1.9 & 9.1.9.1)</p>		<p>states that the list must include "the location at which the changes will occur." The term "location" must be considered in the context of 47 C.F.R. § 51.325(a), which states that the public notice must include notice regarding any network change that "will affect a competing service provider's performance or ability to provide service." Eschelon's proposal is consistent with these rules, taken together. It provides that, <i>if the network changes are customer-specific</i>, Qwest will provide the <i>information necessary to provide the location of the customers for whom the CLEC's performance will be affected</i>. That necessary information is circuit identification and customer addresses: the former is the generally accepted locator within the network and the latter is the locator within the CLEC's list of customers. Without this information, the notice will not fulfill the intended purpose. The less information that Qwest provides in its notices, the more information is needed from its repair department when an emergency arises. If Qwest's notice</p>		<p>the changes. There is no such requirement in 47 C.F.R. § 51.327, the FCC rule that governs notice of network changes, and, moreover, Eschelon has the information it needs to determine if a change to Qwest's network could affect an eschelon customer. Eschelon's attempt to impose a form of notice that is not required under the governing FCC rule should be rejected.</p>

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<p>Issue 9-35</p> <p>Sections 9.1.9, 9.1.9.1</p> <p>Network Maintenance and Modernization Activities – Emergencies</p> <p>(3 of 4 issues in Sections 9.1.9 & 9.1.9.1)</p>	<p>9.1.9 <u>Qwest repair center personnel will provide the status on emergency maintenance or modernization activity to the extent they are aware of such status in the same manner as would be provided for Qwest's own end users. CLEC may contact their Service Manager to request additional information so that CLEC may, for example, communicate with its End User Customer(s).</u></p> <p>9.1.9.1. <u>In the event of an emergency (e.g., no dial tone), Qwest need not provide CLEC with advance email notification but shall notify CLEC by email within three (3) business days after completing the emergency maintenance or modernizing activity. In such emergencies,</u></p>	<p>allowed CLEC to identify specifically customers that may be impacted by the network activity, CLEC would be less likely to need to contact Qwest's repair department for that information. The notices, however, are inadequate for this purpose.</p> <p>Whether emergencies are dealt with in 9.1.9 or a subsection, as proposed by Eschelon, the issue remains the same: how will information be communicated so that CLEC will be able to assist its end user customers in resolving the resulting service issue. Eschelon's language recognizes that the first priority should be to restore service, with formal notification coming later. Qwest's proposal contains similar language. Qwest does not commit in its proposal, however, to ensuring that the right hand knows what the left hand is doing at Qwest. This is the concern that Eschelon attempts to address. Under the repair process, Eschelon contacts Qwest's repair department for status updates, which Eschelon then passes on to its end users. If the Qwest repair department has not</p>	<p>9.1.9 <u>Qwest repair center personnel will provide the status on emergency maintenance or modernization activity to the extent they are aware of such status in the same manner as would be provided for Qwest's own end users. CLEC may contact their Service Manager to request additional information so that CLEC may, for example, communicate with its End User Customer(s).</u></p> <p>9.1.9.1. In the event of an emergency (e.g., no dial tone), Qwest need not provide CLEC with advance email notification but shall notify CLEC by email within three (3) business days after completing the emergency maintenance or modernizing activity. In such emergencies, once Qwest personnel involved in the maintenance of</p>	<p>Qwest is committing that in an emergency situation arising from activities involving maintenance or modernization of the network, its repair center personnel will provide the same information to CLECs as Qwest provides to its retail customers in these circumstances. Eschelon's proposal would improperly require Qwest to provide information and a form of notice that goes beyond that which Qwest provides to its retail customers. Further, Eschelon's request for unique information and notice would impose costs that Qwest is entitled to recover under the Act.</p>

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Issue 9-36 Sections 9.1.9, 9.1.9.1 Network Maintenance and Modernization Activities – Placement/ Charges (4 of 4 issues in Sections 9.1.9 & 9.1.9.1)	<p><u>once Qwest personnel involved in the maintenance or modernization activities are aware of an emergency affecting multiple End User Customers, Qwest shall ensure its repair center personnel are informed of the network maintenance and modernization activities issue and their status so that CLEC may obtain information from Qwest so that CLEC may, for example, communicate with its End User Customer(s).</u></p>	<p>made the connection between the Qwest maintenance or modernization activity and the CLEC's customer's outage, valuable time will be lost in restoring service. Eschelon's proposed language is reasonably limited to situations when the Qwest personnel conducting the activities are aware of the emergency so they can convey it to Qwest repair.</p>	<p>modernization activities are aware of an emergency affecting multiple End User Customers, Qwest shall ensure its repair center personnel are informed of the network maintenance and modernization activities issue and their status so that CLEC may obtain information from Qwest so that CLEC may, for example, communicate with its End User Customer(s).</p>	
	<p>9.1.9No charges apply to dispatches described in this Section 9.1.9 and 9.1.9.1.</p>	<p>The parties agree that no charges apply to the dispatches described in Section 9.1.9. This is logical, because Qwest should not be allowed to charge Eschelon to repair an emergency customer disruption that Qwest caused when doing its own network maintenance and modernization activity. That activity was not requested by Eschelon or its customer. Eschelon moved some language from 9.1.9 to Section 9.1.9.1 and expanded upon it for the reasons described above. Placement of the language dealing with emergencies did not change</p>	<p>9.1.9No charges apply to dispatches described in this Section 9.1.9and 9.1.9.1</p>	<p>Qwest agrees with the language in Section 9.1.9 establishing that it will not charge Eschelon for dispatching engineers or technicians into the field to perform activities involving maintenance or modernization of the network. Eschelon's proposal goes beyond this agreed limitation on Qwest's ability to charge for dispatches by also prohibiting charges for the dispatches "described" in Section 9.1.9.1. There are at least two flaws in this proposal. First, Eschelon's proposed Section 9.1.9.1. does not refer to or describe any dispatches,</p>

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Section 9.1.12.1 – See Issue 12-67 (Section 12.2.1.2) below		<p>the reason why Qwest cannot charge Eschelon for these dispatches. It remains clear from the language in Section 9.1.9 and 9.1.9.1 together that the only dispatches referred to are those described in these sections (and not some other dispatches unrelated to the Qwest-caused emergency.) Qwest caused the emergency doing work of its own and cannot charge Eschelon for any related dispatch to repair the service back to where it was before Qwest caused the problem.</p>		<p>and the prohibition against dispatches "described in Section 9.1.9.1" is therefore undefined and vague. Second, given the vagueness of the proposal, Eschelon may be seeking to prevent Qwest from assessing charges for dispatches that are not the result of Qwest's maintenance or modernization of the network. In multiple circumstances, Qwest has a right to recover the costs of dispatches, and Eschelon's vague proposal could improperly prevent the recovery of those costs.</p>
				<p>This position statement should be read in conjunction with the language Qwest is proposing for Section 9.1.12.1 and subparts and in conjunction with Eschelon's proposed language for Section 12.2.1.2.</p> <p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to override processes set by and approved in the CMP and to import PCAT-like process language into the ICA, thereby undermining the Commission approved CMP process. The entire purpose of</p>

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				<p>CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p> <p>Finally, Eschelon is trying to obtain expedites for free, when all applicable law requires Eschelon to pay a fee to obtain an expedite.</p>
<p>Issue 9-37 Section 9.1.13.3 Moved to potentially “Stayed Issues”</p>		<p><i>Note: Potentially stayed issues are found at the bottom of this matrix.</i></p>		<p><i>Note: Potentially stayed issues are found at the bottom of this matrix.</i></p>
<p>Issue 9-37(a) Section 9.1.13.3 Moved to</p>				

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potentially “Stayed Issues” Issue 9-37(b) Section 9.1.13.3 Moved to potentially “Stayed Issues”				
Issue 9-38 Section 9.1.13.3 Moved to potentially “Stayed Issues”				
Issue 9-39 Section 9.1.13.4.1; 9.1.13.4.1.2.2; 9.1.13.4.1.2.2.1; 9.1.13.4.1.2.3 (Caps) (Remainder of 9.1.13.4.1.2 moved to “Stayed Issues” ⁶)	<p><u>9.1.13.4.1.....Pursuant to Section 5.18.2 of this Agreement, prior to any other formal Dispute resolution Party will negotiate in good faith to resolve the Dispute. To facilitate good faith negotiations and in an attempt to avoid further proceedings, the Parties will work together to verify the qualification of any High Capacity Loop or high capacity transport UNE that Qwest shall provide at least the following information to</u></p>	<p>To the extent that this language relates to Wire Centers, that issue has been stayed. To the extent that this language relates to the caps described in Sections 9.2 and 9.6.2.3 of the ICA, however, this issue has not been stayed. This position statement refers, therefore, to the issue of the caps.</p> <p>Section 9.1.13 sets out the procedure for self-certification when ordering high capacity loops and transport UNEs. If Qwest disputes that certification, or a</p>	<p>9.1.13.4.1.....Pursuant to Section 5.18.2 of this Agreement, prior to any other formal Dispute resolution proceedings, each Party will negotiate in good faith to resolve the Dispute. To facilitate good faith negotiations and in an attempt to avoid further proceedings, the Parties will work together to verify the qualification information of any High Capacity Loop or high capacity transport UNE that Qwest shall provide at least the following information to CLIC (with any</p>	<p>Issues relating to the development and use of lists of non-impaired wire centers prepared pursuant to the criteria in the TRRO should be addressed in the Commission's ongoing TRRO wire center proceeding, not in this arbitration. Per paragraph 234 of the TRRO, Eschelon has an obligation to determine that any high-capacity transport or a high-capacity loops it orders from Qwest meet the impairment criteria in the TRRO. Qwest's proposal incorporates that obligation, but Eschelon's proposal</p>

⁶ To the extent any language also applies to wire centers and the wire center issue is stayed, see Issue 9-39 below under “Stayed Issues”.

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Issue 9-40	<p><u>CLEC (with any Confidential Information being subject to Sections 5.16 and 5.18.3.1.4 of this Agreement or as ordered by the Commission or other appropriate authority):</u></p> <p>...</p> <p><u>9.1.13.4.1.2.2 For Caps:</u></p> <p><u>9.1.13.4.1.2.2.1 With respect to the caps described in Sections 9.2 and 9.6.2.3, data that allows CLEC to identify all CLEC circuits relating to the applicable Route or Building [including circuit identification (ID), installation purchase order number (PON), Local Service Request identification (LSR ID), Customer Name/Service Name, installation date, and service address including location (LOC) information].</u></p> <p><u>9.1.13.4.1.2.3 For all: Other data upon which Qwest relies for its position that CLEC may not access the UNE.</u></p>	<p>dispute otherwise arises, Eschelon's proposed language provides a mechanism for attempting to resolve that dispute. That mechanism requires Qwest to provide to CLEC information needed to resolve the dispute. For example, in the wire center proceedings, the parties have been able to resolve issues after Qwest provided data to CLEC that were not resolved without that data. Qwest would need to gather the data in any event to bring its dispute to the Commission. The process proposed by Eschelon is efficient and will reduce the likelihood of disputes before the Commission.</p>	<p>Confidential Information being subject to Sections 5.16 and 5.18.3.1.4 of this Agreement or as ordered by the Commission or other appropriate authority):</p> <p>...</p> <p>9.1.13.4.1.2.2 For Caps:</p> <p>9.1.13.4.1.2.2.1 With respect to the caps described in Sections 9.2 and 9.6.2.3, data that allows CLEC to identify all CLEC circuits relating to the applicable Route or Building [including circuit identification (ID), installation purchase order number (PON), Local Service Request identification (LSR ID), Customer Name/Service Name, installation date, and service address including location (LOC) information].</p> <p>9.1.13.4.1.2.3 For all: Other data upon which Qwest relies for its position that CLEC may not access the UNE.</p>	<p>does not. Eschelon's proposal could result in Eschelon ordering and receiving transport and loop UNEs despite the existence of facts demonstrating an absence of impairment in a wire center. In addition, Eschelon's proposal relating to the information it would obtain from Qwest in connection with evaluations of non-impairment improperly goes beyond the non-impairment criteria in the TRRO.</p>

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Section 9.1.13.3 Moved to potentially “Stayed Issues”				
Issue 9-41 Section 9.1.13.3 Moved to potentially “Stayed Issues”				
Issue 9-42 Section 9.1.13.3 Moved to potentially “Stayed Issues”				
WIRE CENTER ISSUES				
Section 9.1.14.6 – See Issue 9-40 (Section 9.1.13.5.2) above				
Section 9.1.15.1 – See Issue 9-37(b) (Section 9.1.13.3) above				

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Section 9.1.15.2.1 – See Issue 9-40 (Section 9.1.13.5.2) above				
Issue 9-43 Section 9.1.15.2.3 Conversions - Circuit ID	<p><u>9.1.15.2.3 The circuit identification (“circuit ID”) will not change. After the conversion, the Qwest alternative service arrangement will have the same circuit ID as formerly assigned to the high capacity UNE.</u></p>	<p>Eschelon proposes that the conversions described in Section 9.1.15 will be in the manner of a pricing change. See Section 9.1.15.3 below. If the conversions are handled as pricing changes, the circuit ID will not change. If for any reason the conversions are not handled as pricing changes, the circuit ID still does not need to change. For example, when special access circuits were converted to UNEs, the circuit ID did not change. Changing the circuit IDs is a choice by Qwest that will make life harder for CLECs when an easier option is available. Before a conversion, the CLEC’s customer has working telephone service that has a circuit ID number assigned to it. Both the CLEC’s systems and the Qwest systems reflect that circuit ID. They use the circuit ID to identify the service for billing and repair matters. As part of the</p>	<p>9.1.15.2.3 The circuit identification (“circuit ID”) will not change. After the conversion, the Qwest alternative service arrangement will have the same circuit ID as formerly assigned to the high capacity UNE.</p>	<p>Substantial and costly changes to Qwest’s operation support systems would be required to attempt to assign the same circuit identification used for UNEs to the facilities used in an alternate service arrangement after a UNE conversion. There is no legal requirement for Qwest to change its systems for this purpose. Further, separate circuit IDs may be needed for alternate service arrangements because of product-specific information that may be reflected by the IDs.</p> <p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is</p>

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		<p>conversion, Qwest proposes to change the existing circuit ID number and instead assign a new/different circuit ID to the circuit, even though the facility is being reused so no change to the facility is occurring. The same customer will have the same service before and after the conversion, assuming nothing goes wrong. Changing the circuit ID significantly increases the risk of customer disruption. Qwest processes circuit ID changes using “disconnect” and “new” service orders. A simple typing error in an order could send the order to Qwest facilities assignment with a “disconnect” on the order, and the customer will go out of service. Problems will also occur later when repairs are needed or the end user customer later requests changes to its service if records are not correctly updated to show the new circuit IDs. No Qwest retail customer will experience these TRO/TRRO conversions and be exposed to these risks.</p>		<p>involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC.</p> <p>Finally, to provide the same circuit ID after a conversion from a UNE, Qwest would have to incur costs that it is entitled to recover under the Act.</p>
Issue 9-44	<p><u>9.1.15.3. If Qwest converts a facility to an analogous or</u></p>	<p>Agreed upon language in Section 9.1.15 states that, if CLEC has not</p>	<p>9.1.15.3. If Qwest converts a facility to an analogous or</p>	<p>Issues relating to Qwest's right to assess non-recurring charges for</p>

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<p>Section 9.1.15.3; See subparts to Issue 9-44 (a) and Issue 9-44 (b) for related issues in 9.1.15.3.1 & 9.1.15.3.1.1</p> <p>Manner of Conversion</p>	<p><u>alternative service arrangement pursuant to Section 9.1.15, the conversion will be in the manner of a price change on the existing records and not a physical conversion. Qwest will re-price the facility by application of a new rate.</u></p>	<p>converted a UNE at the end of a transition period, Qwest “will convert” it to month-to-month service arrangements under its tariff. Without Eschelon’s language in Section 9.1.15.3, however, the ICA does not describe what “convert” means or the terms and conditions under which this conversion will take place. Eschelon’s proposal is designed to avoid end user customer harm. After all, these are customers who are currently in service and have not requested any change in service. The FCC has recognized both that conversions have a real potential to impact end user customer quality of service and that such impact should be avoided. (TRO ¶¶586-87.) Only end user customers of CLECs will be exposed to this risk. No Qwest retail customer will suffer the same fate. If Qwest is allowed to choose a manner of conversion that exposes only CLEC customers to service interruption as a result of conversions, Qwest will gain a competitive advantage, in addition to the price increases it enjoys under the rulings.</p>	<p>alternative service arrangement pursuant to Section 9.1.15, the conversion will be in the manner of a price change on the existing records and not a physical conversion. Qwest will re-price the facility by application of a new rate.</p>	<p>conversions from UNEs to alternate service arrangements should be addressed in the Commission’s ongoing TRRO wire center proceeding, not in this arbitration. Eschelon’s proposal incorrectly assumes that conversions do not involve physical activity and therefore would unlawfully prevent Qwest from charging an appropriate non-recurring rate for conversions. In addition, tariffed charges apply to conversions to alternate service arrangements, which Eschelon’s proposal does not recognize. Eschelon’s proposal also would require Qwest to add a new Universal Service Ordering Code (“USOC”), and Qwest has a right under the Act to recover the costs associated with developing and implementing the new USOC.</p>

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		<p>Eschelon proposes that Qwest handle the conversion as a price change and not a physical conversion of facilities. This is consistent with the FCC’s finding that such conversions are “largely a billing function.” (<i>Id.</i> ¶588.) Only the price to Eschelon is changing and that is the result of a regulatory change, not an end user request. Therefore, service to end users should not be placed at risk, when such risk can be avoided by adopting Eschelon’s proposal.</p> <p>The risk of harm to the end user customer’s service that arises with a physical conversion does not end with the conversion itself. If, as part of that conversion, Qwest changes the circuit ID for the circuit that is already in place and working well for the customer, additional service and billing problems may occur at a later date. For example, if six months after the conversion, the end user calls Eschelon with a repair but the circuit ID is incorrect as a result of conversion activity, Eschelon may not even be able to open a ticket with Qwest because Qwest requires a correct circuit ID</p>		

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Issue 9-44(a) Section 9.1.15.3.1 Manner of Conversion – Use of adder or surcharge	<p><u>9.1.15.3.1 Qwest may perform the re-pricing through use of an “adder” or “surcharge” used for Billing the difference between the previous UNE rate and the new rate for the analogous or alternative service arrangement, much as Qwest currently does to take advantage of the annual price increases in its commercial Qwest Platform Plus product.</u></p>	<p>to open a ticket. When a ticket is opened, the repair will be delayed and require additional resources to resolve. All of this can be avoided. If Eschelon’s re-pricing proposal is adopted, the circuit IDs will not change, and the risk of such problems arising will be eliminated.</p> <p>Re-pricing is a technically feasible manner of performing the conversions referenced in Section 9.1.15. Qwest has already demonstrated this with its implementation of the Qwest Platform Plus (QPP) agreements. Under those agreements, QPP circuits are subject to annual rate increases. Qwest does not physically convert the circuits to convert to the new rates. Instead, Qwest re-prices the circuits by using an “adder” or “surcharge” for billing the difference between the previous rate and the new rate. On the bill, the old rate appears, as well as the adder. The new rate is the total of the old rate and the adder. In Section 9.1.15.3.1, Eschelon makes clear that Qwest may use this same approach for the conversions described in Section 9.1.15.</p>	<p>9.1.15.3.1 Qwest may perform the re-pricing through use of an “adder” or “surcharge” used for Billing the difference between the previous UNE rate and the new rate for the analogous or alternative service arrangement, much as Qwest currently does to take advantage of the annual price increases in its commercial Qwest Platform Plus product.</p>	<p>Issues relating to Qwest's right to assess non-recurring charges for conversions from UNEs to alternate service arrangements should be addressed in the Commission's ongoing <i>TRRO</i> wire center proceeding, not in this arbitration. Eschelon's proposal incorrectly assumes that conversions do not involve physical activity and therefore would unlawfully prevent Qwest from charging an appropriate non-recurring rate for conversions. In addition, tariffed charges apply to conversions to alternate service arrangements, which Eschelon's proposal does not recognize.</p> <p>Eschelon's proposal also would require Qwest to add a new Universal Service Ordering Code ("USOC") and make other system-related modifications, and Qwest</p>

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Issue 9-44(b) Section 9.1.15.3.1.1 Manner of Conversion - Use of USOC	<u>9.1.15.3.1.1 Qwest may add a new Universal Service Ordering Code ("USOC") for this purpose and assign the "adder" or "surcharge" rate to that USOC.</u>	Inclusion of this language avoids any concern that the bills could be characterized as inaccurate because the rate itself does not appear in the bill but must be derived by adding two figures. For QPP, Qwest has accomplished rate changes by means of adding new Universal Service Ordering Codes ("USOC") that introduce additives to the underlying UNE rate that CLECs pay for the circuit. Section 9.1.15.3.1.1 makes clear that Qwest may also add new USOCs for this purpose if needed. The rate changes involved with QPP are significantly more complex than the rate change involved in changing from UNE rates to private line rates. QPP rates differ depending upon whether the end-user customer is a residential or a business customer and upon whether the CLEC has met certain volume quotas. It should be easier to use USOCs in this case.	9.1.15.3.1.1 Qwest may add a new Universal Service Ordering Code ("USOC") for this purpose and assign the "adder" or "surcharge" rate to that USOC.	has a right under the Act to recover the costs associated with developing and implementing the new USOC. Issues relating to Qwest's right to assess non-recurring charges for conversions from UNEs to alternate service arrangements should be addressed in the Commission's ongoing <i>TRRO</i> wire center proceeding, not in this arbitration. Eschelon's proposal incorrectly assumes that conversions do not involve physical activity and therefore would unlawfully prevent Qwest from charging an appropriate non-recurring rate for conversions. In addition, tariffed charges apply to conversions to alternate service arrangements, which Eschelon's proposal does not recognize.
				Eschelon's proposal also would require Qwest to add a new Universal Service Ordering Code ("USOC") and make other system-related modifications, and Qwest has a right under the Act to recover the costs associated with developing

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Issue 9-44(c) Section 9.1.15.3.1.2 Manner of Conversion - Same USOC	<u>9.1.15.3.1.2 For any facility converted to an analogous or alternative service arrangement pursuant to Section 9.1.15.3, Qwest will either use the same USOC or the USOC will be deemed to be the same as the USOC for the analogous or alternative service arrangement for pricing purposes, such as for the purpose of calculating volumes and discounts for a regional commitment plan.</u>	After a conversion, CLEC is paying the higher price for special access or another alternative service arrangement. The USOC is not a means in itself and should not be used to change substantive results. The product being ordered is the same (<i>i.e.</i> , the alternative service arrangement) regardless of the USOC assigned. When alternative arrangements are subject to regional commitment plans, for example, Qwest should not be able to limit the discount terms based on a manner of pricing that allows Qwest to collect those higher charges. This is particularly true when that manner of pricing allows Qwest, as well as CLECs to avoid additional work of conversions and the associated increase in risk of adverse impact to End User Customers.	9.1.15.3.1.2 For any facility converted to an analogous or alternative service arrangement pursuant to Section 9.1.15.3, Qwest will either use the same USOC or the USOC will be deemed to be the same as the USOC for the analogous or alternative service arrangement for pricing purposes, such as for the purpose of calculating volumes and discounts for a regional commitment plan.	and implementing the new USOC. Qwest does not agree. See Issues 9-44 and subparts above.
Issue 9-45 Intentionally Left Blank				
INTERFERING BRIDGED TAP				
Issue 9-46 Section	Interfering Bridged Tap is defined as any amount of Bridged Tap that is <u>excessive or otherwise</u>	Section 9.2.2.9.6 sets forth performance parameters that Qwest is required to meet with respect to	Interfering Bridged Tap is defined as any amount of Bridged Tap that <u>is excessive or otherwise</u> would	Eschelon's definition of "interfering bridge tap" is vague and incapable of reliable and certain contract

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9.2.2.9.6 (2 nd Paragraph) Bridged Taps	<p>would <u>interfere with proper performance, cause loss at the end-user location to exceed the amount of loss allowable by the ANSI Standards.</u></p>	<p>loops that it provides under the ICA. For certain types of loops, one such performance parameter is that there not be "Interfering Bridged Tap" on the loop. Eschelon has proposed language that defines "Interfering Bridged Tap" logically to include any Bridged Tap that "would interfere with proper performance" of the loop. The remainder of this Section then goes on to describe proper performance. Qwest has rejected this language in favor of more narrowly defining Interfering Bridged Tap to Bridged Tap "that would cause loss at the End-User Customer location to exceed the amount of loss allowable by the ANSI Standards."</p> <p>Qwest proposed definition is too narrow for at least two reasons. First, the definition would exclude loss occurring somewhere other than the End-User Customer location. Loss occurring at locations other than the customer's location may nevertheless interfere with the customer's use of the loop and should come within the definition of Interfering Bridged</p>	<p>interfere with proper performance <u>cause loss at the End User Customer location to exceed the amount of loss allowable by the ANSI Standards.</u></p>	<p>implementation. The definition of this phrase should be tied to measurable industry standards so that the parties' rights and obligations are clear. The standards that apply are those set forth in ANSI relating to permissible decibel loss, as set forth in Qwest's proposal. This definition also is consistent with the PCAT, which incorporates ANSI standards. Eschelon's proposed standard of bridge tap interference that is "excessive" or that "interferes with proper performance" is far too subjective and uncertain. Without any tie to industry standards, there is no reliable way to determine what is "excessive" or what constitutes interference with "proper performance." The use of these subjective, vague terms would leave the parties rights and obligations largely undefined and would lead to future disputes and disagreements concerning the amount of interference from bridge tap that is acceptable.</p>

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		<p>Tap. Second, the parties have agreed on a list of performance parameters for loops. Only some of these performance parameters are governed by ANSI Standards. Thus, Qwest’s definition of Interfering Bridged Tap is too narrow to include all of the applicable performance parameters. Accordingly, Eschelon’s proposed definition is more consistent with the agreed upon language.</p>		
Issue 9-47 Intentionally Left Blank				
Issue 9-48 Intentionally Left Blank Section 9.2.3.8 See Issue 4-5 (a)				
Section 9.2.3.9 See Issue 4-5 (b)				
Section 9.2.5.2 See, Issue 12-80				<p>At a broad level, Eschelon is proposing to define “trouble report” in a manner that is inconsistent with</p>

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(Section 12.4.1.8) <i>below</i>				<p>industry. This definition should only include reports issued through one of Qwest's repair interfaces. Eschelon believes it should include reports issued through one "of Qwest's call or repair centers." Call centers include ordering, as well as repair tickets. It is important to differentiate between repair and ordering, as there is substantial law differentiating between ordering and repair. Industry practice also differentiates between the two. Accordingly, this distinction should be incorporated into the ICA..</p> <p>With respect to this specific issue, Qwest agrees that if Qwest incorrectly determines that there is no trouble in its network and Eschelon corrects that determination through a dispatch, Eschelon should be compensated for the dispatch. However, Eschelon's proposal would give Eschelon the right to charge Qwest even in circumstances where Eschelon did not have a dispatch and thus did not incur the costs of the dispatch. Under Eschelon's proposal, its right to charge Qwest is improperly linked to a "repeat</p>

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Issue 9-49 Intentionally Left Blank				trouble", not to a dispatch. This could result in Eschelon assessing a charge against Qwest when it did not perform a dispatch or incur any costs as part of a determination that trouble was in Qwest's network. Eschelon clearly should not be permitted to assess a charge when it does not undertake any action or incur any costs.
Issue 9-50 SUBLOOPS – QWEST CROSS CONNECT/WIRE WORK	9.3.3.8.3.1 If Qwest performs or offers to perform the cross-connect for any other CLEC during the term of this Agreement, Qwest will notify CLEC and offer CLEC an amendment to this Agreement that allows CLEC, at its option, to request that Qwest run the jumper for Intrabuilding cable in MTEs on nondiscriminatory terms and conditions.	Qwest currently offers to other CLECs, when it is necessary to either perform hard wiring or run a jumper to cross-connect facilities in a subloop context, an option under which Qwest performs this work and, when it does so, charges the Commission-approved rate for the services provided. This issue presents a straight-forward application of the prohibition against discrimination. See 47	9.3.3.8.3.1 If during the term of this agreement a new negotiated ICA or negotiated amendment has been approved by the Commission that contains the option for Qwest to perform cross connect jumper work for intrabuilding cable, at CLEC's request, Qwest will offer CLEC an amendment to this agreement which will include all the associated rates, terms and conditions as it negotiated.	Qwest has no legal obligation to perform cross-connect wiring for Eschelon, and Eschelon can perform this function itself. Qwest has voluntarily offered this service in the past, but CLECs have not ordered it. Because of this lack of demand and the absence of any legal obligation, Qwest is discontinuing this offering on a going-forward basis.

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		<p>U.S.C. § 251(c)(3) (duty of local exchange carrier to nondiscriminatory access to network elements on an unbundled basis); Minn. Stat. §237.121(a)(5). Qwest makes this option for it to perform such work available to both AT&T and Covad pursuant to the ICAs that were approved by this Commission. When the FCC reversed the pick-and-choose rule, it made clear that “existing state and federal safeguards against discriminatory behavior” were still in effect and remained “in place” to provide needed protection against discrimination. (<i>Second Report and Order</i> ¶¶ 18, 20 23.) Therefore, Qwest cannot, consistent with its obligation to not discriminate, offer such a UNE term under its ICAs with other carriers but refuse to make that term available under its agreement with Eschelon.</p> <p>Qwest has proposed language that would require it to offer to provide hard-wiring and cross-connects to Eschelon only if it enters into a “new” negotiated ICA or amendment that provides for this option. Thus, Qwest’s proposal</p>		<p>Under Qwest’s proposal, Eschelon is protected against discriminatory treatment through Qwest’s language that gives Eschelon the right to enter into an amendment for cross-connect service if the Commission approves any new agreements with other CLECs that include this service. Eschelon’s proposal would improperly require Qwest to offer Eschelon a cross-connect amendment if Qwest ever performs a cross-connect for a CLEC, even if Qwest does not have a cross-connect amendment or other agreement with that CLEC. Eschelon’s proposal thus could result in Eschelon obtaining a cross-connect amendment when other CLECs obtain cross-connects only through the BFR process. That result would impermissibly favor Eschelon over other CLECs. By linking the obligation to enter into a cross-connect amendment with Eschelon to an agreement with another CLEC, Qwest’s proposal ensures non-discriminatory, uniform treatment among CLECs.</p>

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		<p>would not require it to offer Qwest-provided hard-wiring and cross-connects pursuant to existing agreements or pursuant to “new” agreements that are arbitrated rather than negotiated. These exclusions are inconsistent with Qwest’s obligation to not discriminate. Furthermore, Qwest’s proposal would provide Qwest with an incentive to provide this service other than pursuant to a written agreement, in order to avoid having to offer the service equally to all carriers. Qwest has claimed that there is no demand for this service and that it intends to discontinue the offering. However, unless and until it does so, Qwest has an obligation to offer the service to all carriers on the same terms and conditions. <i>See also</i> Issue 9-52 (Section 9.9.1).</p>		
9.6.3.6 see Issue 4-5 (c)				
Issue 9-51 Section 9.7.5.2.1.a Application of UDF-IOF	<p>PROPOSAL #1 9.7.5.2.1a)UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Qwest Wire Center.</p>	<p>Eschelon has proposed two alternatives. The first alternative mirrors the language from Qwest’s SGAT, so it is difficult to understand why this alternative is not acceptable to Qwest. Qwest, however, has proposed the addition</p>	<p>SAME FOR BOTH PROPOSALS: 9.7.5.2.1a)UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Qwest</p>	<p>Eschelon’s proposal assumes incorrectly that Qwest is always required to perform only one cross-connect to provide UDF-IOF terminations. In fact, more than one cross-connect may be necessary, which is why Qwest’s proposed</p>

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termination (fixed) rate element	<p>Two UDF-IOF terminations apply <u>(one for each of the two end points in the termination path) per pair</u>cross-connect provided on the facility. Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.</p> <p>PROPOSAL #2 9.7.5.2.1a)UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interface FDP within the Qwest Wire Center. Two UDF-IOF terminations apply per <u>pair</u>cross-connect provided on the facility. Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.</p>	<p>of a phrase, providing that the rate applies “per cross-connect provided on the facility.” The rate for this element will not change and it is unclear how Qwest believes that the addition of this phrase impacts the application of the rate. In order to address what Eschelon believes Qwest may be getting at with this phrase, Eschelon’s second proposal includes language that clarifies that the rate applies to each of the end points of the facility.</p>	<p>Wire Center. Two UDF-IOF terminations-apply-per-cross-connect provided on the facility. Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.</p>	<p>language permits recovery of two UDF-IOF terminations “per cross-connect.” Eschelon’s proposal would improperly prevent Qwest from charging for more than one cross-connect when multiple cross-connects are required and would thereby deny Qwest cost recovery.</p>
ACCESS TO 911 DATABASES				
Issue 9-52 Section 9.8 and subpart	<p>9.8 <u>911 and E911 Call-Related Databases</u> <u>9.8.1 Qwest shall provide CLEC nondiscriminatory access to 911</u></p>	<p>Pursuant to the FCC’s unbundling rules, as amended pursuant to the TRO, ILECs are required to provide nondiscriminatory access to call-related databases, including 911 and</p>	<p>9.8 <u>Intentionally Left Blank</u></p>	<p>In 47 C.F.R. § 51.319(d)(4)(i)(B)(1), the FCC established that ILECs are required to unbundle 911 and E911</p>

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Access to 911 Databases	<p>and E911 databases only as required by the Act and 47 C.F.R. §51.319 and subparts.</p>	<p>E911 databases. See 47 C.F.R. § 51.319(f). In order to address Qwest’s objection that it may not be required to provide unbundled access to 911 and E911 databases beyond that required under the FCC’s unbundling rules, Eschelon’s proposed language cross-references the applicable rule, 47 C.F.R. § 51.319, and makes clear that Qwest is required to provide unbundled access only to the extent required under that rule. To the extent that Qwest continues to argue that 911/E911 databases are only available as part of unbundled local switching, the FCC expressly rejected that argument in the TRO. On page 12 of the TRO, the FCC said (with emphasis added): “When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases.” See <i>also</i> TRO ¶ 557. After the TRRO, the FCC issued its VoIP E-911 Order, and again reiterated this point. In paragraph 38, the FCC said: “We note that the Commission currently requires LECs to provide access to 911 databases and interconnection</p>		<p>databases “to the extent the [CLEC] is entitled to unbundled local switching.” In other words, CLECs are entitled to unbundled access to these databases only if they are entitled to unbundled access to local switching. By only citing this rule and not stating that access to these databases is linked to access to local switching, Eschelon appears to be leaving the door open to obtaining access to the databases in circumstances that the FCC did not authorize. Eschelon is not entitled to access to 911 and E911 databases separate from local switching, and the mere reference to the rule without express recognition of the link between switching and access to the databases is improper.</p>

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<p>UCCRE</p> <p>Issue 9-53</p> <p>Section 9.9 and subpart 6;</p> <p>Unbundled Customer Controlled Rearrangement Element (UCCRE)</p>	<p><u>9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)</u></p> <p><u>9.9.1. If Qwest provides or offers to provide UCCRE to any other CLEC during the term of this Agreement, Qwest will notify CLEC and offer CLEC an amendment to this Agreement that allows CLEC, at its option, to request UCCRE on nondiscriminatory terms and conditions.</u></p>	<p>to 911 facilities to all telecommunications carriers, pursuant to sections 251(a) and (c) and section 271(c)(2)(B)(vii) of the Act” (see also footnote 128).</p>	<p><u>9.9 Intentionally Left Blank</u></p>	<p>The FCC has removed from its rules the former requirement for ILECs to provide digital cross-connects for the unbundled customer controlled rearrangement element (“UCCRE”). Compare former 47 C.F.R. § 51.319(d)(2)(iv) and current 47 C.F.R. § 51.319(d)(2). Eschelon acknowledges that Rule 51.319 defines the unbundling obligations of ILECs, but it dismisses as irrelevant the fact that the FCC affirmatively removed from that rule the former obligation of ILECs to provide UCCRE. The FCC’s unbundling rules are definitive and binding, and the fact that the FCC has removed UCCRE from those rules establishes that ILECs no longer have an obligation to provide this service.</p> <p>Further, although Qwest offered this service in the past, CLECs did</p>

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		<p>First, Rule 319 sets forth the FCC’s unbundling rules. 47 C.F.R. § 51.319(d)(2)(iv), prior to its revision pursuant to the TRO, provided that “The incumbent shall . . . permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC’s digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers.” This rule was substantially re-written in 2003 (and re-written again pursuant to the TRRO) to set forth a process by which state commissions would conduct an impairment analysis to determine what elements must be unbundled. As a result of the re-write, § 51.319(d)(2)(iv) was omitted from the rule. Qwest interprets this to mean that the FCC found the incumbents are not required to offer access to digital cross connect systems and, therefore, Qwest is not required to offer UCCRE, which is accessed using a digital cross connect system. There is no evidence however that, in amending Rule</p>		<p>not order it. If Eschelon desires this service, it can obtain the service through a tariff or through the bona fide request process.</p> <p>Because Qwest will not be offering this service to any CLECs that enter into new interconnection agreements, there is no merit to Eschelon’s assertion that it would be discriminatory for Qwest not to offer the service to Eschelon. The service will no longer be offered to Eschelon or to any other CLEC that enters into a new interconnection agreement, and Eschelon is therefore being treated on a par with other CLECs. Under Eschelon’s argument, Qwest would be prohibited from ending on a going-forward basis an offering it has no legal obligation to provide and that CLECs do not order simply because the offering is included in another carrier’s interconnection agreement that is several years old. This position relies on an improper application of the Act’s non-discrimination requirements and would improperly force Qwest to continue voluntary offerings of services for which there is no</p>

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		<p>319, the FCC intended to relieve incumbents from the obligation to offer access using cross-connects. To the contrary, after Rule 319 was re-written, 47 C.F.R. § 51.305(a)(2)(iv) continued to require incumbents to provide CLECs with interconnection at “central office cross-connect points.” The reasonable interpretation is that, in amending Rule 319, the FCC was focused on establishing a process for conducting the necessary impairment analysis, not that the FCC had, itself, concluded that unbundled access to cross-connects would no longer be required. To support this interpretation, Qwest cites to no discussion in the order of the FCC’s relieving incumbents from the obligation to offer access using cross-connects. When the FCC has eliminated such obligations, it has done so expressly.</p> <p>Second, aside from any amendment by the FCC to its unbundling rules, it remains that UCCRE is a UNE that Qwest makes available pursuant to its SGAT as well as</p>		demand.

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		<p>pursuant to interconnection agreements that it has with other carriers. See SGAT § 9.9; Qwest-AT&T ICA Section 9.9. Qwest is required to provide CLECs with nondiscriminatory access to unbundled network elements. 47 U.S.C. § 251(c)(3). Because it provides UCCRE to other carriers, it must also provide it to Eschelon. See also <i>Second Report and Order</i> ¶¶ 18, 20-23. Eschelon’s proposal, consistent with Qwest’s obligations to not discriminate among carriers, only requires that Qwest provide Eschelon with UCCRE on the same terms and conditions as it offers or provides that element to another carrier. Qwest’s language, in contrast, allows Qwest to continue to provide access to UCCRE under its existing SGATs and ICAs to other CLECs while denying such access to Eschelon unless a “new” UCCRE agreement later is approved by the Commission. If Qwest offers UCCRE to another carrier who does not desire it, nothing in Qwest’s proposal requires Qwest to also offer it to Eschelon. As of the time of filing its petition, Eschelon was proposing</p>		

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<p>DIFFERENT UNE COMBINATIONS</p> <p>Issue 9-54</p> <p>Sections 9.23.2</p> <p>UNE Combination Availability</p> <p>(1 of 2 issues;</p>		<p>the same UCCRE language as approved by this Commission in the Qwest-AT&T ICA. In response to Qwest’s representations that it was going to modify such agreements to eliminate its UCCRE product offering, but it had to start somewhere (i.e., with Eschelon’s ICA), Eschelon substantially curtailed its UCCRE proposal, while reserving its rights to obtain UCCRE so long as Qwest offered it to other carriers. Qwest’s proposal would allow Qwest to leave the other agreements in place and discriminate against Eschelon. <i>See also</i> Issue 9-50 (Section 9.3.3.8.3.1).</p>		
	<p>9.23.2 UNE Combinations Description and General Terms</p> <p>UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) and <u>Loop Mux Combinations</u>. If CLEC desires</p>	<p>Eschelon’s proposal for the disputed sentence is identical to language in the Qwest-AT&T ICA approved by this Commission. Eschelon is also willing, as another option, to use the corresponding sentence from the Washington SGAT in this provision: “. . . <u>Qwest will provision UNE</u></p>	<p>9.23.2 UNE Combinations Description and General Terms</p> <p>UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) and <u>Loop-Mux-Combinations</u>. If CLEC desires access to a different UNE</p>	<p>There is no legal requirement for ILECs to provide stand-alone multiplexing. Multiplexing is not a feature or function of the loop, and Qwest is not required to provide loops and multiplexing as a UNE combination</p> <p>Further, Eschelon can self-provision</p>

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For 2 nd issue (Loop-Mux Combinations), see Section 9.23.9)	<p>access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. Qwest will provision UNE Combinations pursuant to <u>the rates, terms and conditions of this Agreement</u> provided that all <u>individual UNEs, UNE rates, terms and conditions making up</u> included in the UNE Combination are contained in this Agreement. If Qwest develops additional UNE Combination products, CLEC can order such products without using the Special Request Process, but CLEC may need to submit a questionnaire pursuant to Section 3.2.2.</p>	<p><u>combinations pursuant to the terms of this Agreement without requiring an amendment to this Agreement, provided that all UNEs making up the UNE Combination are contained in this Agreement. . . .</u> In either case, Eschelon’s proposal establishes that, if the individual elements to be combined are addressed in the ICA, Qwest must combine them without claiming an amendment is needed. Qwest, in contrast, seeks to limit its obligation to provide UNE Combinations under the Agreement to those circumstances when “all individual UNE rates, terms and conditions included in the UNE Combination are contained in the Agreement.” Qwest’s proposal opens a potentially significant loophole that makes it possible for Qwest to insist on slightly different or additional terms, even though all of the elements making up the UNE Combination are in ICA. It would take little imagination to devise some allegedly new term that requires an amendment. Doing so leaves the CLEC with the alternative of either signing the unnecessary amendment or</p>	<p>Combination, CLEC may request access through the Special Request Process set forth in this Agreement. Qwest will provision UNE Combinations pursuant to the rates, terms and conditions of this Agreement provided that all <u>individual UNEs, UNE rates, terms and conditions making up included in</u> the UNE Combination are contained in this Agreement. If Qwest develops additional UNE Combination products, CLEC can order such products without using the Special Request Process, but CLEC may need to submit a questionnaire pursuant to Section 3.2.2.</p>	<p>multiplexing within its own collocation space, and, therefore, will not be denied access to this service if Qwest does not provide it. In the <i>TRO</i>, the FCC established that the type of multiplexing ILECs must provide is that associated with commingling, not stand-alone multiplexing. Accordingly, on a going-forward basis, Qwest will no longer offer stand-alone multiplexing.</p> <p>Qwest also should not be required to provide a UNE combination unless all terms and conditions, including rates, for the UNEs comprising the combination are included in the Agreement.</p>

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		<p>expending resources on an action before the Commission. This language in the SGAT and other ICAs, however, is designed to avoid just that scenario and make clear that no amendment is required when the elements of the combination are in the ICA. Eschelon’s language is consistent with that intent. Qwest’s language reduces the provision to a mere agreement to agree later -- defeating the purpose of ensuring that UNE Combinations are fully available under this ICA. (See <i>also</i> Section 9.23.5.1.3 below.) Eschelon’s proposal for the disputed sentence is identical to language in the Qwest-AT&T ICA approved by this Commission. Eschelon is also willing, as another option, to use the corresponding sentence from the Minnesota SGAT in this provision: “... Qwest will provision UNE combinations pursuant to the terms of this Agreement without requiring an amendment to this Agreement, provided that all UNEs making up the UNE Combination are contained this Agreement. . . .” In either case, Eschelon’s proposal establishes that, if the individual</p>		

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		<p>elements to be combined are addressed in the ICA, Qwest must combine them without claiming an amendment is needed. Qwest, in contrast, seeks to limit its obligation to provide UNE Combinations under the Agreement to those circumstances when “all individual UNE rates, terms and conditions included in the UNE Combination are contained in the Agreement.”</p> <p>Qwest’s proposal opens a potentially significant loophole that makes it possible for Qwest to insist on slightly different or additional terms, even though all of the elements making up the UNE Combination are in ICA. It would take little imagination to devise some allegedly new term that requires an amendment. Doing so leaves the CLEC with the alternative of either signing the unnecessary amendment or expending resources on an action before the Commission. This language in the SGAT and other ICAs, however, is designed to avoid just that scenario and make clear that no amendment is required when the elements of the combination are in the ICA.</p>		

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Issue 9-54(a) Section 9.23.5.1.3 Recurring Rates for Different UNE Combinations	<u>9.23.5.1.3 If CLEC elects to use the BFR/SR process to obtain access to a different UNE Combination, the recurring rates for the UNE Combination will be no greater than the total of the recurring rates in Exhibit A in that combination.</u>	Eschelon's language is consistent with that intent. Qwest's language reduces the provision to a mere agreement to agree later -- defeating the purpose of ensuring that UNE Combinations are fully available under this ICA. (See <i>also</i> Section 9.23.5.1.3 below.) As required by Section 9.23.2, Qwest must provision UNE Combinations when the elements making up that combination are contained in the ICA. The rates for each element are set forth in Exhibit A. Eschelon's proposal confirms that Qwest will not charge a recurring rate that is greater than the total of the recurring rates in Exhibit A for the combination. The need for this provision is particularly great given Qwest's position with respect to Section 9.23.2 (see above), as it causes concern that Qwest seeks to create such a rate and require CLECs to sign an amendment containing the new Qwest rate before CLECs can combine UNEs in their existing ICAs, even when each element already has a rate in Exhibit A.	9.23.5.1.3 If CLEC elects to use the BFR/SR process to obtain access to a different UNE Combination, the recurring rates for the UNE Combination will be no greater than the total of the recurring rates in Exhibit A in that combination.	The BFR/SR processes exist to give the parties some flexibility in requesting and responding to non-standard product and service offerings. An essential component and purpose of these processes is establishing prices that reflect the unique or non-standard nature of the product or service. Eschelon's proposal to limit prices for UNE combinations obtained through the BFR/SR to prices set forth in Exhibit A undermines this essential purpose of the BFR/SR processes and artificially limits the costs that Qwest may recover. This artificial limit could unlawfully prevent Qwest from recovering the costs of providing UNE combinations.
LOOP –				

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Issue 9-55 Sections 9.23.4, 9.23.4.4; 9.23.4.4.1; 9.23.4.5; 9.23.4.6; 9.23.4.5.4 See subparts to Issue 9-58 for related issues in 9.23.4.5.1 Combinations of Loops and Transport – Terms	<p>9.23.4 <u>Loop-Transport Combinations: Enhanced Extended Links (EELs), Commingled EELs, and High Capacity EELs</u></p> <p><u>Loop-Transport Combination – For purposes of this Agreement, “Loop-Transport Combination” is a Loop in combination, or Commingled, with a Dedicated Transport facility or service (with or without multiplexing capabilities), together with any facilities, equipment, or functions necessary to combine those facilities. At least as of the Effective Date of this Agreement “Loop-Transport Combination” is not the name of a particular Qwest product. “Loop-Transport Combination” includes Enhanced Extended Links (“EELs”), Commingled EELs, and High Capacity EELs. If no component of the Loop-transport Combination is a UNE, however, the Loop-Transport Combination</u></p>	<p>The crux of the issue presented by these disputed sections is how Loop-Transport Combinations will be treated under the ICA, particularly if they involve commingling. When Qwest’s proposals are closely scrutinized, it becomes clear that Qwest is attempting to position commingling so that, if any part of such a Combination is not a UNE, then the non-UNE’s terms can dictate how the UNE is ordered, provisioned, and repaired. The ordering example provided with respect to Section 9.23.4.4.3.1 below and the repair example discussed under Section 9.23.4.7 below illustrate this point. The Commission should retain its jurisdiction over the UNE component of Loop-Transport Combinations (including the UNE in a Commingled EEL) and ensure that terms that affect the UNE are included in the filed and approved ICA.</p> <p>In Section 9.23.4, Eschelon has proposed a definition of “Loop-</p>	<p>9.23.4 Loop-Transport Combinations: Enhanced Extended Links (EELs), Commingled EELs, and High Capacity EELs</p> <p>Loop-Transport Combination—For purposes of this Agreement, “Loop-Transport Combination” is a Loop in combination, or Commingled, with a Dedicated Transport facility or service (with or without multiplexing capabilities), together with any facilities, equipment, or functions necessary to combine these facilities. At least as of the Effective Date of this Agreement “Loop-Transport Combination” is not the name of a particular Qwest product. “Loop-Transport Combination” includes Enhanced Extended Links (“EELs”), Commingled EELs, and High Capacity EELs. If no component of the Loop-transport Combination is a UNE, however, the Loop-Transport Combination is not addressed in this Agreement. The UNE</p>	<p>The FCC uses the term “loop-transport” to describe varieties of EELs, not to establish an unbundled product separate from EELs. By contrast, Eschelon uses “loop-transport” as a defined term that applies equally to high capacity and commingled EELs. Although “loop-transport” is not a Qwest product, Eschelon improperly proposes to assign product attributes to it. See, e.g., §§ 9.23.4.4.3.1 (intervals); 9.23.4.5.1.1. (Billing); 9.23.4.6.6. (BANS). Qwest has no legal obligation to offer loop-transport combinations other than EELs. Eschelon asserts that certain provisions of the TRO recognize a category of loop-transport combinations that encompasses more than EELs, but that is an inaccurate characterization of the TRO. The provisions Eschelon relies upon, when read in proper context, refer only to EELs, not to loop-transport combinations other than EELs.</p>

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	<p><u>is not addressed in this Agreement. The UNE components of any Loop-Transport Combinations are governed by this Agreement.</u></p> <p>Commingled EEL – If CLEC obtains at UNE pricing part (but not all) of a <u>L</u>oop-<u>T</u>ransport Combination, the arrangement is a Commingled EEL. (Regarding Commingling, see Section 24.)</p> <p>High Capacity EEL – “High Capacity EEL” is a <u>L</u>oop-<u>T</u>ransport Combination (either EEL or Commingled EEL) when the Loop or transport is of DS1 or DS3 capacity. High Capacity EELs may also be referred to as “DS1 EEL” or “DS3 EEL,” depending on capacity level.</p> <p>...</p> <p>9.23.4.4 Additional Terms for <u>EELsUNE Components of Loop Transport Combinations</u></p> <p>...</p>	<p>Transport Combination” which mirrors the way that the FCC has used that term, to define any combination of loop and transport. See TRO ¶¶ 25 & 575 (both using “loop-transport combinations”); see also TRO ¶ 599 [“We apply the service eligibility requirements on a circuit-by-circuit bases, so each DS1 EEL (<i>or combination of</i> DS1 loop with DS3 transport) must satisfy the service eligibility criteria.”] (emphasis added). The use of this defined term is efficient because it provides an umbrella that includes all three of the types of Loop-Transport Combinations that exist currently – EELs, Commingled EELs, and High Capacity EELs – thus avoiding having to repeat all three terms throughout the document. Further, this proposed definition makes clear that only the UNE components of a Loop-Transport Combination are subject to the ICA. It also expressly states that, if no component is a UNE, the combination is not governed by the ICA, to eliminate any suggestion that the terminology is some kind of attempt to govern non-UNEs in the ICA.</p>	<p>components of any Loop-Transport Combinations are governed by this Agreement.</p> <p>Commingled EEL – If CLEC obtains at UNE pricing part (but not all) of a <u>L</u>oop-<u>T</u>ransport Combination, the arrangement is a Commingled EEL. (Regarding Commingling, see Section 24.)</p> <p>High Capacity EEL – “High Capacity EEL” is a <u>L</u>oop-<u>T</u>ransport Combination (either EEL or Commingled EEL) when the Loop or transport is of DS1 or DS3 capacity. High Capacity EELs may also be referred to as “DS1 EEL” or “DS3 EEL,” depending on capacity level.</p> <p>...</p> <p>9.23.4.4 Additional Terms for <u>EELsUNE Components of Loop Transport Combinations</u></p> <p>...</p> <p>9.23.4.4.1 EELs and Commingled EELs may consist of loops and</p>	<p>Further, Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems to provide Eschelon’s proposed “loop-transport” product. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act.</p>

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	<p>9.23.4.4.1 EELs and <u>Commingled EELs</u> may consist of loops and interoffice transport of the same bandwidth (Point-to-Point). When multiplexing is requested, EELs and <u>Commingled EELs</u> may consist of loops and interoffice transport of different bandwidths (Multiplexed). CLEC may also order combinations of interoffice transport, concentration capability and DS0 loops.</p> <p>...</p> <p>9.23.4.5 Ordering Process for <u>EELs-UNE Components of Loop Transport Combinations</u></p> <p>9.23.4.5.4 ... Qwest may require two (2) service requests when CLEC orders <u>Multiplexed Loop Transport Combinations</u> (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding <u>Commingle</u> see Section 24.</p> <p>9.23.4.6 Rate Elements for <u>EELs-UNE Components of Loop Transport Combinations</u></p>	<p>Consistent with this definition, Eschelon proposes capitalizing the term in indicate it is defined and referring to the UNE components of Loop Transport Combinations in the headings to clarify, as stated in the definition, that this ICA does not govern the non-UNE portion. Because at least one component of the combination is a UNE, however, the terms and conditions belong in Section 9, which is entitled “Unbundled Network Elements.” Although there is also a section on Commingling (Section 24), that section contains general terms and not the type of terms and conditions that the parties otherwise agree belong in the 9.23, such as Service Eligibility Criteria for High Capacity EELs (which include Commingled EELs). Qwest’s proposal to place only these terms (Service Eligibility Criteria) of Commingled EELs in Section 9 while placing others in Section 24 does not make sense from an organizational or ease-of-use perspective. Commingled EELs have a UNE component and thus are appropriately addressed in Section 9. Section 9 contains ample</p>	<p>interoffice transport of the same bandwidth (Point-to-Point). When multiplexing is requested, EELs and <u>Commingled EELs</u> may consist of loops and interoffice transport of different bandwidths (Multiplexed). CLEC may also order combinations of interoffice transport, concentration capability and DS0 loops.</p> <p>...</p> <p>9.23.4.5 Ordering Process for <u>EELs-UNE Components of Loop Transport Combinations</u></p> <p>9.23.4.5.4 ... Qwest may require two (2) service requests when CLEC orders <u>Multiplexed EELs-Loop Transport Combinations</u> (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding <u>Commingle</u> see Section 24.</p> <p>9.23.4.6 Rate Elements for <u>EELs-UNE Components of Loop Transport Combinations</u></p>	

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SERVICE ELIGIBILITY CRITERIA - AUDITS		cross references to Section 24 on Commingling that the user of the ICA will readily be able to locate the Commingling general terms.		
Issue 9-56 Sections 9.23.4.3.1.1; See subpart to Issue 9-56a below for related issues in 9.23.4.3.1.1.1.1	9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to ascertain whether those High Capacity EELs comply with the Service Eligibility Criteria set forth in Section 9.23.4.1.2., <u>when Qwest has a concern that CLEC has not met the Service Eligibility Criteria.</u>	The parties agree that Qwest shall have the right to conduct an audit to determine Eschelon's compliance with the Service Eligibility Criteria applicable to High Capacity EELs. Two issues remain to be resolved with respect to such audits. First, is Qwest entitled to conduct an audit "without cause"? Second, should Qwest be required to provide Eschelon with information supporting its audit request? Eschelon's proposal would allow Qwest to perform an audit per the ICA terms when it has a concern that Eschelon has not met the Service Eligibility Criteria. Qwest has rejected this very modest limitation on its audit rights, in effect insisting that it should be able to conduct an audit without cause. The FCC held, however, that	9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to ascertain whether those High Capacity EELs comply with the Service Eligibility Criteria set forth in Section 9.23.4.1.2., when Qwest has a concern that CLEC has not met the Service Eligibility Criteria.	The TRO gives ILECs the right to conduct audits of CLECs to ensure compliance with the TRO's eligibility criteria for high-capacity EELs. TRO at ¶¶ 625-29. There is no support in the TRO for Eschelon's proposal that would permit Qwest to conduct an audit only if Qwest states and explains the "cause upon which Qwest has a concern that [Eschelon] has not met the Service Eligibility Criteria." In addition, Eschelon's proposal improperly would require Qwest to identify specific Eschelon circuits that Qwest believes do not comply with the service eligibility criteria. There is no requirement in the TRO for Qwest to identify non-complying circuits as a condition to conducting an audit. Eschelon's proposal impermissibly interferes with and weakens the audit rights

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		<p>“audits will not be routine practice, but will <i>only</i> be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange service.” See TRO at ¶1621 (citing <i>Supplemental Order</i> ¶¶28-33) (emphasis added). Before Eschelon is put to the work and expense that an audit necessarily entails, Qwest should be required to have at least some reason to believe that there may be noncompliance that will be uncovered by an audit. Otherwise, the audit process becomes not a reasonable measure for assuring compliance, but rather, the very sort of “routine practice” that the FCC precluded. Eschelon’s proposed language allows Qwest to fully protect its interest in verifying compliance with the Service Eligibility Criteria while protecting Eschelon from undue burden without cause.</p> <p>Eschelon also proposes that Qwest be required to describe its concern regarding Eschelon’s compliance with the Service Eligibility Criteria</p>		<p>Qwest is granted in the TRO.</p>

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Issue 9-56 (a) Section 9.23.4.3.1.1.1.1 Service Eligibility Criteria – Audits	<p><u>9.23.4.3.1.1.1.1 The written notice shall include the cause upon which Qwest has a concern that CLEC has not met the Service Eligibility Criteria. Upon request, Qwest shall provide to CLEC a list of circuits that Qwest has identified as of that date, if any, for which Qwest alleges non-compliance or which otherwise supports Qwest's concern.</u></p>	<p>and that Qwest be required to identify any non-complying circuits that it has identified. In the TRO, the FCC recognized that the states are in a better position to address implementation of the audit provisions. TRO at ¶ 625. Eschelon’s proposal would require Qwest to provide information that may allow Eschelon to respond to Qwest’s articulated concerns and further early resolution. Eschelon’s notice proposal is not burdensome. Qwest knows the reason for its concern and must merely state it. In addition, the language states only that Qwest will provide, upon request, a list of allegedly non-complying circuits “if any” only if Qwest has identified such circuits “as of that date.” If Qwest has a list of non-complying circuits, there is no reason for it to not provide that information to further root cause analysis and allow CLEC to respond fully. If Qwest does not have such a list, the language places no burden on Qwest to create one.</p>	<p>9.23.4.3.1.1.1.1 The written notice shall include the cause upon which Qwest has a concern that CLEC has not met the Service Eligibility Criteria. Upon request, Qwest shall provide to CLEC a list of circuits that Qwest has identified as of that date, if any, for which Qwest alleges non-compliance or which otherwise supports Qwest's concern.</p>	<p>Please see the statement immediately above concerning right to conduct audits of CLECs to ensure compliance with the TRO’s eligibility criteria for high-capacity EELs.</p>
Sections 9.23.4.4 &				

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9.23.4.4.1 – See Issue 9-55 Section 9.23.4 & 9.23.4.5.1)				
Section 9.23.4.4.3 – See Issue 1-1 (Sections 1.7.2) & Issue 9-61 (Section 9.23.9)				
Issue 9-57 Intentionally Left Blank				
COMMINGLED EELS/ ARRANGE- MENTS				
Issue 9-58 Sections 9.23.4.5.1, 9.23.4.5.1.1; See subparts (a)-(e) for related issues in 9.23.4.5.4, 9.23.4.6.6 (and subparts), 9.23.4.7 and subparts;	9.23.4.5.1 CLEC will submit orders for <u>Loop Transport EELs Combinations</u> using the LSR process. Submission of LSRs is described in Section 12. <u>9.23.4.5.1.1 If any component of the Loop-Transport Combination is not a UNE (i.e., not a component to which UNE pricing applies), CLEC will indicate on the LSR that the component is not a UNE (e.g., CLEC is ordering the component as an alternate service such as special</u>	Overview (LSR, ID, Bill): In the next several provisions of the ICA, Eschelon proposes use of a single LSR, single circuit ID, and single bill for point-to-point Commingled EELs, just as Qwest provides a single LSR, single circuit ID, and single bill for point-to-point UNE EELs today. A commingled EEL is nothing more than a point-to-point circuit with multiple segments. As such, it is a network facility that Qwest has been provisioning, maintaining and repairing for	9.23.4.5.1 CLEC will submit orders for <u>Loop-Transport Combinations</u> using the LSR process. Submission of LSRs is described in Section 12. <u>9.23.4.5.1.1 If any component of the Loop-Transport Combination is not a UNE (i.e., not a component to which UNE pricing applies), CLEC will indicate on the LSR that the component is not a UNE (e.g., CLEC is ordering the component as an alternate service such as special</u>	For the reasons described above in connection with Issue 9-55, Eschelon's use of the term "loop-transport" is improper and should be rejected. Further, Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems and procedures to provide Eschelon's proposed "loop-transport" product. Such modifications would require Qwest

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9.1.1.1.1 & 9.1.1.1.1.2 Ordering, Billing, and Circuit ID for Commingled Arrangements – ORDERING (For alternate proposal, see Section 9-59 below)	<p><u>as an alternate service such as special access). CLEC will indicate this information in the Remarks section of the LSR, unless the Parties agree otherwise.</u></p> <p>9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point <u>Commingled EELs</u> . . .</p>	<p>decades, whether in the form of a special access circuit, an EEL or, now, a commingled EEL. Thus, there is absolutely nothing new about a commingled EEL from a technical, network, provisioning or maintenance standpoint. Therefore, the terms based upon well-established history proposed by Eschelon should be acceptable to Qwest. Instead, desiring to drive as much wholesale commingled EEL traffic to its exorbitantly priced retail tariff products as possible, Qwest proposes fundamental operational changes that ensure both a terrible end user customer experience and the complete inability of any CLEC to actually and successfully use the commingled EEL product. Since these changes are unnecessary to accomplish Qwest’s stated purposes, and their ultimate impact and effect is transparently anti-competitive, Qwest’s proposed language for these provisions should be rejected.</p> <p><u>Single LSR</u>: Regardless of the additional work, increased expense and multiplication of opportunity</p>	<p>access). CLEC will indicate this information in the Remarks section of the LSR, unless the Parties agree otherwise.</p> <p>9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point EELs, and Point-to-Point Commingled EELs . . .</p>	<p>to incur significant costs that it is entitled to recover under the Act. Accordingly, the Commission should reject Eschelon’s demand that Qwest alter its processes by requiring only one LSR for point to point commingled EELs.</p>

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		<p>for error with two orders, these orders cannot be submitted simultaneously per Qwest's terms outside of the ICA. Rather, once Eschelon receives the FOC for the UNE segment, Eschelon may then submit an ASR for the non-UNE component. Using a DS1 UNE loop and PLT transport as an example, there are two problems, at least, with this process: (1) there is a time delay since Qwest can take up to 72 hours to return a FOC for a DS1 UNE loop; and (2) receipt of a FOC is no guarantee that the UNE facility will actually be delivered on the due date. It is entirely possible that, after receiving the FOC and placing the ASR for the transport segment of the EEL, the loop order can go into held status for an indefinite period of time. Despite that, the PLT transport order may complete but the delivery of that facility is irrelevant. There is no complete functioning circuit, even though Eschelon has already incurred significant NRCs as well as commencing the recurring billings for the PLT transport. The customer thus has no service, and there may be no specified time by</p>		

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Issue 9-58(a) Sections 9.23.4.5.4 Ordering, Billing, and Circuit ID for Commingled Arrangements – CIRCUIT ID [2 of 2 issues in Section 9.23.4.5.4; For 1 st issue (terminology), see Issue 9-55, Section 9.23.4.4.1 above]	9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point EELs, and Point-to-Point Commingled EELs. For such Point-to-Point Loop-Transport Combinations, Qwest will assign a single circuit identification (ID) number for such combination. Qwest may require two (2) service requests when CLEC orders Multiplexed EELs Loop-Transport Combinations (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding Commingling see Section 24. NOTE: For Eschelon's alternative proposal (if single circuit ID is rejected), see Section 9.23.4.7 in subpart below.	which it will have service, and all the while Eschelon is paying for PLT transport which is useless. Single Circuit ID: Qwest assigns a single circuit ID to a UNE EEL and provides it to the ordering CLEC. For Commingled EELs, Qwest proposes to assign two circuit IDs (one to the UNE and another to the non-UNE). Instead of installing one EEL, therefore, the parties must install two separate circuits at two different times. This leads to multiple problems (including intervals – see Section 9.23.4.4.3.1). For example, the gap in time between delivery of the two circuits will cause a marked increase in blind acceptance. In Qwest's Proposals in the Colorado PAP Review, Qwest said: "Blind acceptance is a term used to describe a CLEC's request for Qwest to turn up a circuit <i>without</i> testing between Qwest and the CLEC, which testing would ensure that the circuit is operational through the entire portion of the loop that Qwest provides. By contrast, Qwest performs this type of end-to-end testing on all of its	9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point EELs, and Point-to-Point Commingled EELs. For such Point-to-Point Loop-Transport Combinations, Qwest will assign a single circuit identification (ID) number for such combination. Qwest may require two (2) service requests when CLEC orders Multiplexed EELs Loop-Transport Combinations (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding Commingling see Section 24.	For the reasons described above in connection with Issue 9-55, Eschelon's use of the term "loop-transport" is improper and should be rejected. Further, Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems and procedures to provide Eschelon's proposed "loop-transport" product. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act. Accordingly, the Commission should reject Eschelon's demand that Qwest alter its processes by requiring the use of one circuit ID number for point to point commingled EELs. Eschelon's demand that Qwest use a single circuit identification number for commingled EELs instead of separate identification numbers for the UNE and non-UNE components is improper for several reasons.

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		<p>retail circuits.” (<i>Qwest CPAP Proposal</i>, p. 48.) This won’t be possible for CLECs under Qwest’s proposals. The UNE loop interval is 5 days. If Qwest wants to meet the PID for the loop, it will deliver the loop within 5 days. Because the PLT transport piece will not be delivered until many days later, however, there is no point in testing that loop. Qwest, however, will start to bill CLEC for the loop. The loop and transport together serve the end user customer and whether that customer’s service is working “end-to-end” cannot be determined until the two are connected. Qwest’s proposal will force CLECs into blind acceptance of the loop, due to the futility of testing a loop not connected to the customer. Eschelon asks the Commission to adopt its language so that Eschelon will also have the opportunity to perform the type of end-to-end testing on all of its customers’ circuits that Qwest said in its PAP proposal it is able to perform on all of its retail circuits.</p> <p>The linchpin of effective EEL facility management is the use of a</p>		<p>First, circuit IDs often include product-specific information that Qwest relies upon for proper processing and billing of products. Using a circuit ID assigned to a UNE for a tariffed alternative service may result in mis-identification of the service and lead to billing and other errors. Second, there is no legal requirement for Qwest to change its systems for this purpose; indeed, Qwest uses separate circuit ID numbers for other CLECs, so adoption of that approach for Eschelon will not result in unequal treatment. Third, it would be very costly for Qwest to modify its operation systems to meet Eschelon’s demand for use of the same circuit ID number after a conversion. Fourth, Eschelon’s demand involves processes that affect all CLECs, not just Eschelon, and it therefore should be addressed through the CMP, not through an arbitration involving a single CLEC. Finally, there is no merit to Eschelon’s claim that the use of two circuit IDs could result in difficulties in completing repairs for Eschelon customers. Qwest</p>

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		<p>single circuit ID to cover all segments of the facility. It is this single identifier that permits both Qwest and Eschelon to easily and accurately track facility inventories, order correctly, repair in the most efficient manner possible, and bill in a way that actually permits verification of bill and rate accuracy. The end result, of course, is that both companies manage what is a single facility from the end user customer's perspective in the most efficient manner possible, which ensures the best possible delivery of service to a customer.</p> <p>With so much at stake, any administrative wrinkles that Qwest raises are minor by comparison. When Qwest needed to change the service code modifier in order to distinguish EELs and Loop-Mux Combinations from each other as well as from private line and private line resale products, Qwest used both a standardized Telcordia solution as well as the development of a Qwest "home grown" modifier for Loop-Mux Combinations. Together, these service code modifiers allowed all of Qwest's</p>		<p>provides CLECs with the circuit IDs for commingled EELs, which should eliminate any repair-related concerns if Eschelon properly updates its own records.</p> <p>In addition to the flaws in the merits of its position, Eschelon's proposed Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 are duplicative in that they address the same subjects that Eschelon addresses in Section 9.23.4 and related sub-sections. For example, Eschelon addresses service intervals for commingled arrangements in both Section 9.1.1.1.1 and 9.23.4.4.3.1. Similarly, it addresses ordering and billing procedures for commingled arrangements in Section 9.1.1.1.1.2 and again in Sections 9.23.4.5.4 and 9.23.4.6.6. These repetitive ICA provisions create unnecessary confusion, and, accordingly, Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 should be eliminated in their entirety.</p> <p>In addition to being duplicative of other Eschelon proposals, these proposed ICA provisions are inappropriately set forth in a</p>

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		<p>systems to differentiate the four different products without assigning multiple Circuit IDs to a single circuit. In the same way, Qwest could simply develop a unique code modifier for commingled EELs that would account for the increase in price and without the thorny problems associated with Qwest's ICA proposal.</p>		<p>general section of the Agreement containing general terms and conditions relating to UNEs. It is confusing and inconsistent with the overall organization of the ICA to include specific terms and conditions relating to commingling in a section of the Agreement that is intended to define the broad terms and conditions that apply to UNEs. For this additional reason, Sections 9.1.1.1.1, 9.1.1.1.1.1, and 9.1.1.1.1.2 should be eliminated from the ICA.</p> <p>In contrast to Eschelon's confusing approach, Qwest addresses specific issues relating to commingling in the section of the ICA titled "Commingling." Specifically, per mutual agreement of the parties, Section 24 is titled "Commingling," and it set forths the parties' general commingling rights and obligations. In proposed Section 24.3.2, for example, Qwest includes language establishing the service intervals for commingled EELs. These and other specific sections relating to commingling are appropriately included in the section of the Agreement devoted to commingling</p>

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Issue 9-58(b) Sections 9.23.4.6.6 (and subparts), Ordering, Billing, and Circuit ID for Commingled Arrangements – BILLING	<p>9.23.4.6.6 For each Point-to-Point Loop-Transport Combination (see Section 9.23.4.5.4), all chargeable rate elements for such combination will appear on the same Billing Account Number (BAN).</p> <p>NOTE: For Eschelon's alternative proposal (if single BAN is rejected), see Section 9.23.4.6.6 below.</p>	<p><u>Single Bill:</u> When billing Eschelon for a UNE EEL, Qwest bills the UNE EEL as a single facility on one billing account number (BAN). Bill review and reconciliation will be challenging at best, and unmanageable at worst, if Qwest implements its proposal to bill the two components of the Commingled EEL separately. In the absence of a single circuit ID or relating the segments of the commingled EEL on the bills (as proposed by Eschelon in its alternative proposal), Eschelon will not know whether a particular UNE is a part of an EEL. Thus, Eschelon will have to review every line item on its UNE bill to attempt to determine whether that UNE is part of a commingled EEL. Given the volume of Eschelon's UNE inventory, this kind of undertaking is simply not feasible. Similarly, while Eschelon can track loss and completion reports to ensure accurate billing for disconnected UNEs (no loss and completion</p>	<p>9.23.4.6.6 For Commingling see Section 24.</p>	<p>and should not be addressed in different sections with duplicative provisions.</p> <p>For the reasons described above in connection with Issue 9-55, Eschelon's use of the term "loop-transport" is improper and should be rejected. Further, Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems and procedures to provide Eschelon's proposed "loop-transport" product. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act. Accordingly, the Commission should reject Eschelon's demand that Qwest alter its processes by having all chargeable rate elements for commingled EELs appear on the same billing account number ("BAN").</p> <p>Eschelon's demand that Qwest use a single BAN for the elements comprising a point-to-point commingled EEL fails to recognize that BANs contain essential</p>

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		<p>reports are provided for tariffed services), without some indication that the segments of a commingled EEL are related, a loop may be disconnected and Eschelon could conceivably continue to pay for the non-UNE segment for no reason at all.</p>		<p>product-specific information that affects the proper billing for products. This information affects, for example, whether a product is billed at a UNE-based rate or at a tariffed rate. Not only are separate BANs important to Qwest's provisioning and billing of the elements that make up point-to-point commingled EELs, but Eschelon's demand for a single BAN would impose very substantial costs on Qwest because of the systems changes that would be required. Qwest has no legal obligation to make those changes, and, moreover, Eschelon is not offering to compensate Qwest for the costs of performing them. Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems to provide Eschelon's proposed "loop-transport" product. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act.</p>
Issue 9-58(c)	Eschelon's proposed alternate	<u>Alternatives (Relating Separate</u>	SAME FOR BOTH	Please see the position statements

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<p>Sections 9.23.4.6.6 (and subparts)</p> <p>Ordering, Billing, and Circuit ID for Commingled Arrangements</p> <p>– BILLING</p> <p>(Alternate proposal to 9.23.4.6.6 in Issue 9-58 (b))</p>	<p>language (if Qwest's position on 9.23.4.6.6 is accepted in arbitration)</p> <p><u>9.23.4.6.6 For each Point-to-Point Commingled EEL (see Section 9.23.4.5.4), so long as Qwest does not provide all chargeable rate elements for such EEL on the same Billing Account Number (BAN), Qwest will identify and relate the components of the Commingled EEL on the bills and the Customer Service Records. Unless the Parties agree in writing upon a different method(s), Qwest will relate the components of the Commingled EEL by taking at least the following steps:</u></p> <p><u>9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each month, the circuit identification (“circuit ID”) for the non-UNE component of the Commingled EEL in the sub-account for the related UNE component of that Commingled EEL;</u></p> <p><u>9.23.4.6.6.2 Qwest will assign a</u></p>	<p><u>Orders, IDs, Bills</u>: To the extent that the Commission adopts Qwest’s language for these provisions, however, the Commission should order that Eschelon’s alternative language for Sections 9.23.4.6.6 (and subparts) and 9.23.4.7 (and subparts) also be included in the ICA. These sections only require that Qwest relate the UNE and non-UNE segments of the commingled EEL. Absent a single circuit ID for the commingled EEL facility, for example, relating the loop and transport segments as laid out in the alternative Sections is the only way that Eschelon can manage the repair and billing for commingled EELs to any customer’s satisfaction. Absent an identified relationship between the UNE and non-UNE segments of the same EEL, no CLEC can feasibly use a commingled EEL. This is not an acceptable implementation of the FCC’s mandate to eliminate restrictions on commingling, and Qwest should not be permitted to so deliberately tilt the field to the advantage of its exorbitantly expensive retail products.</p>	<p>PROPOSALS:</p> <p><u>9.23.4.6.6 For Commingling, see Section 24.</u></p> <p>9.23.4.6.6 For each Point-to-Point Commingled EEL (see Section 9.23.4.5.4), so long as Qwest does not provide all chargeable rate elements for such EEL on the same Billing Account Number (BAN), Qwest will identify and relate the components of the Commingled EEL on the bills and the Customer Service Records. Unless the Parties agree in writing upon a different method(s), Qwest will relate the components of the Commingled EEL by taking at least the following steps:</p> <p>9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each month, the circuit identification (“circuit ID”) for the non-UNE component of the Commingled EEL in the sub-account for the related UNE component of that Commingled EEL;</p> <p>9.23.4.6.6.2 Qwest will assign a separate account type to</p>	<p>set forth above relating to BANs and circuit IDs. In addition, Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act.</p>

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	<p>separate account type to <u>Commingle</u> EELs so that <u>Commingle</u> EELs appear on an account separate from other services (such as special access/private line);</p> <p><u>9.23.4.6.6.3 Each month, Qwest will provide the summary BAN and sub-account number for the UNE component of the Commingled EEL in a field (e.g., the Reference Billing Account Number, or RBAN, field) of the bill for the non-UNE component; and</u></p> <p><u>9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on all associated Customer Service Records the circuit ID for the UNE component; the RBAN for the non-UNE component; and the circuit ID for the non-UNE component.</u></p>		<p>Commingle EELs so that Commingle EELs appear on an account separate from other services (such as special access/private line);</p> <p>9.23.4.6.6.3 Each month, Qwest will provide the summary BAN and sub-account number for the UNE component of the Commingled EEL in a field (e.g., the Reference Billing Account Number, or RBAN, field) of the bill for the non-UNE component; and</p> <p>9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on all associated Customer Service Records the circuit ID for the UNE component; the RBAN for the non-UNE component; and the circuit ID for the non-UNE component.</p>	
Issue 9-58(d) Section 9.1.1.1.1 & 9.1.1.1.1.2	<p><u>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general</u></p>	<p>The same types of problems that will occur with commingled EELs if there is not a single LSR, single circuit ID, and single bill will arise with other commingled</p>	<p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in</p>	<p>Please see the position statements set forth above relating to BANs and circuit IDs. In addition, Qwest has developed and implemented systems, procedures and intervals</p>

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Ordering, Billing, and Circuit ID for Commingled Arrangements – OTHER ARRANGEMENTS	<p><u>terms described in Section 24:</u></p> <p><u>9.1.1.1.1.2 When a UNE or UNE Combination is connected or attached with a non-UNE wholesale service, unless it is not Technically Feasible or the Parties agree otherwise, CLEC may order the arrangement on a single service request; if a circuit ID is required, there will be a single circuit ID; and all chargeable rate elements for the Commingled service will appear on the same BAN. If ordering on a single service request, using a single identifier, and including all chargeable rate elements on the same BAN is not Technically Feasible, Qwest will identify and relate the elements of the arrangement on the bill and include in the Customer Service Record for each component a cross reference to the other component, with its billing number, unless the Parties agree otherwise.</u></p>	<p>arrangements as well. Therefore, these sections create a default to have a single LSR, single circuit ID, and single bill, unless the Parties agree otherwise or doing so is not Technically Feasible. In the latter, case, the components of the commingled arrangement are to be related for these purposes, unless the Parties agree otherwise. Such language will help prevent Qwest from proceeding again in the unilateral manner in which Qwest approached implementing Commingled EELs and its initially password protected terms.</p>	<p>Section 24:</p> <p>9.1.1.1.1.2 When a UNE or UNE Combination is connected or attached with a non-UNE wholesale service, unless it is not Technically Feasible or the Parties agree otherwise, CLEC may order the arrangement on a single service request; if a circuit ID is required, there will be a single circuit ID; and all chargeable rate elements for the Commingled service will appear on the same BAN. If ordering on a single service request, using a single identifier, and including all chargeable rate elements on the same BAN is not Technically Feasible, Qwest will identify and relate the elements of the arrangement on the bill and include in the Customer Service Record for each component a cross reference to the other component, with its billing number, unless the Parties agree otherwise.</p>	<p>for commingled arrangements and is under no legal requirement to modify these systems. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act.</p>
Issue 9-58(e) Sections	<p><u>9.23.4.4.3.1 When any component of the Loop-Transport Combination is not a UNE, the</u></p>	<p>For Commingled arrangements, including Commingled EELs, Eschelon proposes that the interval</p>	<p>9.23.4.4.3.1 When any component of the Loop-Transport Combination is not a UNE, the service interval</p>	<p>As a matter of law and consistent with the TRO, the tariffed services Qwest provides for commingling</p>

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9.23.4.4.3.1 & 24.3.2; 9.1.1.1.1 & 9.1.1.1.1.1	<p><u>service interval for the combination will be the longer interval of the two facilities being Commingled. See Section 24.1.2.1.</u></p> <p><u>24.3.2 See Section 9.23.4.4.3.1 regarding intervals for Commingled EELs.</u></p> <p><u>24.3.2 The service interval for Commingled EELs will be as follows. For the UNE component of the EEL see Exhibit C. For the tariffed component of the EEL see the applicable Tariff.</u></p> <p><u>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</u></p> <p><u>9.1.1.1.1.1 When a UNE and another service are Commingled, the service interval for the Commingled arrangement will be the longer interval of the two facilities being Commingled.</u></p>	<p>be the longer interval of the two facilities being commingled. On its face, Qwest's proposal appears similar. Qwest states that the UNE interval will apply to the UNE and the tariffed interval will apply to the tariffed component. When Qwest's proposal is closely scrutinized and facts outside its proposed ICA language are known, however, the proposals are very different. A key difference is that Eschelon's proposal allows the Commission to retain full jurisdiction over the UNE, whereas Qwest's proposal allows factors outside the approved ICA to change the operation of the UNE terms, in contradiction to the ICA. For example, Qwest's language in Section 9.23.4.5.4 appear to allow a CLEC to order a UNE loop and tariffed transport on separate service requests on the same day and then, pursuant to Section 24.3.2, calculate the interval. If that were true, the result would be the same as under Eschelon's proposed language and the longer interval would be the latest date for installation of the two services. That, in fact, is not how the calculation will work. The</p>	<p>for the combination will be the longer interval of the two facilities being Commingled. See Section 24.1.2.1.</p> <p>24.3.2 The service interval for Commingled EELs will be as follows. For the UNE component of the EEL see Exhibit C. For the tariffed component of the EEL see the applicable Tariff.</p> <p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</p> <p>9.1.1.1.1.1 When a UNE and another service are Commingled, the service interval for the Commingled arrangement will be the longer interval of the two facilities being Commingled.</p>	<p>must be provisioned based on the terms and conditions in tariffs, not based on different terms and conditions that apply to UNEs. "Tariffed services" as used herein refers to Qwest's interstate and intrastate tariffs, price lists, and price schedules that are in effect. Eschelon's proposal improperly applies terms and conditions relating to UNEs to tariffed services, the provisioning of which is governed by tariffed terms.</p> <p>Accordingly, the provisioning interval for the tariffed component of a commingled EEL must be based on the terms of the applicable tariff, and the provisioning interval for the UNE component of a commingled EEL must be based on the interval applicable to the UNE. The tariffed component and the UNE component are installed separately from each other. Because each service order for each component must be complete before installation, the provisioning intervals for each component may have to be added together to determine the total time required for installation.</p>

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		<p>reason cannot be found in the language that Qwest has presented to this Commission for approval. The missing term was initially distributed in a secret, password-protected form, with the password available only to CLECs after they signed the Qwest TRO amendment. After certain commission staff intervention, Qwest posted the term on its public website but did not process it through CMP or add it to its proposed ICA terms. What is the missing term? Consecutive ordering is required, which lengthens the total time required (<i>i.e.</i>, the latest date for installation of the two services is pushed out). It lengthens the interval of delivery of a working service to the end user customer because the missing term provides that CLEC cannot submit the second order until it receives an FOC on the first order. If the FOC commitment is 72 hours, this pushes out the later due date by three days. There is no way to calculate this time period from Qwest's proposed ICA language. CLECs need certainty for planning purposes and to set customer</p>		<p>In addition, the FCC uses the term "loop-transport" to describe varieties of EELs, not to establish an unbundled product separate from EELs. By contrast, Eschelon uses "loop-transport" as a defined term that applies equally to high capacity and commingled EELs. Although "loop-transport" is not a Qwest product, Eschelon improperly proposes to assign product attributes to it. <i>See, e.g.</i>, §§ 9.23.4.4.3.1 (intervals); 9.23.4.5.1.1. (Billing); 9.23.4.6.6. (BANS). Qwest has developed and implemented systems, procedures and intervals for EELs, UNEs and tariffed services and is under no legal requirement to modify these systems to provide Eschelon's proposed "loop-transport" product. Such modifications would require Qwest to incur significant costs that it is entitled to recover under the Act.</p>

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		<p>expectations. CLECs who signed the TRO amendment before receiving the password to the secret PCAT may have been surprised to discover this. Eschelon was certainly surprised to discover it once the terms were posted on the website. The missing term affects the UNE ordered under this ICA. As a result of Qwest's unfiled term requiring consecutive instead of concurrent order submission, for example, the time period for service delivery applicable to the entire Loop-Transport Combination would be longer than ordering the same circuit as a special access facility, thus making the use of the UNE competitively prohibitive.</p>		
Section 9.23.4.5.6 – see Issue 12-67 (Section 12.2.1.2) below				
Section 9.23.4.6.6 – See Issue 9-58 (Section 9.23.4.5.1.1) above				
Issue 9-59	Eschelon proposed alternate	Unlike Eschelon, Qwest does not	9.23.4.7 Maintenance and Repair	This issue arises because of

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(alternate proposal to 9.23.4.5.4 in Issue 9-58(a))	language (if Qwest's position on 9.23.4.5.4 is accepted in arbitration)	propose repair language for the UNE component of commingled EELs. Qwest proposes deletion of Eschelon's language. This, combined with the fact that Qwest leaves the UNE repair language unchanged, could suggest that repairs for the UNE component of the EEL will remain unchanged. Information that Qwest has posted on its website, without obtaining Commission approval or even using CMP, tells a different story.	<u>for UNE Component of Commingled EELs</u> <u>9.23.4.7.1 For Commingling see Section 24.</u>	Eschelon's demand that in the event of a "trouble" associated with a commingled EEL, it be permitted to submit just a single trouble report instead of more than one report for each facility that comprises the commingled EEL. In addition, Eschelon proposes to limit Qwest's right of cost recovery in circumstances where Qwest must dispatch a field engineer to check on a trouble associated with a commingled EEL.
Sections 9.23.4.7 and subparts	<u>9.23.4.7 Maintenance and Repair for UNE Component of Commingled EELs</u>	Currently, for UNE EELs, CLEC opens a trouble report and Qwest assigns a trouble ticket number. See Section 12.1.3.3.1.1. When CLEC opens the ticket, the clock starts running under the PIDs for mean time to repair. See Exhibit B (MR-5). For Commingled EELs, however, Qwest is unilaterally requiring CLECs to use a different process that adds delay for CLEC customers while building in protection against PID payments for Qwest. Like the consecutive placement of orders discussed in 9.23.4.4.3.1, this is also a consecutive process, with special		Eschelon's proposal fails to recognize that different repair-related obligations and performance intervals may apply depending on whether a facility is a UNE or a tariffed service. These different obligations require submission of a trouble report and a separate circuit ID for each component of a commingled EEL. In addition, to the extent Eschelon's proposal is designed to require Qwest to use a single circuit ID for commingled EELs, for the reasons discussed above, that would be improper.
Ordering, Billing, and Circuit ID for Commingled Arrangements--	<u>9.23.4.7.1 When CLEC reports a trouble through any of the means described in Section 12.4.2.2, so long as Qwest provides more than one circuit ID per Commingled EEL, CLEC may provide all circuit IDs associated with the Commingled EEL in a single trouble report (i.e., Qwest shall not require CLEC to submit separate and/or consecutive trouble reports for the different circuit IDs associated with the single Commingled EEL). If CLEC is using CEMR to submit the trouble report, for example, CLEC may report one circuit ID and include the other circuit ID in the remarks section (unless the Parties agree to a different method). Qwest will communicate a single trouble report tracking number (i.e., the "ticket" number) (described in</u>			Eschelon's proposal also would permit Qwest to recover only a
CIRCUIT ID (Alternate proposal to 9.23.4.5.4)				

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	<p><u>Section 12.1.3.3.3.1.1) for the Commingled EEL to CLEC at the time the trouble is reported.</u></p> <p><u>9.23.4.7.1.1 If any circuit ID is missing from any Customer Service Record associated with the Commingled EEL, Qwest will provide the circuit ID information to CLEC at the time CLEC submits the trouble report.</u></p> <p><u>9.23.4.7.1.2 Qwest may charge a single Maintenance of Service or Trouble Isolation Charge (sometimes referred to as “No Trouble Found” charge) only if Qwest dispatches and no trouble is found on both circuits associated with the Commingled EEL. If CLEC may charge Qwest pursuant to Section 12.4.1.8, CLEC may also charge only a single charge for both circuits associated with the Commingled EEL.</u></p>	<p>access first. When a CLEC customer served by a commingled EEL experiences a service affecting problem, Qwest requires the CLEC to first submit an Assist Ticket (AT) on the special access portion of the EEL, even though the trouble may be on the loop portion of the circuit. An AT does not start the clock running under the PIDs for mean time to repair. Only if Qwest does not find trouble on the special access portion of the EEL will Qwest will contact the CLEC and ask the CLEC to open a repair ticket on the loop portion of the EEL. The customer is out of service the entire time and does not know or care whether the trouble is in one circuit or the other. The customer just wants it repaired. This process will certainly delay repair time for the customer’s service when the trouble is in the loop, but that additional delay will not affect Qwest’s PID performance under the ICA (see Exhibits B & K).</p> <p>If CLEC defies Qwest’s requirement to open an AT on the special access portion of the EEL and opens trouble tickets on both</p>		<p>single maintenance of service or trouble isolation charge for commingled EELs, and that single charge would be permitted only if Qwest dispatches a field engineer who does not find a trouble on either circuit of a commingled EEL. However, the costs Qwest incurs resulting from trouble reports associated with commingled EELs are not limited to checking just one circuit of a commingled EEL and are not incurred only if a trouble is not found. Accordingly, Eschelon’s proposal would improperly deny Qwest full recovery of the costs it incurs in connection with trouble reports for commingled EELs.</p>

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		<p>circuits (UNE and non-UNE), CLEC increases the likelihood of incurring additional charges. Finding trouble on both circuits of a commingled EEL at the same time is likely rare. Much more likely is that the trouble is on one circuit or the other, but the parties do not know which one. If CLEC simultaneously opens a ticket on both circuits (assuming Qwest accepts them) to avoid delay, Qwest will code one ticket as no trouble found (NTF) in every case in which the trouble is on one of the two circuits. Qwest charges the CLEC maintenance of service charges on tickets that Qwest codes as NTF. CLEC has to do more work to open and track more tickets, while paying Qwest more charges.</p>		
Section 9.23.5.1.3				
See issue 9-54(a) above				
Section 9.23.6.2 – See Issue 9-61 (Section 9.23.9) below				

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Issue 9-60 Intentionally Left Blank				
LOOP MUX COMBINATIONS (LMC)				
Issue 9-61 Sections 9.23.9 and sub-parts; 24.4 and sub- parts; 9.23.2 ((2 of 2 issues; For 1 st issue, see Section 9.23.2); 9.23.4.4.3; 9.23.6.2 Loop-Mux Combination (LMC) – Placement	<p>Eschelon’s proposed placement = Place Loop-Mux Combinations in Section 9 (UNEs).</p> <p>9.23.9 and subparts – all (see next row)</p> <p>9.23.2 UNE Combinations Description and General Terms UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) <u>and Loop Mux Combinations.</u> and. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. . . .</p>	<p>Placement: Regardless of the status of multiplexing, the UNE Loop is a component of the Loop-Mux Combination. Therefore, this language belongs in Section 9 (“UNEs”). If Qwest were to prevail on its commingling/multiplexing argument, a suitable cross reference to Section 24 could be added for commingling general terms. For the reasons stated below, however, the entire combination is a UNE combination.</p> <p>Regarding Section 9.23.2, Qwest proposes to limit Section 9.23 to a single UNE Combination “product”: EELs. As discussed in the next section, however, Loop Mux Combinations are also a UNE Combination and thus should be identified in Section 9.23.2.</p>	<p>Qwest’s proposed placement = Place Loop-Mux Combinations in Section 24 (Commingling).</p> <p>24.4.1 and subparts – all (see next row)</p> <p>9.23.2 UNE Combinations Description and General Terms UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) and Loop-Mux Combinations. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. . . .</p>	<p>There is no legal requirement for ILECs to provide stand-alone multiplexing. Multiplexing is not a feature or function of the loop, and Qwest is not required to provide loops and multiplexing as a UNE combination</p> <p>Further, Eschelon can self-provision multiplexing within its own collocation space, and, therefore, will not be denied access to this service if Qwest does not provide it. In the <i>TRQ</i>, the FCC established that the type of multiplexing ILECs must provide is that associated with commingling, not stand-alone multiplexing. Accordingly, on a going-forward basis, Qwest will no longer offer stand-alone multiplexing.</p> <p>With respect to the issue of placement within the ICA, Eschelon’s proposed loop-mux combination is comprised of a UNE</p>

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Issue 9-61 (a) Sections 9.23.9 and sub-parts; 24.4 and sub-parts; 9.23.2 ((2 of 2 issues; For 1 st issue, see Section 9.23.2); 9.23.4.4.3; 9.23.6.2 Loop-Mux Combination (LMC) – LMC Loop	Eschelon proposed modifications (9.23.9 and subparts): 9.23.9.1.1[24.4.1.1] Loop-Mux combination (LMC) is an unbundled Loop as defined in Section 9.2 of this Agreement (referred to in this Section as an LMC Loop) Commingled combined with a private line (PLT) , or with a special access (SA) , Tariffed-DS1 or DS3 multiplexed facility with no interoffice transport. The PLT/SA multiplexed facility is provided as either an Interconnection Tie Pair (ITP) or Expanded Interconnection	Qwest has offered unbundled multiplexing in three ways: as part of a multiplexed EEL, as part of a Loop-Mux Combination, and as a stand alone UNE. The Commission has set TELRIC rates for unbundled multiplexing and the UNE rates established for loops and transport include the cost of multiplexing where appropriate. Multiplexing is a “feature, function, or capability” associated with both unbundled loops and transport and, pursuant to the FCC’s unbundling rules, Eschelon is entitled to use that feature, function, or capability. See 47 C.F.R. § 51.307(c). In addition, the definition of “Routine Network	NOTE: See Eschelon Proposed language for cross-references to Section 24. Section 24.4.1 contains Qwest’s corresponding language (without Eschelon’s proposed modifications). The black text in Sections 9.23.9 and 24.4.1 is the same and is agreed upon subject to placement. The parties disagree as to the highlighted (red) language. The red modifications in the Eschelon language column are proposed by Eschelon, and Qwest disagrees. The parties also disagree as to placement (see previous issue).	and a tariffed service. As the title of the section reflects, Section 9 of the ICA addresses only "Unbundled Network Elements." A product such as Eschelon's proposed loop-mux combination, if included in the ICA, should be included in Section 24, which specifically addresses "Commingling." Commingling refers to UNEs that are commingled with non-UNEs and thus includes Eschelon's proposed loop-mux combination. There is no legal requirement for ILECs to provide stand-alone multiplexing. Multiplexing is not a feature or function of the loop, and Qwest is not required to provide loops and multiplexing as a UNE combination In addition, Eschelon can self-provision multiplexing within its own collocation space, and, therefore, will not be denied access to this service if Qwest does not provide it. In the TRO, the FCC established that the type of multiplexing ILECs must provide is that associated with commingling, not stand-alone multiplexing. Accordingly, on a going-forward

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versus LMC	<p>Termination (EECT) from the high side of the multiplexer to CLEC's Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.</p> <p>9.23.9.1.2 [24.4.1.2] LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a PLT/SA-DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.</p> <p>9.23.9.1.3 [24.4.1.3] Qwest offers the LMC loop as a Billing conversion or as new Provisioning.</p> <p>9.23.9.2.1 [24.4.2.1] An Extended Enhanced Loop (EEL) may be commingled with the PLT/SA multiplexed facility.</p> <p>9.23.9.2.2 [24.4.2.2] LMC loops will be provisioned where existing facilities are available or pursuant to the provisions of Section 9.1.2.1 of the Agreement.</p> <p>9.23.9.2.3 [24.4.2.3] The</p>	<p>Modification" (to which the parties have agreed) states that this term means "activities of the type that Qwest undertakes for its own End User Customers" and expressly includes "deploying a new multiplexer or reconfiguring an existing multiplexer." See <i>also</i> 47 C.F.R. § 51.319(a)(7). In this arbitration, however, Qwest claims that it need not provide multiplexing at the TELRIC rates established by this Commission. Although Eschelon disagrees, Eschelon's position in this arbitration only requires Qwest to provide multiplexing at UNE rates when the loops and/or transport connected to the multiplexer are UNEs. This would include providing multiplexing at UNE rates in connection with multiplexed EELs (<i>i.e.</i>, a combination of loop and transport where the loop and transport components have different bandwidths and multiplexing is necessary to connect the facilities) and also as part of a Loop-Mux Combination when unbundled loops are connected to the multiplexer and the multiplexer is connected to</p>		<p>basis, Qwest will no longer offer stand-alone multiplexing.</p> <p>Eschelon's proposal also improperly applies terms and conditions relating to UNEs to tariffed services, the provisioning of which is governed by tariffed terms.</p>

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	<p>PLTSA DS1 or DS3 multiplexed facility must terminate in a Collocation.</p> <p>9.23.9.2.4 [24.4.2.4] <u>Intentionally Left Blank. The multiplexed facility is subject to all terms and conditions (ordering, provisioning, and billing) of the appropriate Tariff.</u></p> <p>9.23.9.2.6 [24.4.2.6] Rearrangements may be requested for work to be performed by Qwest on an existing LMC-Loop, or on some private line/special access circuits, when coupled with a conversion-as-specified request to convert to LMC-Loop.</p> <p><u>9.23.9.3.2 LMC multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. LMC multiplexing is ordered with LMC Loops. The recurring and nonrecurring rates in Exhibit A apply.</u></p> <p><u>9.23.9.3.2.1 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:</u></p>	<p>Eschelon’s collocation, with no transport provided. Qwest’s contention that it is not required to provide unbundled multiplexing in connection with Loop-Mux Combinations is apparently based on the <i>Virginia Arbitration Order</i>. Qwest’s reliance on that decision is misplaced, however. First, Qwest’s argument ignores the procedural posture of the <i>Virginia Arbitration Order</i>. The decision was the result of an arbitration by the FCC’s Common Carrier Bureau, acting in the stead of the Virginia state utilities commission, pursuant to 47 U.S.C. § 252(e)(5), where the state commission did no carry out its responsibilities. Accordingly, the decision is no more binding on this Commission than would be the decision of any other state commission.</p> <p>Second, Qwest ignores the very limited scope of the Common Carrier Bureau’s decision on this issue. As the Bureau noted, WorldCom withdrew its claim that it was entitled to “Loop Concentrator/Multiplexer” as a network element. Virginia</p>		

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	<p>a) <u>Recurring Multiplexing Charge. The DS3 Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.</u></p> <p>b) <u>Non-recurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.</u></p> <p>9.23.9.3.2.2 <u>1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:</u></p> <p>a) <u>Recurring Multiplexing Charge. The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.</u></p> <p>b) <u>Non-recurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 28 channels.</u></p> <p>9.23.9.3.4 [24.4.3.4] Nonrecurring charges for Billing conversions to LMC Loop are set forth in Exhibit A.</p>	<p>Arbitration Order at ¶487. Accordingly, the Bureau did not need to reach the substantive issue presented here. Furthermore, the Bureau specifically emphasized that its decision should not be interpreted as an endorsement of the Verizon position regarding the availability of unbundled multiplexing associated with Loop-Mux Combinations: <i>Id.</i> at ¶ 490 (“We emphasize that our adoption of Verizon’s proposed contract language on this issue <i>should not</i> be interpreted as an endorsement of Verizon’s substantive positions expressed in this proceeding regarding its multiplexing obligations under applicable law.”) (emphasis added.) Thus, the <i>Virginia Arbitration Order</i> cannot, by its plain terms, be read as limiting the ILEC’s obligations to provide unbundled multiplexing.</p>		

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	<p>9.23.9.3.5 [24.4.3.5] A rearrangement nonrecurring charge as described in Exhibit A may be assessed on some requests for work to be performed by Qwest on an existing LMC Loop, or on some private line/special access circuits, when coupled with a conversion-as-specified request to convert to LMC Loop.</p> <p>9.23.9.4.1 [24.4.4.1] Ordering processes for LMC Loop(s) are contained below and in Section 12 of this Agreement. Qwest will document its ordering processes in Qwest's Product Catalog (PCAT). The following is a high-level description of the ordering process:</p> <p>9.23.9.4.1.1 [24.4.4.1] Step 1: Complete product questionnaire for LMC Loop(s) with account team representative.</p> <p>9.23.9.4.1.4 [24.4.4.1] Step 4: After account team notification, place LMC Loop orders via an LSR.</p>			

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	<p>9.23.9.4.3 [24.4.4.3] [Second Sentence – See Issue 1-1(e) for first sentence] <u>For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</u></p> <p>9.23.9.4.4 [24.4.4.4] Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA, EDI or Exact interfaces or through facsimile. For LMC Leeps, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Leeps, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day</p>			

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	<p>and Christmas Day.</p> <p>9.23.9.4.5 [24.4.4.5] Out of Hours Project Coordinated Installations: CLEC may request an out of hours Project Coordinated Installation. This permits CLEC to obtain a coordinated installation for LMC Loops with installation work performed by Qwest outside of Qwest's standard installation hours. For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, except holidays. Installations commencing outside of these hours are considered to be out of hours Project Coordinated Installations.</p> <p>9.23.9.6.1 [24.4.6.1] Qwest will maintain facilities and equipment for LMC Loops provided under this Agreement. Qwest will maintain the multiplexed facility pursuant to the Tariff. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by</p>			

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Issue 9-61(b) Sections 9.23.9 and sub-parts; 24.4 and sub-parts: 9.23.9.4.3, 9.23.4.4.3, 9.23.6.2; Exhibit C, Section 6.0	connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest. 9.23.9.4.3 Standard service intervals for LMC(s) Loops are set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale . For UNE Combinations with appropriate retail analogues, the provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval. 9.23.4.4.3 Installation intervals for EEL, UNE Combinations are set forth in Exhibit C but will be no longer than the respective Private Line Transport Service that Qwest will maintain on the following web-site address: http://www.qwest.com/carrier/guides/sig/index.html	For the reasons discussed at Section 1.7.2 above, the ICA should contain applicable intervals and require amendment and Commission approval when intervals are modified. The remainder of this language is the same as in Section 9.23.5.3 (UNE Combination Ordering Process) in the Qwest-AT&T ICA approved by this Commission and the same section of the Washington SGAT. With respect to Sections 9.23.4.4.3 and 9.23.6.2, Qwest proposes to limit the AT&T/SGAT term “UNE Combinations” to only “EELs” based on its argument that Loop-Mux is not a UNE Combination. See Section 9.23.9 above for Eschelon’s position.	24.4.4.3 Standard service intervals for LMC(s) Loops are set forth in Exhibit C in the <u>Service Interval Guide (SIG)</u> available at <u>www.qwest.com/wholesale</u> . For UNE Combinations with appropriate retail analogues, the provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval. 9.23.4.4.3 Installation intervals for <u>EEL, UNE Combinations</u> are set forth in Exhibit C but will be no longer than the respective Private Line Transport Service that Qwest will maintain on the following web-site address: <u>http://www.qwest.com/carrier/guide/s/sig/index.html</u> 9.23.6.2 Service intervals for each <u>UNE Combination</u> <u>EEL</u> are set forth in Exhibit C. For UNE	Please see Qwest's position statement set forth above relating to the absence of any obligation to provide stand-alone loop multiplexing. In addition, Eschelon's proposal improperly applies terms and conditions relating to UNEs to tariffed services, the provisioning of which is governed by tariffed terms. Eschelon's proposal also improperly attempts to alter established service intervals by providing that service intervals for "appropriate retail analogues" will govern. The non-specific reference to "appropriate retail analogues" is improperly vague and leaves substantial uncertainty about the interval that applies. Further, changes in intervals are properly addressed through the CMP, not through a single arbitration in which other affected CLECs are not participating.

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	<p>set forth in Exhibit C. For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</p> <p>Exhibit C: <u>Loop Mux Combo (LMC)</u></p>		<p>Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</p> <p>Exhibit C: <u>Loop-Mux-Combo (LMC)</u></p>	
<p>Issue 9-61(c) Exhibit A Section 9.23.6.1 and subparts LMC Multiplexing</p>	<p><u>9.23.6.1 Interconnection Tie Pair...</u> <u>9.23.6.1.1 \$ 1.29</u> <u>9.23.6.1.2 \$15.26</u> <u>9.23.6.6 LMC Multiplexing</u> <u>9.23.6.6.1 DS1 to DS0, \$203.47, \$295.92, B, B</u> <u>9.23.6.6.2 DS3 to DS1, \$235.66, \$302.96, E10, B</u></p>	<p>See discussion above of Section 9.23.9. If Loop-Mux Combinations stay in the ICA as a UNE Combination, the rates remain in Exhibit A. There is no separate dispute as to the rates.</p>	<p><u>9.23.6.1 Intentionally Left Blank</u> <u>9.23.6.6 Intentionally Left Blank.</u></p>	<p>Please see Qwest's position statement set forth above relating to the absence of any obligation to provide stand-alone loop multiplexing. Because Qwest has no obligation to provide stand-alone loop multiplexing, rates for this proposed product should not be included in the ICA.</p>
<p>Issue 9-62 Intentionally Left Blank MICRODUCT RATE</p>				
<p>Issue 10-63</p>	<p>10.8.2.29 In cities where Qwest</p>	<p>Agreed upon language in Section</p>	<p>10.8.2.29 In cities where Qwest has</p>	<p>Eschelon has exclusive use of the</p>

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Section 10.8.2.29 and subparts Microduct	has not deployed microduct and CLEC wishes to use this technology, CLEC must lease an innerduct <u>at one-half (1/2) of the rate for innerduct in Exhibit A per microduct placed within the innerduct.</u> In these locations CLEC will be required to furnish and place the microduct. At the conclusion of the lease, CLEC and Qwest will make a joint decision whether or not CLEC will be required to remove CLEC's microduct from the innerduct.	10.8.1.2.3 provides: "The term microduct means a smaller version of innerduct. Four (4) microducts can be placed within a one and one-fourth (1 1/4)-inch innerduct." Therefore, there is reason to believe the rate per microduct placed within the innerduct is 1/4 the rate for innerduct. In a Qwest cost study, Qwest assumes that, even though four microducts can be placed in an innerduct, on average two will be placed. The Qwest assumption was based upon an FCC assumption for the number of innerducts in a conduit system. See Qwest's microduct cost study (supplied for Arizona). To be consistent with Qwest's own assumption, this should at least be 1/2 (not Qwest's proposal of 100%)..	not deployed microduct and CLEC wishes to use this technology, CLEC must lease an innerduct at one-half (1/2) of the rate for innerduct in Exhibit A per microduct placed within the innerduct. In these locations CLEC will be required to furnish and place the microduct. At the conclusion of the lease, CLEC and Qwest will make a joint decision whether or not CLEC will be required to remove CLEC's microduct from the innerduct.	innerduct. Therefore, Eschelon should pay for the entire innerduct.
ROOT CAUSE ANALYSIS AND ACKNOWLEDGEMENT OF MISTAKES Issue 12-64 Section 12.1.4, 12.1.4.1, 12.1.4.2,	<u>12.1.4 Root Cause Analysis and Acknowledgement of Mistakes</u> <u>12.1.4.1 CLEC may make a</u>	Eschelon has proposed a process for obtaining from Qwest a root cause analysis and/or acknowledgement of a Qwest mistake that impacts an Eschelon customer. Eschelon's	12.1.4 Intentionally Left Blank	Qwest does not believe it is appropriate or necessary to incorporate this language into an interconnection agreement. Eschelon's proposal stems from a

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<p>12.1.4.2.1; see subparts (a)-(b) below to Issue 12-64 for 12.1.4.2.3 and 12.1.4.2.5</p> <p>Acknowledgement of Mistakes</p>	<p><u>written request to its Qwest Service Manager for root cause analysis and/or acknowledgement of a mistake relating to products and services provided under this Agreement. The written request should include the following information, when applicable and available: Purchase Order Number (PON), Service Order Number, billing telephone number, a description of the End User Customer impact and the ticket number associated with the repair of the impacting condition. It is expected that CLEC has followed usual procedures to correct a service impacting condition before beginning the process of requesting Qwest acknowledgement of error.</u></p> <p><u>12.1.4.2 When the Qwest Service Manager receives a request for root cause analysis and/or acknowledgement from CLEC, an investigation process will begin. When this investigation results in agreement that Qwest erred, the Qwest Service Manager will provide written correspondence to CLEC.</u></p>	<p>proposal tracks a commission decision in Minnesota in a July 30, 2003 Order in Docket No. P-421/C-03-616 (<i>MN 616 Order</i>). In Minnesota, Qwest agrees to the majority of this language, and only sub-issues are being arbitrated (<i>see</i> highlighted language in the Minnesota language for this provision, copied below). Therefore, at least the majority of these terms will be implemented in Minnesota and thus could also be implemented in Washington.</p> <p>Qwest, however, would like the parties' ICA in all states other than Minnesota to be silent regarding the entire investigative/acknowledgement issue. All of this language (not just the highlighted language in Eschelon's proposal) is open, therefore, in Washington. Qwest can point to no state-specific reason why the terms should vary by state, so that customers in Minnesota may receive these explanations, but not Washington customers.</p> <p>Without a means to address Qwest errors through root cause analysis,</p>		<p>decision of the Minnesota Commission and is thus specific to that state. Moreover, while the Minnesota ruling Eschelon relies upon is flawed, Eschelon's proposed language significantly expands the effect of the ruling by encompassing not just problems involving orders, but multiple other potential situations. Eschelon's proposal also would improperly require Qwest to disclose potentially highly confidential materials (such as sensitive internal documentation) on a non-confidential basis.</p> <p>Further, this issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would</p>

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	<p><u>12.1.4.2.1 The letter will include a recap of sufficient pertinent information to identify the issue (e.g., PON, Service Order Number, order Due Date and billing telephone number, as provided in the CLEC request) and the following statement: “Qwest acknowledges its mistake... The error was not made by the other service provider.”</u></p>	<p>the CLEC has no ability to prevent Qwest’s continued commission of the same errors, and the consequent adverse impact on the CLEC’s service quality. Without a requirement for Qwest to acknowledge mistakes, a CLEC is unable to assign a Qwest error to the correct party---leaving the likely prospect that the end user customer will ascribe the resulting service defect to the CLEC as the customer’s immediate provider. Nearly all CLEC customers are hard-won from Qwest, the dominant monopoly provider of 100 years. If such a customer believes that Eschelon’s actions have caused a service disruption, the customer is very likely to return to its former provider. If the error was really caused by Qwest, the lack of attribution is another barrier to a CLEC’s meaningful opportunity to compete.</p>		<p>require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
<p>Issue 12-64(a) Section 12.1.4.2.3 Acknowledge-</p>	<p><u>12.1.4.2.3 Written responses acknowledging Qwest error will be provided with Qwest identification, such as Qwest letterhead, logo, or other indicia.</u></p>	<p>Eschelon’s language is a logical means of demonstrating to the CLEC end user that the acknowledgement of error was generated by Qwest. For example, in Minnesota, the Commission</p>	<p><u>Intentionally left Blank.</u></p>	<p>Qwest does not believe it is appropriate or necessary to incorporate this language into an interconnection agreement. Eschelon’s proposal stems from a decision of the Minnesota</p>

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<p>ment of Mistakes – Qwest identification</p>	<p><u>12.1.4.2.4. The Qwest Service Manager will provide the acknowledgement to CLEC.</u></p>	<p>responded to Eschelon’s request for an investigation regarding Qwest’s handling of a customer’s transfer of service from Qwest to Eschelon. Qwest’s errors caused the customer to be out of service and resulted in the customer’s wrongly attributing the fault to Eschelon and Eschelon’s losing the valuable account. In its Order (<i>MN 616 Order</i>), that commission required that Qwest make a number of improvements to its wholesale process, including filing a plan to provide transparency regarding Qwest’s actions that harm customers who would reasonably conclude that a CLEC was at fault.</p>		<p>Commission and is thus specific to that state. Moreover, while the Minnesota ruling Eschelon relies upon is flawed, Eschelon’s proposed language significantly expands the effect of the ruling by encompassing not just problems involving orders, but multiple other potential situations. Eschelon’s proposal also would improperly require Qwest to disclose potentially highly confidential materials (such as sensitive internal documentation) on a non-confidential basis.</p>
		<p>Eschelon’s proposal tracks the Minnesota commission’s decision. Qwest, however, objects in Minnesota to the portion of Eschelon’s language that allows a CLEC to request a root cause analysis as well as an acknowledgement of the mistake (and, in Washington, to all of the language). In many instances, a root cause analysis is essential to getting to the heart of the error, and hopefully preventing further similar</p>		<p>Further, this issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems</p>

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		<p>mistakes. Furthermore, the requirement for a root cause analysis, when necessary to establish the party who caused the error, is implicit in the Minnesota commission’s order. That commission cannot have meant that fault be arbitrarily assigned in order for an acknowledgement to be made. Similarly, the Arizona Commission ordered Qwest to provide root cause analysis to CLECs for network failures and to do so on a non-confidential basis so the analysis “can be used to explain to a customer the cause of the network problem they experienced.” (<i>AZ 271 Staff Report</i>, ¶1221).</p> <p>Qwest’s attempts to limit this Section to “processing an LSR/ASR” and therefore proposes to delete Eschelon’s references to “products and services” and “repair.” While the particular example that led to the Minnesota investigation stemmed from an order processing error, the goal of the Minnesota Commission’s order was to protect consumers from problems in the future. The same</p>		<p>or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>

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Issue 12-64(b) Section 12.1.4.2.5 Acknowledgement of Mistakes – Confidentiality	<u>12.1.4.2.5 The acknowledgment response described in Section 12.1.4.2.3 and provided by the Qwest Service Manager to CLEC will be provided on a non-confidential basis and will not include a confidentiality statement.</u>	problem will occur in other contexts and other states, as shown by the Arizona network failures example. Eschelon’s proposed addition eliminates the possibility of the Qwest acknowledgement being free of confidentiality language but a cover letter casting the entire matter as confidential.	Intentionally left Blank.	Qwest does not believe it is appropriate or necessary to incorporate this language into an interconnection agreement. Eschelon’s proposal stems from a decision of the Minnesota Commission and is thus specific to that state. Moreover, while the Minnesota ruling Eschelon relies upon is flawed, Eschelon’s proposed language significantly expands the effect of the ruling by encompassing not just problems involving orders, but multiple other potential situations. Eschelon’s proposal also would improperly require Qwest to disclose potentially highly confidential materials (such as sensitive internal documentation) on a non-confidential basis. Further, this issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving

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				<p>processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
COMMUNICATIONS WITH CUSTOMERS				
<p>Issue 12-65</p> <p>Section 12.1.5.4.7</p> <p>Communication between Qwest Technician and CLEC Customer</p>	<p><u>12.1.5.4.7 The Qwest technician will limit any communication with CLEC End User Customer to that necessary to gain access to premises and perform the work. Specifically, the Qwest technician will not discuss Qwest's products and services with CLEC End User Customer and will not make disparaging remarks about CLEC and will refer any CLEC End User Customer questions to CLEC. If the Qwest Technician has questions or concerns, the</u></p>	<p>Section 12.1.5.4 deals specifically with maintenance and repair. Although there is language preventing parties from making disparaging remarks about the other party, that language is in the context of telephone "calls." When a Qwest technician is at CLEC's end user customer premises on behalf of CLEC, there is an opportunity for the technician to talk to the customer in person and not by telephone. CLEC is required to test and isolate trouble to Qwest's</p>	<p>12.1.5.4.7. The Qwest technician will limit any communication with CLEC End User Customer to that necessary to gain access to premises and perform the work. Specifically, the Qwest technician will not discuss Qwest's products and services with CLEC End User Customer and will not make disparaging remarks about CLEC and will refer any CLEC End User Customer questions to CLEC. If the Qwest Technician has questions or concerns, the Qwest technician</p>	<p>This contract language was thoroughly litigated in the section 271 proceedings throughout the 14-states. Qwest's contract language reflects the decisions of the commissions, including the Washington Commission, relating to this issue. Proposals similar to that presented by Eschelon here were rejected in the 271 proceedings and thus are not consistent with current law. In addition, Eschelon's proposed language impermissibly interferes with Qwest's First</p>

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	<p><u>Qwest technician will discuss with CLEC and not CLEC End User Customer.</u></p>	<p>network before submitting a trouble report. (See Section 12.4.1.1.) Therefore, generally the Qwest technician will be at the premises due to a potential Qwest network problem. The customer will associate the problem, however, with its provider (CLEC). This is a particularly inopportune time for a Qwest technician to make disparaging comments about CLEC or to make favorable comments about Qwest's products. Examples of Qwest technician conduct that cause concern include a technician telling CLEC's customer, even though the trouble was caused by Qwest, that it was CLEC's fault or that the customer would not have trouble if the customer switched to Qwest; a technician telling CLEC's customer that CLEC's service was bad and attempting to sell the customer Qwest service (with Qwest brochures showing up a few days later); <i>etc.</i></p> <p>Such comments are particularly inappropriate because CLEC is paying for the repair, so the Qwest technician is really there on CLEC's behalf. Eschelon's</p>	<p>will discuss with CLEC and not CLEC End User Customer.</p>	<p>Amendment rights. Finally, the proposed requirement for a Qwest technician to address "any concerns" with Eschelon, not with the customer, could prevent a technician from obtaining information from a customer that is necessary to perform a repair.</p>

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Section 12.1.5.4.8 See Issue 12-66 (a) below		<p>proposed language closes gaps in the existing language to ensure that the Qwest technician does not make disparaging comments outside of calls (e.g., in person) and that the Qwest technician not only does not discuss CLEC's products but also does not discuss Qwest products while working on CLEC's behalf. If it is part of Qwest's practices to allow Qwest's technicians to engage in such behavior, there is no legitimate reason why Qwest should object to this language.</p>		
Issue 12-66 Section 12.1.5.5 See 12-66 (a) below for related section 12.1.5.4.8 Responsibilities Relating to End User	<p><u>12.1.5.5 Notwithstanding any other provision of this Agreement, when a CLEC End User Customer experiences an outage or other service affecting condition or Billing problem due to a Qwest error or action, Qwest shall not use the situation (including any misdirected call) as a winback opportunity or otherwise to discuss its products and services with CLEC's End</u></p>	<p>Rewarding Qwest with a marketing opportunity when its actions or inactions cause a CLEC customer to contact Qwest regarding a service issue would create a perverse incentive for the company to induce such opportunities, or at least to be lax in guarding against them. Eschelon's proposal does not impugn Qwest's motives; it simply acknowledges that protections are necessary to offset Qwest's</p>	<p>12.1.5.5 Notwithstanding any other provision of this Agreement, when a CLEC End User Customer experiences an outage or other service affecting condition or Billing problem due to a Qwest error or action, Qwest shall not use the situation (including any misdirected call) as a winback opportunity or otherwise to discuss its products and services with CLEC's End User Customer.</p>	<p>This contract language was thoroughly litigated in the section 271 proceedings throughout the 14-states. Qwest's contract language reflects the decisions of the commissions, including the Washington Commission, relating to this issue. Proposals similar to that presented by Eschelon here were rejected in the 271 proceedings and thus are not consistent with current law. In</p>

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Customers – win backs		<p>significant natural win back advantage as an incumbent. Protections are necessary to ensure that Qwest’s win back efforts are not anticompetitive. The language proposed by Eschelon is a very reasonable limit on Qwest’s employment of Qwest-caused errors for marketing opportunities: if Qwest is known to have the caused the condition, Qwest is precluded from turning its error to its advantage by initiating discussion of its products and services with the CLEC’s customer. If Qwest does not intend to engage in such improper winback activity, it should be agreeable to such language.</p>		<p>addition, Eschelon’s proposed language impermissibly interferes with Qwest’s First Amendment rights.</p>
Issue 12-66a Section 12.1.5.4.8 Responsibilities Relating to End User Customers - Repair	<p>12.1.5.4.8 CLEC, or CLEC’s agent, shall act as the single point of contact for its End User Customers’ service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC shall inform its End User Customers that they are End User Customers of CLEC for</p>	<p>Eschelon proposes a cross reference to Section 12.1.5.5, which should be adopted for the reasons stated above in Issue 12-66. The cross reference will help clarify that Section 12.1.5.5 applies notwithstanding the clause in Section 12.1.5.4.8 (which immediately follows Eschelon’s proposed insertion) that begins with “nothing in this Agreement.”</p>	<p>12.1.5.4.8 CLEC, or CLEC’s agent, shall act as the single point of contact for its End User Customers’ service needs, including without limitation, sales, service design, order taking, Provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, Billing, collection and inquiry. CLEC shall inform its End User Customers that they are End User Customers of CLEC for resold services. CLEC’s End User</p>	<p>This contract language was thoroughly litigated in the section 271 proceedings throughout the 14-states. Qwest’s contract language reflects the decisions of the commissions, including the Washington Commission, relating to this issue. Proposals similar to that presented by Eschelon here were rejected in the 271 proceedings and thus are not consistent with current law. In addition, Eschelon’s proposed</p>

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	<p>resold services. CLEC's End User Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In the event CLEC's End User Customers contact Qwest in error, Qwest will either (1) provide the caller with a number the caller can dial to obtain sales information, or (2) ask the caller whether he or she would like to hear sales information. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, except as provided in Section 12.1.5.5, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from asking CLEC's or Qwest's End User Customers who call the other Party if they would like to discuss the Party's products and services, and then discussing the Party's products</p>		<p>Customers contacting Qwest in error will be instructed to contact CLEC; and Qwest's End User Customers contacting CLEC in error will be instructed to contact Qwest. In the event CLEC's End User Customers contact Qwest in error, Qwest will either (1) provide the caller with a number the caller can dial to obtain sales information, or (2) ask the caller whether he or she would like to hear sales information. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local Exchange Service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from asking CLEC's or Qwest's End User Customers who call the other Party if they would like to discuss the Party's products and services, and then discussing the Party's products and services with those End User Customers who would like to do so.</p>	<p>language impermissibly interferes with Qwest's First Amendment rights. Indeed, the proposal would prevent a Qwest employee from answering questions about Qwest products initiated entirely by the customer.</p>

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	and services with those End User Customers who would like to do so.			
EXPEDITED ORDERS				
Issue 12-67 Section 12.2.1.2; See subparts (a)-(g) to issue 12-67 for Sections 12.2.1.2.1, 12.2.1.2.2, 12.2.1.2.3,, 9.1.12.1 and subparts; 9.23.4.5.6, 7.3.5.2 and subparts, Ex. A 9.20.14 Expedited Orders	<u>12.2.1.2 Expedites. CLEC may request a Due Date earlier than the applicable Due Date interval for that product or service. Requests for expedites can be made either prior to, or after, submitting CLEC’s service request.</u>	Eschelon’s language proposals for Section 12.2.1.2 and subparts reflects the terms offered by Qwest today in Washington. Of the 14 Qwest states, Washington is the only state in which Qwest continues to offer those terms at this time. It appears that Qwest is attempting to change the terms for expedites in Washington as well through its proposed language in this arbitration. The Commission should not allow Qwest to do so, for the same reasons that Qwest currently offers such terms to CLECs in Washington (and should do offer them in the other states). Section 12 is the “OSS” section of the ICA. “OSS” includes manual processes and systems, and their “associated business processes.” (<i>Third Report and Order ¶425.</i>) Section 12 covers topics similar to those addressed in Attachment 5 (“Business Process Requirements”)	NOTE: Qwest Counter at 7.3.5.2 and 9.1.12.1 and subsections; see Issues 12-67(d) and (f) below. 12.2.1.2 Expedites. CLEC may request a Due Date earlier than the applicable Due Date interval for that product or service. Requests for expedites can be made either prior to, or after, submitting CLEC’s service request.	In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.

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		<p>of the existing approved ICA between Qwest and Eschelon (and other CLECs) in Washington. Similar to language in Attachment 5 (see, e.g., §§ 3.2.2.12, 3.2.2.13, 3.2.4) of the parties' approved ICA currently in effect, Section 12.2.1.2 describes Expedites as requests for due dates earlier than the due dates that would otherwise apply under the ICA. Qwest's proposal to refer to its web-based SIG instead of intervals in the ICA suffers from the same problems as its proposal to use those intervals in the first place. See Section 1.7.2 above.</p> <p>Eschelon's reference to the term "Due Date" is appropriate because this is an agreed-upon defined term, meaning "the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable." Thus, the filed provisions of the ICA will determine how the particular Due Date will be calculated in each instance.</p> <p>The ICA must also be clear that requests for due dates may be made either on the CLEC's service request, or, in some instances, after</p>		

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ¹
Issue 12-67(a) Section 12.2.1.2 Expedited Orders – Emergencies	<p><u>12.2.1.2.1. Notwithstanding any other provision of this Agreement, for all products and services under this Agreement (except for Collocation pursuant to Section 8), Qwest will grant and process CLEC's expedite request, and expedite charges are not applicable, if one or more of the following conditions are met:</u></p> <p>a) <u>Fire;</u></p>	<p>the original service request, such as when emergency circumstances may arise. This proposal requires no change by Qwest, as Qwest currently allows expedite requests at either time today.</p> <p>Section 12 is not product-specific. Placing the terms of expedites in Section 12 eliminates the need for redundancy and potential inconsistencies that arise with Qwest's proposal, because Qwest would address expedites in multiple sections by product. It is clearer and more streamlined to describe expedites once and refer to that description, if a cross reference is needed, in other sections.</p> <p>Qwest must provide access to UNEs on nondiscriminatory terms for all CLECs (facility-based and non-facility based), as well as for Qwest itself. See 47 C.F.R. 51.313. Qwest, including its predecessor USWC, has historically provided expedites for no additional charge when certain "Emergency" conditions were met. Qwest recovered its costs through Commission approved charges,</p>	<p>NOTE: Qwest Counter at 7.3.5.2 and 9.1.12.1 and subsections; see Issues 12-67(d) and (f) below.</p> <p>12.2.1.2 Expedites. CLEC may request a Due Date earlier than the applicable Due Date interval for that product or service. Requests for expedites can be made either prior to, or after, submitting CLEC's service request.</p>	<p>In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.</p>

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	<p>b) <u>Flood;</u></p> <p>c) <u>Medical emergency;</u></p> <p>d) <u>National emergency;</u></p> <p>e) <u>Conditions when the End User Customer is completely out of service (primary line);</u></p> <p>f) <u>Disconnect in error when one of the other conditions on this list is present or is caused by the disconnect in error;</u></p> <p>g) <u>Requested service necessary for CLEC End User Customer's grand opening event delayed for facilities or equipment reasons with a future Ready For Service (RFS) date;</u></p> <p>h) <u>Delayed orders with a future RFS date that meet any of the above described conditions;</u></p> <p>i) <u>National Security;</u></p> <p>j) <u>Business Classes of Service unable to dial 911 due to previous order activity; or</u></p>	<p>because, with an expedite, Qwest performs the same work (as the work included in the installation NRC), but Qwest just performs that work earlier. Therefore, the expedites are not “free” but are included in those costs. Upon information and belief, Qwest continues to do so for its own retail customers. Qwest also continues to grant expedite requests at no additional charge in the Emergency situations to CLECs that use exclusively Qwest facilities via QPP or resale without amendment of their ICAs. In contrast, when a facilities-based CLEC such as Eschelon uses a loop to provide the same functionality and service as a Qwest retail customer or a CLEC ordering resale voice or QPP, Qwest now refuses to grant expedite requests at no additional charge in the Emergency situations. Qwest claims that it may change course because there is no “retail analogue” for loops. As discussed with respect to intervals (see Section 1.7.2 above), however, the FCC stated specifically that the test for a “meaningful opportunity to compete” when there is no retail</p>	<p>1.2.1.2.1 Notwithstanding any other provision of this Agreement, for all products and services under this Agreement (except for Collocation pursuant to Section 8), Qwest will grant and process CLEC's expedite request, and expedite charges are not applicable, if one or more of the following conditions are met:</p> <p>a) <u>Fire;</u></p> <p>b) <u>Flood;</u></p> <p>c) <u>Medical emergency;</u></p> <p>d) <u>National emergency;</u></p> <p>e) <u>Conditions when the End User Customer is completely out of service (primary line);</u></p> <p>f) <u>Disconnect in error when one of the other conditions on this list is present or is caused by the disconnect in error;</u></p> <p>g) <u>Requested service necessary for CLEC End User Customer's grand opening event delayed for facilities or equipment</u></p>	

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	<p>k) <u>Business Classes of Service where hunting, call forwarding or voice mail features are not working correctly due to previous order activity where the End User Customer's business is being critically affected.</u></p>	<p>analogue is no less rigorous than the test when there is one. (NY 271 Order ¶ 55.)</p> <p>For unbundled loops (and certain other products), Qwest is attempting to change the terms so that Qwest will only provide facilities-based CLECs expedites if they agree to pay an unapproved rate of \$200 per each day expedited (e.g., 5-day expedite = \$1,000) to expedite the loop order, in addition to the approved installation NRC, even when the Emergency conditions are met. And, at least in some cases, Qwest proposes to charge CLECs this unapproved rate even when a Qwest error causes a service-affecting condition that then requires an expedited order to correct that Qwest error. In contrast, Eschelon's proposal is fully consistent with the manner in which expedites have been handled in the past and are handled for other carriers today. It captures the Emergency conditions. Unlike Qwest's proposal, Eschelon's proposal is nondiscriminatory.</p> <p>If the Emergency conditions</p>	<p>reasons with a future Ready For Service (RFS) date;</p> <p>h) Delayed orders with a future RFS date that meet any of the above-described conditions;</p> <p>i) National Security;</p> <p>j) Business Classes of Service unable to dial 911 due to previous order activity; or</p> <p>k) Business Classes of Service where hunting, call forwarding or voice mail features are not working correctly due to previous order activity where the End User Customer's business is being critically affected.</p>	
Issue 12-67(b)	12.2.1.2.2. If none of the		NOTE: Qwest Counter at 7.3.5.2	In the limited circumstances that

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<p>Section 12.2.1.2.2 & Exhibit A</p> <p>Expedited Orders –</p> <p>Charges in Exhibit A</p>	<p><u>conditions described in Section 12.2.1.2.1 are met, Qwest will grant and process CLJC's expedite request, but the expedite charges in Exhibit A will apply, unless the need for the expedite is caused by Qwest.</u></p> <p><u>Exhibit A, See Section 9.20.13 below</u></p>	<p>described in Section 12.2.1.2.1 are not met, Eschelon offers to voluntarily pay additional charges for expedites, even though Qwest has established no cost-based rate to expedite orders. Eschelon proposes a rate of \$100 per day expedited. Although this rate is half of Qwest's proposed rate, Eschelon's proposed rate is higher per day than the most expensive Commission approved one-time rate for the complete installation of an entire new loop (i.e., \$88.57 for DS1 capable loop Coordinated Install with Cooperative Testing). If Qwest expedited an order for a DS1 capable loop Coordinated Install with Cooperative Testing per Eschelon's proposal, Qwest would charge \$88.57 for the installation, plus \$100 per day expedited (e.g., 5-day expedite = \$500) for a total NRC of \$587.57 for the expedited installation. If the loop is already installed and an expedited order is needed several months later (for example, to correct a later disconnect in error of that loop), Qwest would charge \$88.57 for the initial installation of the expedited order and an additional \$587.57 to</p>	<p>and 9.1.12.1 and subsections; see Issues 12-67(d) and (f) below.</p> <p>(NOTE: see subpart for Section 7.3.5.2 below for full language)</p> <p>12.2.1.2.2 If none of the conditions described in Section 12.2.1.2.1 are met, Qwest will grant and process CLJC's expedite request, but the expedite charges in Exhibit A will apply, unless the need for the expedite is caused by Qwest.</p>	<p>Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.</p>

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		<p>correct the disconnect in error (even if the facilities remain in place and no premise dispatch is required). This is an exorbitant charge. Eschelon seeks to meet Qwest halfway in its rate proposal and avoid litigation in the cost case as well as here. Eschelon reserves its right to a cost-based rate if litigated in the cost case and thus proposes its rate as an Interim Rate.</p> <p>This section contains an exception so that Qwest may not charge CLEC if Qwest caused the need for an expedite. If, for example, Qwest makes an error affecting Eschelon's customer's service and an expedite is needed to correct the error without pushing out the due date, Qwest should not be able to charge Eschelon for such an expedite. The addition of this language also removes an inappropriate incentive for Qwest to mishandle orders to create a situation requiring payment of expedited order charges. Qwest has agreed to similar language in 9.2.4.4.2(b) and 9.6.4.1.4(c) for loops and transport, so it is unclear why Qwest proposes deletion here and includes no similar language in</p>		

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Issue 12-67(c) Section 12.2.1.2.3 Expedited Orders – NRC	<u>12.2.1.2.3. Nothing in this Section 12.2.1.2 alters whether a non-recurring installation charge in Exhibit A applies to the CLEC order pursuant to the terms of the applicable section of this Agreement. The expedite charge, if applicable, is separate from the installation charge.</u>	its proposal in Section 7.3.5.2 relating to trunking. Eschelon is not trying to get something for nothing through its expedite proposal. Eschelon included this language in its proposal to allay fears that the phrase no “additional” charge would somehow be interpreted to mean “no” charge. This language ensures that the provisions of §12.2.1.2 will not alter the application of installation charges under Exhibit A when they appropriately apply. Expedites are not free under Eschelon’s proposal. Eschelon clarifies that it will pay that installation charge (covering Qwest’s costs), in addition to expedite charges when applicable.	12.2.1.2.3. Nothing in this Section 12.2.1.2 alters whether a non-recurring installation charge in Exhibit A applies to the CLEC order pursuant to the terms of the applicable section of this Agreement. The expedite charge, if applicable, is separate from the installation charge.	In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.
Issue 12-67(d) Section 9.1.12.1 and subparts; Expedited Orders – UNES	<u>9.1.12.1 For expedites, see Section 12.2.1.2. 9.1.12.1 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest’s Service Interval Guide (SIG), Exhibit C or Individual Case Basis (ICB) Due Dates as</u>	Regarding Qwest’s proposal for 9.1.12.1, Qwest’s language says expedites are “allowed” but Qwest does not commit to granting them. In contrast, under its template “Pre-Approved Expedite” terms, Qwest automatically grants expedites when a CLEC pays Qwest’s requested per day expedite charges. Regarding intervals, see Sections 1.7.2 and 12.2.1.2 above.	<u>9.1.12.1 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest’s Service Interval Guide (SIG), Exhibit C or Individual Case Basis (ICB) Due Dates as applicable. 9.1.12.1.1 CLEC will request an expedite for designed Unbundled</u>	In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.

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	<p>applicable. 9.1.12.1.1 CLEC will request an expedite for designed Unbundled Network Elements, including an expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate. 9.1.12.1.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedites at Qwest's wholesale web site.</p>	<p>Regarding Qwest's proposal for 9.1.12.1.1, Qwest attempts to deal with ordering in the loop "general terms" section. Eschelon's placement is more appropriate. Qwest also recognizes requests for expedites only when requested on the service order. This is a departure from Qwest's current practice of allowing requests either on or after the service request.</p> <p>Regarding Qwest's proposal for 9.1.12.1.2, it varies from Eschelon's proposal by referring to provisions outside the ICA rather than those filed and approved with this Commission. Qwest proposes to replace all of Eschelon's ICA proposal with a reference to its web-based PCAT. The FCC has clearly held, however, that at "no point did we create a general 'web-posting exception' to section 252(a)." (<i>FCC Forfeiture Order</i>, ¶132).</p>	<p><u>Network Elements, including an expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate.</u> <u>9.1.12.1.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedites at Qwest's wholesale web site.</u></p>	
Issue 12-67(e) Section 9.23.4.5.6	<p><u>9.23.4.5.6 For expedited orders, see Section 12.2.1.2.</u></p>	<p>Eschelon's expedite proposal appropriately applies to Combinations of UNEs, as well as UNEs. To avoid redundancy and</p>	<p>9.23.4.5.6 For expedited orders, see Section 12.2.1.2.</p>	<p>In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale</p>

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Expedited Orders –		potential inconsistencies, Eschelon includes only a cross reference to Section 12.2.1.2 here.		tariff. That tariff authorizes ICB charges.
Combinations				
Issue 12-67(f)	See Eschelon’s position above with respect to Section 12.2.1.2 (Issue 12-67) and subparts.	See Eschelon’s position with respect to Section 12.2.1.2 and the issue subparts. Eschelon also offers to replace all of Section 7.3.5.2 (consistent with its proposal for Sections 9.1.12.1 and 9.23.4.5.6) with the following cross reference: “7.3.5.2 For expedites, see Section 12.2.1.2.”	7.3.5.2 Expedite requests for Interconnection-LIS trunk orders are allowed. <u>Expedites are requests for intervals that are shorter than the interval defined in Qwest’s Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates.</u>	In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.
Section 7.3.5.2 and subparts	Eschelon also offers to replace all of Section 7.3.5.2 (consistent with its proposal for Sections 9.1.12.1 and 9.23.4.5.6) with the following cross reference: “7.3.5.2 For expedites, see Section 12.2.1.2.”		<u>Expedite charges as identified in Exhibit A apply per order for every day that the Due Date interval is shortened, based on the standard interval in the SIG or based on ICB criteria for Due Dates.</u>	
Expedited Orders –			7.3.5.2.1 CLEC will request an expedite for Interconnection LIS trunks; <u>including an expedited Due Date, on the Access Service Request (ASR).</u>	
Trunk orders			7.3.5.2.2 The request for expedite will be allowed only when the request meets the criteria outlined in Section 12.2.1.2.2 the <u>Pre-Approved Expedite Process in Qwest’s Product Catalog for expedite charges at Qwest’s wholesale web site.</u>	

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Issue 12-67(g) Exhibit A Section 9.20.14 Expedite Charge	Expedite Charge <u>NRC</u> <u>\$100</u> 1	Qwest’s proposal for the rate for expedited orders varies by state. In some states (such as Minnesota), Qwest is proposing a reference to its federal tariff for this rate, and in other states Qwest has proposed language in Exhibit A that states “\$200 per day advanced” (which is the rate in its tariff). In all of those states, Qwest appears to be opposing commission jurisdiction over these rates. Qwest’s proposal diminishes the Commission’s authority over rates. In Washington only, however, Qwest is proposing an “ICB” rate which it asserts is a Commission approved rate. The rate must be viewed in the context of the language of the ICA. As discussed above with respect to Issue 12-67, Eschelon’s language proposals for Section 12.2.1.2 and subparts reflects the terms offered by Qwest today in Washington. Of the 14 Qwest states, Washington is the only state in which Qwest continues to offer those terms at this time. Qwest is opposing those terms. It is at least unclear, therefore, whether Qwest’s proposal	Expedite Charge <u>NRC</u> <u>ICB</u> <u>E</u> <u>3</u>	In the limited circumstances that Qwest offers expedites, Eschelon must pay Qwest consistent with the terms of the applicable wholesale tariff. That tariff authorizes ICB charges.

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		<p>to use an “ICB” follows Commission approved terms after all, if Qwest is going to apply an ICB rate to a wider range of circumstances under the ICA than it currently does in Washington. In addition, the new ICA contains a definition of “ICB” that includes longer intervals that are inconsistent with the need to expedite orders, but Qwest has not proposed any language to address an expedite situation. While Eschelon may not oppose an ICB rate in the proper circumstances, it is not clear that Qwest’s proposal reflects such circumstances.</p>		
<p>Issue 12-68 Section 12.2.3.2 Supplemental Orders (1 of 2 options)</p>	<p>PROPOSAL #1 12.2.3.2 There is no transaction charge for the physical act of a CLEC submitting a supplement or canceling-or re-submitting a service request.</p>	<p>Qwest does not charge CLECs for supplementing a service request. Eschelon’s proposals, both accurately stating there is no charge, require no change by Qwest. As indicated in agreed upon language in Section 12.2.3.1, supplements add to or change an already existing, previously submitted LSR or ASR. In other words, the order is still in the pipeline when CLEC submits its supplemental request. Qwest does not charge a separate charge for</p>	<p>SAME FOR BOTH PROPOSALS: 12.2.3.2 There is no <u>transaction</u> charge for <u>the physical act of a</u> CLEC submitting a supplement or canceling-or re-submitting a service request.</p>	<p>The appropriate venue for discussing rates for OSS cost recovery is a Washington cost docket, not this arbitration. OSS cost recovery charges were thoroughly investigated by this Commission and rates were duly established via a cost docket. It is not appropriate to allow Eschelon to create exceptions to the application of these rates. Eschelon believes it should not have to pay Qwest its pro rata share</p>

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Issue 12-68 Section 12.2.3.2 Supplemental Orders (2 of 2 options)	<p>PROPOSAL #2</p> <p>12.2.3.2 There is no <u>charge for CLEC submitting a supplement or cancelling or re-submitting a service request, unless otherwise expressly provided in this Agreement. Whether a charge applies to any activity resulting from such a service request will be governed by the provisions of this Agreement applicable to such activities.</u></p>	<p>submitting such supplements, as they are part of the routine process for ordering products from Qwest. If Qwest seeks at some point to begin charging separately for submitting supplements, Qwest would need to either negotiate a rate or obtain an ordered rate from the Commission. In either case, the Agreement would be modified to reflect that rate. Until then, specifically stating in the Agreement that there is no charge will avoid later disputes and promote administrative efficiency.</p> <p>Eschelon’s second option for this section clarifies that, if there is an explicit charge somewhere else in the Agreement, that charge would apply. For example, the Collocation section may include some charges when an application is cancelled after work is performed. Eschelon does not believe Section 12.2.3.2 governs or conflicts with such provisions, because collocation applications are not submitted by LSR or ASR, as supplements are defined in Section 12.2.3.1. To err on the side of caution and avoid any ambiguity,</p>	<p>SAME FOR BOTH PROPOSALS:</p> <p>12.2.3.2 There is no <u>transaction charge for the physical act of a CLEC submitting a supplement or cancelling or re-submitting a service request.</u></p>	<p>for development and upkeep of OSS. Qwest is legally entitled to compensation for all UNEs, including OSS, according to all applicable law including Section 252(d) of the Act.</p> <p>Eschelon is trying to avoid payments for OSS under certain circumstances, which are not legally permissible.</p> <p>The appropriate venue for discussing rates for OSS cost recovery is a Washington cost docket, not this arbitration. OSS cost recovery charges were thoroughly investigated by this Commission and rates were duly established via a cost docket. It is not appropriate to allow Eschelon to create exceptions to the application of these rates.</p> <p>Eschelon believes it should not have to pay Qwest its pro rata share for development and upkeep of OSS. Qwest is legally entitled to</p>

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		<p>however, Eschelon added this clause.</p> <p>Eschelon’s second option also includes a second sentence that captures the concept which Qwest attempts to address in its language. Qwest’s proposal qualifies the phrase “no charge” in two ways: (1) no “transaction” charge; and (2) and no charge “for the physical act.” By qualifying the term in these two ways, Qwest’s language erroneously suggests that there is a charge that is somehow “non-transactional” or “non-physical.” But, there is no charge at all for submitting supplements. Qwest’s language therefore introduces unnecessary ambiguity, and ambiguity often leads to litigation. It appears that Qwest is attempting to address a concern that the previous sentence may suggest that it cannot charge CLEC if the supplement results in additional work and the Agreement allows Qwest to charge for that work. For example, if CLEC supplements an existing service request to add a line, Qwest will not charge for supplementing the order but will</p>		<p>compensation for all UNEs, including OSS, according to all applicable law including Section 252(d) of the Act.</p> <p>Eschelon is trying to avoid payments for OSS under certain circumstances, which are not legally permissible.</p>

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Issue 12-69 Intentionally Left Blank		charge the rates in Exhibit A to install that line, etc. Eschelon's proposed sentence more clearly addresses this issue and indicates that Qwest will be able to charge in such situations when pursuant to the applicable provisions of the Agreement.		
PSONS				
Issue 12-70 Section 12.2.7.2.3 Pending Service Order Notification	12.2.7.2.3 Pending Service Order Notification. When Qwest issues or changes the Qwest service orders associated with the CLEC LSR, Qwest will issue a Pending Service Order Notification (PSON) to CLEC. Through the PSON, Qwest supplies CLEC with information that appears on the Qwest service order <u>providing at least the data in the service order's Service and Equipment (S&E) and listings sections.</u>	When CLEC submits an LSR to Qwest, Qwest creates (either manually or electronically) internal service orders to implement the LSR. There may be multiple Qwest service orders per each LSR. If the information in a Qwest service order differs from the information on the LSR (e.g., due to a typo in a manually typed service order), the end user customer's service may be harmed because Qwest will deliver a service different from what ordered or possibly even disconnect the service in error per the erroneous Qwest service order. To attempt to reduce the frequency of	12.2.7.2.3 Pending Service Order Notification. When Qwest issues or changes the Qwest service orders associated with the CLEC LSR, Qwest will issue a Pending Service Order Notification (PSON) to CLEC. Through the PSON, Qwest supplies CLEC with information that appears on the Qwest service order. <u>providing at least the data in the service order's Service and Equipment (S&E) and listings sections.</u>	Eschelon is trying to broaden existing processes to obtain more information than it currently receives in Pending Service Order Notifications. Further, this issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an

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		<p>service affecting problems on the due date resulting from Qwest service order errors, Eschelon requested that Qwest provide information from the Service and Equipment (S&E) section of the Qwest service order to CLECs before the due date, so that CLECs could compare them to obtain corrections before the due date. After many stages of development, the end result of this request is that Qwest provides a Pending Service Order Notification (“PSO”) to CLECs about an hour after the FOC is received. The PSO provides service order detail (e.g., features/USOCs from the S & E section and address and listing detail from the listings section of the Qwest service order) to requesting CLECs. Although resource-intensive to do so, Eschelon compares the information for accuracy. For example, if Eschelon orders 900 blocking for its customer on the LSR, both the LSR and the S&E section of the Qwest service order should contain 900 blocking. CLECs have no visibility into the Qwest service order. It is not available to CLECs. As long as</p>		<p>arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>

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		<p>Qwest provides the S&E and listings information from the Qwest service orders on the PSONs, however, CLECs may compare the PSONs to the LSRs to ensure that Qwest will deliver the service requested (<i>e.g.</i>, 900 blocking).</p> <p>If Qwest alters the PSON to provide some information from the service order (such as the bill detail) but not the detail in the S&E and listing sections, the useful purpose that the PSONs currently serve would be defeated. Eschelon relies heavily on the S&E and listings sections of the PSON in particular. An error in the bill section is a billing problem for Eschelon, but it does not impact the end user customer for that LSR. Errors in the S&E and listings section, however, are much more likely to be customer affecting. Nonetheless, the key difference between Qwest’s proposed language and Eschelon’s proposed language is that Qwest will not commit to continue to provide “at least the data in the service order’s Service and Equipment (S&E) and listings sections.” Eschelon’s proposal does not require any</p>		

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		<p>change by Qwest. If Qwest seeks to change the PSONS to eliminate data from the S&E and listings sections, it may do so by amending the ICA. (Qwest currently provides more information than that in these two sections, but Eschelon has identified these two in its language because of their importance.)</p> <p>Without Eschelon’s language, Qwest will argue that it is free to delete information in the S&E and listings section from the PSONS. Developing the PSONS in their current form, however, was a lengthy resource-intensive process. It was four years from the first request through completion of the current PSONS. That is longer than the three-year term of the Agreement under Section 5.2.1. Eschelon spent time and resources providing data and examples to Qwest to develop and improve the PSONS so that the PSONS would serve the purpose of avoiding adverse end user customer impact on the due date. Qwest should not be able to nullify that work without an amendment and Commission involvement to protect end user</p>		

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JEOPARDIES		customers.		
Issue 12-71	<u>12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a</u>	Jeopardy situations, in which Qwest is in danger of failing to meet Due Dates, are critical situations.	<u>12.2.7.2.4.4 Specific procedures are contained in Qwest's</u>	This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs.
Section 12.2.7.2.4.4	<u>caused by CLEC will be classified as Customer Not Ready (CNR).</u>	Jeopardies may be caused by either Qwest or CLEC, and Qwest classifies them accordingly. It is important that jeopardies are classified correctly, as the classifications have consequences. Therefore, Eschelon's proposal states that Qwest will classify a jeopardy caused by Qwest as a Qwest jeopardy and a jeopardy caused by CLEC as a CLEC jeopardy (known as Customer Not Ready – "CNR"). One consequence is that the classification of the jeopardy dictates which party must take action to clear the jeopardy (e.g., if it is a Qwest jeopardy due to bad pairs, Qwest must try to locate good pairs). Another consequence is that, once a jeopardy is labeled a CNR, the CLEC is required by Qwest to supplement the order, automatically pushing the order out by three full days. If Qwest incorrectly classifies a Qwest	<u>Qwest's wholesale web site.</u>	should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.
Jeopardy				Further, Qwest believes this process belongs in the PCAT (not contracts), and maintained by the Commission approved CMP because the jeopardy process is

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		<p>jeopardy as a CLEC CNR, Qwest may not take appropriate action and the end user customer's service will be pushed out unnecessarily. This is a critical problem because a CLEC's end user perceives that its provider--the CLEC--as the cause of any failure to obtain crucial telephone service following a change of provider, switch in location, or other service event. The CLEC's customer is not likely to understand or accept that a disruption or delay in service may actually be caused by the underlying wholesale provider—in this case, Qwest. A failure to obtain timely working service, which can have major ramifications to a business customer, may actually destroy the CLEC's relationship with its would-be customer before it has begun.</p> <p>Qwest proposes to replace all of Eschelon's ICA language in Section 12.2.7.2.4.4 and subparts with a reference to its unfiled PCAT. The classification of jeopardies as being a "Qwest jeopardy" or a CNR and the consequences of such classification are appropriate</p>		<p>incorporated into PIDs (OP-3) defined by the Commission. The Commission should be able to define PIDs that apply uniformly to all CLECs.</p>

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		<p>subject matters for an ICA. For example, agreed upon language in Sections 9.2.2.9.3 and 9.2.2.9.4 deals with whether a jeopardy is a “Qwest jeopardy” and what happens if it is. Like Eschelon’s proposed language here, those closed provisions provide that, if it is a Qwest jeopardy, “the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.” The FCC found that a “web-posting exception” would render [252(a)(1) of the Act] meaningless, since CLECs could not rely on a website to contain all agreements on a permanent basis.” (<i>FCC Forfeiture Order</i>, ¶32) The FCC held, therefore, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>Id.</i>)</p>		
Issue 12-72 Section 12.2.7.2.4.4.1 Jeopardy Classification	<p><u>12.2.7.2.4.4.1</u> There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or service order is not accepted by the CLEC (when Qwest has tested the service to meet all</p>	<p>One scenario in particular leads to unfair and customer affecting results if Qwest incorrectly characterizes a jeopardy as a CLEC (CNR) jeopardy rather than a Qwest jeopardy. This occurs when, after CLEC submits its LSR, Qwest</p>	<p><u>12.2.7.2.4.4</u> Specific procedures are contained in Qwest’s documentation, available on Qwest’s wholesale web site.</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of</p>

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	<p><u>testing requirements.); and (2) End User Customer access was not provided. For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs but before Qwest attempts to deliver the service. CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.</u></p>	<p>sends a Qwest jeopardy notice to CLEC. The jeopardy notice may indicate, for example, that there is a Qwest facility issue. After sending that notice, Qwest clears the Qwest jeopardy (such as by locating available facilities). Qwest, however, does not inform CLEC that the jeopardy has been cleared and is no longer an obstacle to delivering the facilities. Based on Qwest's last communication with CLEC, the facility is not available so Qwest has not assigned any due date. Therefore, CLEC has no reason to expect delivery on any particular day and obviously then has not planned resources or customer access for a delivery that it has no reason to expect. Qwest nonetheless attempts to deliver the facility unexpectedly. Despite Qwest's failure to inform CLEC earlier that Qwest cleared the jeopardy and its failure to provide a due date, Eschelon's proposal states that Eschelon will still use its best efforts to accept the service. Whereas Qwest requires at least three days' notice when CLEC is not ready to arrange staffing for delivery, Eschelon will scramble</p>		<p>CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p> <p>Further, Qwest believes this process belongs in the PCAT (not contracts), and maintained by the Commission approved CMP because the jeopardy process is incorporated into PIDs (OP-3) defined by the Commission. The Commission should be able to define PIDs that apply uniformly to all CLECs.</p>

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		<p>and try to staff the delivery on a day when it had no notice of delivery. Eschelon will attempt to overcome all of these obstacles because delivery of service to its customer is so important to Eschelon. Thus, any further disruption or delay in service is clearly a direct product of Qwest's jeopardy action or inaction and subsequent failure to send a FOC, not of the CLEC's unwillingness to mitigate the consequences. If the obstacles are too great because of Qwest's conduct and Eschelon cannot accept delivery at the time, Qwest should not classify this as a CLEC (CNR) jeopardy. Qwest created the situation that lead to the inability to complete delivery. This is truly a Qwest jeopardy and should be classified as such. If it is classified as a CNR, the due date will get pushed out by three days, even though Eschelon may be ready to accept delivery earlier, such as the next day. Also, if it is a CNR, Qwest benefits under the PIDs. Even if Qwest has missed the due date due to a Qwest jeopardy, Qwest is off the hook because it is now classified as a CNR. Placing a</p>		

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Issue 12-73 Section 12.2.7.2.4.4.2 Jeopardy Correction	<u>12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy.</u>	jeopardy into CNR category erases any prior history of the situation, even if Qwest had previously caused a jeopardy situation for an installation. As described with respect to Section 12.2.7.2.4.4 above, it is important that jeopardies are classified correctly, as the classifications have consequences. Therefore, under Eschelon's proposed language, if a CLEC demonstrates that Qwest has erred in designating a jeopardy as caused by a CLEC, Qwest must correct the erroneous CNR classification and treat the jeopardy going forward as a Qwest jeopardy.	<u>12.2.7.2.4.4 Specific procedures are contained in Qwest's documentation, available on Qwest's wholesale web site.</u>	This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.
				Further, Qwest believes this process belongs in the PCAT (not

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<p>FATAL REJECTION NOTICES</p> <p>Issue 12-74</p> <p>Section 12.2.7.2.6.1 and subpart</p> <p>Fatal Rejection Notices</p>	<p>12.2.7.2.6.1 If CLEC submits an LSR or ASR that contains a Fatal Error and receives a Fatal Reject notice, CLEC will need to resubmit the LSR or ASR to obtain processing of the service request, <u>except as provided in Section 12.2.7.2.6.2.</u></p> <p><u>12.2.7.2.6.2 If Qwest rejects a service request in error, Qwest will resume processing the service request as soon as Qwest knows of the error. At CLEC's direction, Qwest will place the service request back into normal processing, without requiring a supplemental order from CLEC and will issue a subsequent FOC to CLEC.</u></p>	<p>The parties agree that the ICA should list Fatal Rejection Notices as a type of order status notice that Qwest should provide on a nondiscriminatory basis. (See 12.2.7.2.6.) Qwest is also willing to obligate CLECs - for the term of the ICA unless amended - to resubmitting service requests when an order contains a Fatal CLEC error (<i>i.e.</i>, an error that prevents further order processing). (See agreed upon language in Section 12.2.7.2.6.1.) When it is a CLEC error, Qwest thus agrees that the subject matter and level of detail are appropriate for inclusion in the filed ICA. (See <i>id.</i>) Eschelon's proposal in Section 12.2.7.2.6.2 fairly and reasonably deals with the reverse</p>		<p>contracts), and maintained by the Commission approved CMP because the jeopardy process is incorporated into PIDs (OP-3) defined by the Commission. The Commission should be able to define PIDs that apply uniformly to all CLECs.</p>
			<p>12.2.7.2.6.1 If CLEC submits an LSR or ASR that contains a Fatal Error and receives a Fatal Reject notice, CLEC will need to resubmit the LSR or ASR to obtain processing of the service request, except as provided in Section 12.2.7.2.6.2.</p> <p>12.2.7.2.6.2 Fatal Rejection Notices. <u>Specific procedures are contained in Qwest's PCAT, available on Qwest's wholesale web site.</u></p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems</p>

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		<p>situation, at the same level of detail, when it is a Qwest error. Suddenly, Qwest believes the topic of its own obligations does not belong in the filed ICA but should only be dealt with in the unfiled PCAT. Eschelon’s proposal simply provides that, if Qwest knows that it has rejected a CLEC order in error, Qwest will resume processing the order without requiring a supplemental order. But for the Qwest error no supplemental order would be needed because Qwest would have continued processing CLEC’s initial order. Eschelon’s proposal requires no change by Qwest, as Qwest does this today. But, Qwest proposes to replace all of Eschelon’s ICA proposal with a reference to its web-based PCAT. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i>, ¶32)</p>		<p>or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
<p>TAG AT THE DEMARCA-TION POINT Issue 12-75</p>	<p>12.3.1 Demarcation Point.</p>	<p>The Demarcation Point is basically the hand-off point between Qwest</p>	<p>12.3.1 Specific procedures are contained in Qwest’s PCAT.</p>	<p>This issue involves processes that affect all CLECs, not just</p>

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Sections 12.3.1 and subpart; 12.4.3.6.3 and subparts	<p>12.3.1.1 <u>If CLEC requires information identifying the Demarcation Point to complete installation, Qwest will provide to CLEC information identifying the location of the Demarcation Point (e.g., accurate binding post or Building terminal binding post information). If Qwest is unable to provide such information, the Demarcation Point is not tagged, and CLEC has dispatched personnel to find the Demarcation Point and is unable to locate it, Qwest will dispatch a technician and tag the line or circuit at the Demarcation Point at no charge to CLEC, if CLEC informs Qwest within 30 Days of service order completion.</u></p>	<p>and Eschelon. If either party cannot find that hand-off point when it comes time to install or repair facilities at the Demarcation Point, it is a problem. The installation or repair will either not occur or be delayed and the end user customer's service may be impacted or delayed as a result. Finding the Demarcation Point is not always easy. For business customers in a multi-tenant environment, for example, there could be hundreds of possible locations. If CLEC is not provided with the correct location, CLEC is unlikely to find it. Therefore, when needed, Qwest provides CLEC with identifying information about the Demarcation Point's location (e.g, binding post information). Qwest also generally "tags" the Demarcation Point, meaning that Qwest physically marks it with identifying information (such as telephone number or circuit ID). Because of the importance of knowing the location of the Demarcation Point, Eschelon's proposed language outlines these terms and conditions. Eschelon's proposal requires no change by Qwest, as Qwest does</p>	<p>available on Qwest's wholesale web site.</p>	<p>Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>

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Issue 12-75 (a) Section 12.4.3.6.3 Tag at Demarcation Point	<p><u>12.4.3.6.3</u> Whenever a Qwest technician is dispatched to an End User Customer premise, Qwest will place a tag accurately identifying the line or circuit, including the telephone number Qwest Circuit ID, at the Demarcation Point if such a tag is not present. See also Section <u>12.3.1.1.</u></p>	<p>this today. Qwest proposes to replace all of Eschelon’s ICA proposal with a reference to its web-based PCAT. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i>, ¶132)</p> <p>As described with respect to Section 12.3.1 above, identifying the location of the Demarcation Point is critical to timely installation and repair of customers’ service. If a Qwest technician is dispatched to an end user customer’s premises for any reason and the Demarcation Point for that customer is not tagged with the telephone number or circuit ID, there is no reason why the Qwest technician would not properly correct the problem and tag it. Regardless of the reason why it is not tagged (e.g., the tag just fell off), the tag needs to be present to allow technicians to find the Demarcation Point to complete installations and repairs. Tagging the Demarcation Point is critical to ensuring CLEC may conduct</p>	<p><u>12.4.3.6.3</u> Responsibilities of Qwest’s Maintenance and Repair technicians are contained in Qwest’s PCAT, available on Qwest’s wholesale web site.</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to</p>

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		<p>trouble isolation in the future when dispatch is required for such testing. Qwest requires CLECs to conduct trouble isolation, which CLECs cannot do when dispatch is required if they cannot find the Demarcation Point. With the exception of optional testing, CLEC may not even submit a trouble report without having conducted such trouble isolation. (<i>See</i> Sections 9.2.5.1 & 12.4.1.1.) Therefore, Qwest needs to ensure it is possible to conduct the required trouble isolation by tagging the Demarcation Point. Eschelon’s proposal requires no change by Qwest, as Qwest does this today. Qwest proposes to replace all of Eschelon’s ICA proposal with a reference to its web-based PCAT. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i>, ¶32)</p>		<p>recover under the Act.</p>
<p>LOSS AND COMPLETION REPORTS Issue 12-76 Sections</p>	<p>12.3.7.1.1 The daily loss report will contain a list of accounts that have had lines</p>	<p>Loss and Completion Reports are daily reports that Qwest provides to notify Eschelon when an end user</p>	<p>12.3.7.1.1 The daily loss report will contain a list of accounts that have had lines disconnected</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of</p>

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12.3.7.1.1, 12.3.7.1.2 Loss and Completion Reports	<p>disconnected because of a change in the End User Customer's local service provider. Qwest will issue a loss report when a service order Due Dated for the previous business day, is completed or canceled in Qwest's service order processor (SOP). The losses on the report will be for the previous day's activity. This report will include detailed information consistent with OBF guidelines, but <u>no less than the BTN, service order number, PON, service name and address, the WTN the activity took place on and date the service order completed (the date the change was completed).</u> Individual reports will be provided for at least the following list of products:</p>	<p>customer changes to a different local service provider (a "loss") and when activity other than losses (such as changes to service) occur on an account ("completions"). A primary problem with these reports historically was that the reports did not provide CLECs with the intended ability to identify which customers have left the CLEC for another carrier. This was a significant issue that could adversely affect the CLEC's reputation and the end-user customer's service. If Eschelon cannot determine that a customer has left (a "loss"), for example, Eschelon continues to bill the customer. Doing so later significantly decreases the likelihood of full collection. Eschelon and other CLECs are made to look bad with the customer, who does not understand why a carrier would not know that the customer has left. Eschelon has invested a significant amount of time into improving these reports. Due to the number of problems that existed at the time, Eschelon began requesting changes in April of 2001. Eschelon provided examples</p>	<p>because of a change in the End User Customer's local service provider. Qwest will issue a loss report when a service order Due Dated for the previous business day, is completed or canceled in Qwest's service order processor (SOP). The losses on the report will be for the previous day's activity. This report will include detailed information consistent with OBF guidelines, but no less than the BTN, service order number, PON, service name and address, the WTN the activity took place on and date the service order completed (the date the change was completed). Individual reports will be provided for at least the following list of products:</p>	<p>CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>

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		<p>of errors and problems on a regular basis to its Qwest service management team over a period of approximately 1.5 years. Other CLECs supported Eschelon's efforts as well. Over an approximate three-year period, Eschelon, CLECs, and Qwest worked on these issues. A joint matrix was created to track the many issues raised by the examples and the corrections made as a result of them. (There would have been even more issues if the reports had provided even less information than they did at the time.) The resources needed were substantial, but they were warranted because of the significant impact of the problems on both CLECs and their customers. The end result was better reporting that benefits not only CLECs but also Qwest. Qwest will not receive escalation calls, for example, due to problems that used to arise from inadequate reports but no longer occur. Eschelon's proposed language captures the work that carriers have done over a lengthy period of time so that these benefits are not lost. That does not mean the reports cannot be changed, because</p>		

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		<p>the agreement can be amended. But, it does mean Qwest cannot unravel this work unilaterally to Eschelon's detriment, after Eschelon has expended significant time and resources on this issue.</p> <p>Eschelon's proposal includes a list of the minimum amount of information that must be contained in these reports to ensure those benefits continue. Eschelon's proposal requires no change by Qwest, as Qwest provides this information to Eschelon today. Qwest has proposed that it be required only to provide the level of detail that is consistent with OBF guidelines. Of the information listed in Eschelon's proposed language, however, Qwest may argue that only the WTN and order completion date are required by OBF guidelines. OBF guidelines, however, do not preclude providing additional information. Eschelon's language, therefore, does not violate OBF guidelines. Unlike Qwest's proposal, it does help ensure that the extensive work done on these reports was not wasted and the resulting benefits are not lost.</p>		

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Issue 12-76 (a) Section 12.3.7.1.2 Loss and Completion Reports	12.3.7.1.2 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the previous day's activity for the service(s) requested is complete. This includes service orders Qwest generates without an LSR (for example, records correction work, PIC or Maintenance and Repair charges). This report will include detailed information consistent with OBF guidelines, but no less than the BTN, service order number, PON, service name and address, the WTN the activity took place on and date the service order completed (the date the change was completed). Individual reports will be provided for Resale and Unbundled Loop.	Eschelon's proposal requires no change by Qwest, as Qwest provides this information to Eschelon today. See Section 12.3.7.1.1 above.	12.3.7.1.2 Completion Report provides CLEC with a daily report. This report is used to advise CLEC that the order(s) for the previous day's activity for the service(s) requested is complete. This includes service orders Qwest generates without an LSR (for example, records correction work, PIC or Maintenance and Repair charges). This report will include detailed information consistent with OBF guidelines, but no less than the BTN, service order number, PON, service name and address, the WTN the activity took place on and date the service order completed (the date the change was completed). Individual reports will be provided for Resale and Unbundled Loop.	This issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.
TESTING CHARGES				
Issue 12-77 Section 12.4.1.5.1 Testing Charges When	12.4.1.5.1 If the circuit is on Pair Gain, or like equipment that CLEC or Qwest cannot test through, and CLEC advises Qwest of this, Qwest will not assess <u>any</u> testing charges. <u>Whether other charges, such as</u>	Section 12.4.1.5 concerns charges to be assessed when Qwest performs trouble isolation with Eschelon. Pair Gain equipment (<i>i.e.</i> , electronics that enable multiple signals to be carried simultaneously on a single physical	12.4.1.5.1 If the circuit is on Pair Gain, or like equipment that CLEC or Qwest cannot test through, and CLEC advises Qwest of this, Qwest will not assess <u>optional</u> testing charges.	Qwest is entitled to recover the cost of dispatching a technician, when necessary to isolate charges on the customer side of a pair gain system. Eschelon is trying to force Qwest to dispatch a technician at no charge.

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Circuit is on Pair Gain	<p>dispatch charges, apply will be governed by the provisions of this Agreement associated with such charges.</p>	<p>circuit) generally cannot be tested through. Therefore, Eschelon has proposed language that stands for the unremarkable proposition that when a circuit cannot be tested, because of the presence of Pair Gain or other similar equipment, Qwest will not charge for testing. Qwest has proposed that, rather than prohibiting Qwest from imposing “any” testing charges for Pair Gain circuits, this Section should prohibit only “optional” testing charges, suggesting that Qwest believes that there are some, albeit undisclosed and unexplained, charges that might apply. Contrary to Qwest’s position, if a circuit cannot be tested, then Qwest should not charge for testing the circuit. Qwest’s language leaves the door open for imposition of unwarranted charges. With respect to optional charges, it is unnecessary, because those charges are addressed in agreed-upon Section 12.4.1.6.1. Eschelon views the last sentence of its proposal as optional. If Qwest argues that “any” testing charges is too broad and, as unlikely as this seems, can be interpreted to include non-testing charges, the final</p>		

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DEFINITION OF TROUBLE REPORT		sentence is available to clarify that this is not the case.		
Issue 12-78	PROPOSAL #1	No definition of trouble report is needed. The term is used throughout the ICA without definition and the meaning is clear from its use. (See, e.g., 12.1.3.3 & 12.1.3.3.1.1.)	SAME FOR BOTH PROPOSALS 12.4.1.7 <u>For the purposes of Section 12.4.1.8, “Trouble Reports” means trouble reports received via MEDIACC, CEMR, or reported to one of Qwest’s call or repair centers, and managed and tracked within Qwest’s repair systems consisting of WFA (Work Force Administration) and MTAS (Maintenance Tracking Administration System), and successor repair systems, if any.</u>	Eschelon is trying to define “trouble report” in a manner that is inconsistent with industry. Qwest believes it should only include reports issued through one of Qwest’s repair interfaces. Eschelon believes it should include reports issued through one “of Qwest’s call or repair centers.” Call centers include ordering, as well as repair tickets. Qwest believes it is important to differentiate between repair and ordering. There is substantial law differentiating ordering and repair. Industry practice also differentiates between the two. The contract should make this distinction.
Section 12.4.1.7	12.4.1.7 <u>Intentionally Left Blank</u>	Qwest’s definition should also be deleted because of the problems it introduces. This dispute concerns whether “Trouble Report” should be defined to include all reports of trouble made by CLEC to Qwest pursuant to agreed upon language of the ICA (Eschelon’s position) or whether the definition should be limited to a subset of trouble reports that Qwest chooses to manage and track in certain repair systems (Qwest’s position). This definition is significant because it determines the circumstances under which the next section, Section 12.4.1.8 (relating to charges for “Repeat Troubles”), will apply. Troubles		Moreover, it also appears that Eschelon is trying to bill Qwest for every dispatch, even on installations. Qwest only has the ability to bill for repair troubles – with trouble defined as a repair
Trouble Report Definition (1 of 2 options)				

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		<p>may occur shortly after installations or at a later time. For reporting troubles shortly after new installations, Qwest requires CLECs to call its provisioning center if the trouble occurs within 24 hours of the installation. CLECs cannot contact repair. These troubles are tracked in Qwest's provisioning systems rather than Qwest's repair systems. Qwest's proposed definition, however, is limited to troubles tracked in certain repair systems (WFA and MTAS). As shown by the troubles reported to call centers in the first 24 hours after installation, Qwest currently does not track all trouble reports in WFA and MTAS. In addition, Qwest's language would allow Qwest in the future to simply choose to track troubles in another system to omit them from the definition and avoid associated charges. Qwest's definition, therefore, is too narrow and will lead to omission of valid trouble reports that should be counted in determining repeat troubles for purposes of Section 12.4.1.8. For example, if CLEC reports a trouble within 24 hours after installation</p>		<p>ticket (not an installation). Qwest believes Eschelon should only be able to bill Qwest when Qwest's incorrectly isolates trouble to E's network causing Eschelon to dispatch as the result.</p>

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Issue 12-78 Section 12.4.1.7 Trouble Report Definition (2 of 2 options)	<p>PROPOSAL #2</p> <p>12.4.1.7 For the purposes of Section 12.4.1.8, “Trouble Reports” means trouble-reports of <u>trouble</u> received via <u>electronic interface</u> (MEDIACC, CEMR, or <u>successor system, if any</u>) or <u>submitted</u> reported to one of Qwest’s call or repair centers,⁵ and managed and tracked within <u>Qwest’s repair systems consisting of WFA (Work Force Administration) and MFAS (Maintenance Tracking Administration System), and successor repair systems, if any.</u></p>	<p>and then submits another trouble report 4 days later, Qwest will not consider the second report as a “repeat” trouble because it is the first one tracked in an identified repair system.</p> <p>Eschelon has already spent significant resources proving the definition and attempting to correct those problems. <i>See</i> Option#2 below.</p>	<p>SAME FOR BOTH PROPOSALS:</p>	<p>Eschelon is trying to define “trouble report” in a manner that is inconsistent with industry. Qwest believes it should only include reports issued through one of Qwest’s repair interfaces. Eschelon believes it should include reports issued through one “of Qwest’s call or repair centers.” Call centers include ordering, as well as repair tickets. Qwest believes it is important to differentiate between repair and ordering. There is substantial law differentiating ordering and repair. Industry practice also differentiates between the two. The contract should make this distinction.</p>

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		<p>trouble reports (provisioning and repair). Eschelon first raised these issues in the Arizona 271 case and then in FCC 271 proceedings. As a result of Eschelon's efforts, Arizona conducted an audit in which the auditor confirmed that Qwest was not adequately capturing errors in its PID data due to this problem. (See, e.g., <i>CGE&Y Report</i>, pp. 39-40.) Qwest itself acknowledged that the affected PID did "not capture all reported troubles." (<i>MN ALJ 271 OSS Order</i>, ¶276) The CGE&Y auditor's findings showed that Qwest excluded trouble reports from results based on which internal department or system handled them, instead of whether a trouble affected the end user customer's service. This is exactly the problem with Qwest's proposed definition. It was inappropriate then, and it is inappropriate now.</p>		<p>Moreover, it also appears that Eschelon is trying to bill Qwest for every dispatch, even on installations. Qwest only has the ability to bill for repair troubles – with trouble defined as a repair ticket (not an installation). Qwest believes Eschelon should only be able to bill Qwest when Qwest's network isolates trouble to E's dispatch as the result.</p>
Issue 12-79 Intentionally Left Blank				
CHARGES FOR REPEATS				
Issue 12-80	12.4.1.8 Where Qwest has billed	There are two open issues: (1)	12.4.1.8 Where Qwest has billed	Eschelon is trying to define "trouble

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Sections 12.4.1.8; see (a) –(c) below to Issue 12-80 for related sections 12.4.1.8.1, 6.6.4 & 9.2.5.2 Trouble Isolation Charge- Repeats	CLEC for Maintenance of Services or Trouble Isolation (“TIC”) charges for a CLEC T trouble Rreport, Qwest will remove such Maintenance of Services or TIC charge from CLEC’s account and CLEC may bill Qwest for its repeat dispatch(es) <u>on Repeat</u> Troubles(s) to recover a Maintenance of Services or TIC charge or CLEC’s actual costs, whichever is less, if all of the following conditions are met:	capitalization of Trouble Report; and (2) whether CLEC may charge Qwest for repeat troubles or only those repeat troubles for which Eschelon dispatched a technician in both cases (rather than used remote testing the first time). The capitalization issue hinges on the resolution of definition of Trouble Report in Section 12.4.1.7. If it is defined, the term will be capitalized. The second issue is the same in Sections 12.4.1.8, 6.6.4 and 9.2.5.2.	CLEC for Maintenance of Services or Trouble Isolation (“TIC”) charges for a CLEC T trouble Rreport, Qwest will remove such Maintenance of Services or TIC charge from CLEC’s account and CLEC may bill Qwest for its <u>repeat</u> dispatch(es) on Repeat Trouble(s) to recover a Maintenance of Services or TIC charge or CLEC’s actual costs, whichever is less, if all of the following conditions are met:	report” in a manner that is inconsistent with industry. Qwest believes it should only include reports issued through one of Qwest’s repair interfaces. Eschelon believes it should include reports issued through one “of Qwest’s call or repair centers.” Call centers include ordering, as well as repair tickets. Qwest believes it is important to differentiate between repair and ordering. There is substantial law differentiating ordering and repair. Industry practice also differentiates between the two. The contract should make this distinction.
(a) the repeat T trouble Rreport(s) is the same trouble as the prior T trouble Rreport (“Repeat Trouble”), as is demonstrated by CLEC’s test results isolated between consecutive CLEC access test points; and e) CLEC’s demonstration of its technician dispatch on the prior Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC’s records that are generated and maintained in the ordinary course of CLEC’s business.	(a) the repeat T trouble Rreport(s) is the same trouble as the prior T trouble Rreport (“Repeat Trouble”), as is demonstrated by CLEC’s test results isolated between consecutive CLEC access test points; and e) CLEC’s demonstration of its technician dispatch on the prior Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC’s records that are generated and maintained in the ordinary course of CLEC’s business.	Regarding the second issue, Qwest seeks to limit when CLEC may bill Qwest to one charge for situations in which CLEC dispatches twice. Qwest charges CLEC when Qwest dispatches a technician and the trouble is found to be on the End User Customer’s side of the Demarcation Point. (See Sections 6.6.4 & 9.2.5.2). Similarly, Eschelon seeks to charge Qwest when Eschelon dispatches a technician and the trouble is found to be on Qwest’s side of the network. Eschelon is not seeking, however, to charge in all cases in which Qwest would charge	(a) the repeat T trouble Rreport(s) is the same trouble as the prior T trouble Rreport (“Repeat Trouble”), as is demonstrated by CLEC’s test results isolated between consecutive CLEC access test points; and e) CLEC’s demonstration of its technician dispatch on the <u>prior and</u> Repeat Trouble; provided that such demonstration is sufficient when documented by CLEC’s records that are generated and maintained in the ordinary course of CLEC’s business.	Moreover, it also appears that Eschelon is trying to bill Qwest for every dispatch, even on installations. Qwest only has the ability to bill for repair troubles – with trouble defined as a repair ticket (not an installation). Qwest believes Eschelon should only be able to bill Qwest when Qwest’s incorrectly isolates trouble to E’s network causing Eschelon to dispatch as the result.

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Issue 12-80 (a) Section 12.4.1.8.1 Trouble Isolation Charge-Remote Testing Capability	<p><u>12.4.1.8.1 Where CLEC does not have remote testing capability, subsection (e) of Section 12.4.1.8 requires a technician dispatch for both the prior and Repeat Trouble. Where CLEC has remote testing capability and provides the test results described in subsection (d) of Section 12.4.1.8, CLEC must demonstrate the technician dispatch pursuant to subsection (e) of Section 12.4.1.8 only for the Repeat Trouble.</u></p>	<p>Eschelon. Qwest’s charges are not limited to repeat troubles, but are charged in each applicable case. Under Eschelon’s proposal, in contrast, Eschelon will dispatch twice in some cases (e.g., when remote testing is not available), but even in those cases, Eschelon will only charge Qwest one time (for the second, repeat trouble). In all cases of trouble not in its network when Qwest dispatches twice, Qwest will charge Eschelon twice. Eschelon’s proposal is very reasonable.</p> <p>As described regarding Section 12.4.1.8, under Eschelon’s proposal, Eschelon will only charge for the repeat trouble when Eschelon dispatches for that trouble. With respect to the earlier trouble, Eschelon may either dispatch a technician or, if remote testing capability is available, may test remotely. Eschelon does not charge for the first trouble. (In some situations, Qwest charges CLEC for testing even in situations when all such testing is done remotely. See Section 12.4.1.6.) Section 12.4.1.8.1 addresses remote testing. Eschelon’s proposal is</p>	<p><u>12.4.1.8.1 Where CLEC has remote testing capability and provides Qwest with conclusive circuit specific test results that isolate trouble to Qwest’s network, demonstration of CLEC’s prior dispatch pursuant to subsection (e) of Section 12.4.1.8 will be waived.</u></p>	<p>Eschelon is trying to define “trouble report” in a manner that is inconsistent with industry. Qwest believes it should only include reports issued through one of Qwest’s repair interfaces. Eschelon believes it should include reports issued through one “of Qwest’s call or repair centers.” Call centers include ordering, as well as repair tickets. Qwest believes it is important to differentiate between repair and ordering. There is substantial law differentiating ordering and repair. Industry practice also differentiates between the two. The contract should make</p>

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		<p>tailored to the language of the ICA that deals with test results and dispatches to remain consistent throughout. In contrast, Qwest introduces a new test that is applicable only to situations in which CLEC must provide test results. Qwest’s proposal states that CLEC must provide Qwest with “conclusive circuit specific test results.” This new conclusiveness test is not present anywhere in the ICA with respect to results Qwest provides to CLEC. Because the test is different from the usual test (see Sections 12.4.1.1 and 12.4.1.8(d)), CLEC would need to know during the first trouble that a repeat trouble will occur, so the new test should be applied. Assuming the repeat trouble is not intentional, Qwest will not know in advance that a repeat trouble will occur either. Therefore, it is difficult to understand how Qwest’s proposal to apply a new and different test for the initial trouble in cases of repeat troubles will work.</p> <p>See Section 12.4.1.8 above.</p>		<p>this distinction.</p> <p>Moreover, it also appears that Eschelon is trying to bill Qwest for every dispatch, even on installations. Qwest only has the ability to bill for repair troubles – with trouble defined as a repair ticket (not an installation). Qwest believes Eschelon should only be able to bill Qwest when Qwest’s incorrectly isolates trouble to E’s network causing Eschelon to dispatch as the result.</p>
Issue 12-80 (b) Section 6.6.4	6.6.4 When CLEC requests that Qwest perform trouble isolation with CLEC, a trouble isolation		6.6.4 When CLEC requests that Qwest perform trouble isolation with CLEC, a trouble isolation	Eschelon is trying to define “trouble report” in a manner that is inconsistent with industry. Qwest

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Trouble Isolation Charge- Repeat Dispatch v. Repeat Trouble	<p>charge (TIC) charge will apply when Qwest dispatches a technician and the trouble is found to be on the End User Customer's side of the Demarcation Point. If the trouble is on the End User Customer's side of the Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the TIC charge. No charges shall apply if CLEC indicates trouble in Qwest's network and Qwest confirms that such trouble is in Qwest's network. In the event that Qwest reports no trouble found in its network, then Qwest will waive or refund to CLEC any charges assessed to CLEC for that same trouble ticket. If Qwest reported no trouble found in its network but, as a result of a repeat CLEC dispatch <u>trouble</u>, CLEC demonstrates that the trouble is in Qwest's network,</p>		<p>charge (TIC) charge will apply when Qwest dispatches a technician and the trouble is found to be on the End User Customer's side of the Demarcation Point. If the trouble is on the End User Customer's side of the Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges set forth in Exhibit A in addition to the TIC charge. No charges shall apply if CLEC indicates trouble in Qwest's network and Qwest confirms that such trouble is in Qwest's network. In the event that Qwest reports no trouble found in its network on a trouble ticket and it is subsequently determined that the reported trouble is in Qwest's network, then Qwest will waive or refund to CLEC any TIC charges assessed to CLEC for that same trouble ticket. If Qwest reported no trouble found in its network but, as a result of a repeat <u>CLEC dispatch</u> #e#t#e, CLEC demonstrates that the trouble is in Qwest's network, CLEC will charge Qwest a trouble isolation charge as described in Section 12.4.1.8.</p>	<p>believes it should only include reports issued through one of Qwest's repair interfaces. Eschelon believes it should include reports issued through one "of Qwest's call or repair centers." Call centers include ordering, as well as repair tickets. Qwest believes it is important to differentiate between repair and ordering. There is substantial law differentiating ordering and repair. Industry practice also differentiates between the two. The contract should make this distinction.</p> <p>Moreover, it also appears that Eschelon is trying to bill Qwest for every dispatch, even on installations. Qwest only has the ability to bill for repair troubles – with trouble defined as a repair ticket (not an installation). Qwest believes Eschelon should only be able to bill Qwest when Qwest's incorrectly isolates trouble to E's network causing Eschelon to dispatch as the result.</p>

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Issue 12-80 (c) Section 9.2.5.2 Trouble Isolation Charge- Repeat Dispatch v. Repeat Trouble	CLEC will charge Qwest a trouble isolation charge as described in Section 12.4.1.8. 9.2.5.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service Charge will apply when Qwest dispatches a technician and the trouble is found to be on the End User Customer's side of the Loop Demarcation Point. If the trouble is on the End User Customer's side of the Loop Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges and Maintenance of Service Charge, if any, as set forth in Exhibit A at 9.20. No charges shall apply if CLEC provides Qwest with test results indicating trouble in Qwest's network and Qwest confirms that Qwest's network. In the event that Qwest reports no trouble found in its network on a trouble ticket and it is subsequently determined that the reported trouble is in Qwest's network,	See Section 12.4.1.8 above.	9.2.5.2 When CLEC requests that Qwest perform trouble isolation with CLEC, a Maintenance of Service Charge will apply when Qwest dispatches a technician and the trouble is found to be on the End User Customer's side of the Loop Demarcation Point. If the trouble is on the End User Customer's side of the Loop Demarcation Point, and CLEC authorizes Qwest to repair the trouble on CLEC's behalf, Qwest will charge CLEC the appropriate Additional Labor Charges and Maintenance of Service Charge, if any, as set forth in Exhibit A at 9.20. No charges shall apply if CLEC provides Qwest with test results indicating trouble in Qwest's network and Qwest confirms that such trouble is in Qwest's network. In the event that Qwest reports no trouble found in its network on a trouble ticket and it is subsequently determined that the reported trouble is in Qwest's network, then Qwest will waive or refund to CLEC any	Eschelon is trying to define "trouble report" in a manner that is inconsistent with industry. Qwest believes it should only include reports issued through one of Qwest's repair interfaces. Eschelon believes it should include reports issued through one "of Qwest's call or repair centers." Call centers include ordering, as well as repair tickets. Qwest believes it is important to differentiate between repair and ordering. There is substantial law differentiating ordering and repair. Industry practice also differentiates between the two. The contract should make this distinction. Moreover, it also appears that Eschelon is trying to bill Qwest for every dispatch, even on installations. Qwest only has the ability to bill for repair troubles – with trouble defined as a repair ticket (not an installation). Qwest believes Eschelon should only be able to bill Qwest when Qwest's

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	<p>then Qwest will waive or refund to CLEC any Maintenance of Service Charges assessed to CLEC for that same trouble ticket. If Qwest reported no trouble found in its network but, as a result of a repeat CLEC <u>CLEC</u> demonstrates that the trouble is in Qwest's network, CLEC will charge Qwest a trouble isolation charge as described in Section 12.4.1.8.</p>		<p>Maintenance of Service Charges assessed to CLEC for that same trouble ticket. If Qwest reported no trouble found in its network but, as a result of a repeat <u>CLEC dispatch trouble</u>, CLEC demonstrates that the trouble is in Qwest's network, CLEC will charge Qwest a trouble isolation charge as described in Section 12.4.1.8.</p>	<p>incorrectly isolates trouble to E's network causing Eschelon to dispatch as the result.</p>
TEST PARAMETERS				
<p>Issue 12-81 Section 12.4.3.5 Test Parameters and Levels</p>	<p>12.4.3.5 Qwest Maintenance and Repair and routine test parameters and levels will be in compliance with Telcordia's General Requirement Standards for Network Elements, Operations, Administration, Maintenance and Reliability and/or the applicable ANSI standard, <u>and to the extent not inconsistent with the foregoing, Qwest's Technical Publications.</u></p>	<p>The issue presented is, in the event of a conflict between generally-accepted industry standards and Qwest's own testing parameters, which should prevail? Industry standards reflect the consensus of the industry as a whole, rather than the practices of any particular company and, unlike Qwest's technical publications, cannot be changed unilaterally by any one company. Furthermore, the scope of this provision is narrow: It concerns routine testing, not equipment or other items that may be unique to Qwest. In connection</p>	<p>12.4.3.5 Qwest Maintenance and Repair and routine test parameters and levels will be in compliance with <u>Qwest's Technical Publications, and, to the extent not inconsistent with the foregoing, Telcordia's General Requirement Standards for Network Elements, Operations, Administration, Maintenance and Reliability and/or the applicable ANSI standard, and, to the extent not inconsistent with the foregoing, Qwest's Technical Publications.</u></p>	<p>This issue concerns whether Qwest must comply with its technical publications or ANSI standards in performing repairs. Qwest follows its technical publications to the extent not inconsistent with ANSI standards. Qwest can only modify its technical publications in the CMP. Further, this issue involves processes that affect all CLECs, not just Eschelon. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that</p>

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		<p>with a function as basic as routine testing, it is reasonable for industry standards to take precedence over Qwest's own, company-specific practices. Finally, Eschelon's proposal would not prevent Qwest from using its own testing parameters, as reflected in its technical publications, so long as those parameters are consistent with industry standards. Qwest is not the only ILEC with which Eschelon does business. Eschelon needs to be able to work in multiple-carrier settings without changing testing parameters in each case.</p>		<p>processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>
Issue 12-82 Intentionally Left Blank				
DISPATCHES				
Issue 12-83 Section 12.4.3.6.1 Dispatch- related charges (1 of 2 options)	<p>PROPOSAL #1: 12.4.3.6.1 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards to resolve the repair condition. Qwest will dispatch Maintenance and Repair personnel when needed to repair</p>	<p>Eschelon proposes to delete the last sentence because it is unnecessary and creates ambiguity. It is unnecessary because other sections of the ICA describe when dispatch charges apply and do so in the context of the product or service being described. (See, e.g., 6.6.4 & 9.2.5.2.) For example, Sections</p>	<p>SAME FOR ALL PROPOSALS: 12.4.3.6.1 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards to resolve the repair condition. Qwest will dispatch Maintenance and Repair personnel when needed to repair the</p>	<p>Eschelon is trying to avoid paying Qwest for dispatching a technician when Eschelon asks Qwest to perform the dispatch. Qwest is entitled to cost recovery for repair work is performs for CLEC.</p>

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	<p>the condition. Initially, it will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest will make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble. Qwest will only charge for a dispatch if it dispatches trouble if it dispatches and the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC.</p>	<p>12.4.1.5 and 12.4.1.6 already discuss dispatches in the context of trouble isolation. Qwest's language in Section 12.4.3.6.1 is silent on trouble isolation. Therefore, it inadequately addresses an issue that is already addressed more completely elsewhere. Having different terms here will raise unnecessary questions about the relationship of this language to that in Sections 12.4.1.5, 12.4.1.6 and other language in the ICA, which is agreed upon. For example, does Section 12.4.3.6.1 expand when Qwest can charge for the dispatches described in Section 12.3.1.5? It should not do so. The other scenario that Qwest appears to be attempting to address here (though it is ambiguous) is already covered in Section 12.4.1.6. Such duplication and ambiguity is unnecessary. Section 12.4.3 deals with repair and is entitled "Activities to Resolve Trouble Reports or Perform Maintenance and Repair Work." It is not the best place in the ICA for this language. Deleting the ambiguous sentence will avoid later disputes, thereby promoting administrative</p>	<p>condition. Initially, it will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest will make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble. <u>Qwest will only charge for a dispatch if it dispatches and the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC.</u></p>	

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Issue 12-83 Section 12.4.3.6.1 Dispatch-related charges (2 of 2 options)	<p>PROPOSAL #2:</p> <p>12.4.3.6.1 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards to resolve the repair condition. Qwest will dispatch Maintenance and Repair personnel when needed to repair the condition. Initially, it will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest will make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble. Qwest will only charge for a dispatch if it dispatches and the trouble is found to be in the Qwest network. is not in Qwest's facilities</p>	<p>If the last sentence is not deleted, Eschelon proposes language that is consistent with other provisions in the ICA. (See, e.g., Sections 6.6.4.1 and 9.2.5.2.1). This is language that the business people use and understand in the industry. It is also more accurate as to when charges apply. See <i>id.</i></p>	<p>SAME FOR BOTH PROPOSALS:</p> <p>12.4.3.6.1 Upon the receipt of a trouble report from CLEC, Qwest will follow internal processes and industry standards to resolve the repair condition. Qwest will dispatch Maintenance and Repair personnel when needed to repair the condition. Initially, it will be Qwest's decision whether or not to send a technician out on a dispatch. Qwest will make this dispatch decision based on the best information available to it in the trouble resolution process. It is not always necessary to dispatch to resolve trouble. <u>Qwest will only charge for a dispatch if it dispatches and the trouble is not in Qwest's facilities, including Qwest's facilities leased by CLEC.</u></p>	<p>Eschelon is trying to avoid paying Qwest for dispatching a technician when Eschelon asks Qwest to perform the dispatch. Qwest is entitled to cost recovery for repair work is performs for CLEC.</p>
Issue 12-84 Intentionally Left Blank				
Issue 12-85 Intentionally Left Blank				

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Section 12.4.3.6.3 – See Issue 12-75 (Section 12.3.1) above				
TROUBLE REPORT CLOSURE				
Issue 12-86 Sections 12.4.4.1; 12.4.4.2; 12.4.4.3	<p><u>12.4.4.1</u> When Qwest closes a trouble report, Qwest will assign a code accurately identifying the reason or cause for service problems and the action taken (i.e., a “disposition code”).</p> <p><u>12.4.4.2</u> Qwest will notify CLEC of the disposition code upon request. For Maintenance and Repair trouble reports, the disposition code and any remarks will also be available through electronic interface (e.g., Customer Electronic Maintenance and Repair (CEMR)). CLEC closed trouble reports will be available to CLEC via the history function in the electronic interface (e.g., CEMR).</p> <p><u>12.4.4.3</u> Qwest will provide a web based tool (currently known</p>	<p>Eschelon has proposed a section on “Trouble Report Closure” in Section 12.4, which is “Maintenance and Repair.” This is the next logical step in the process that is described in Sections 12.4.1 (testing), 12.4.2 (trouble reports and status), and 12.4.3 (resolving trouble reports). These sections describe the terms and conditions for opening a trouble report through resolving it. Maintenance and Repair is incomplete without stating how the trouble ticket that is opened under Section 12.4.2 is then closed. Trouble report closure terms are important. First and foremost, Eschelon uses the disposition codes to update its end user customers on the status and closure of the trouble reported by that customer. In addition, Eschelon relies on the trouble report closure terms when</p>	<p><u>12.4.4.1</u> Procedures regarding trouble report closure are contained in Qwest’s PCAT, available on Qwest’s wholesale web site.</p>	<p>This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.</p>

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	<p><u>as Maintenance and Repair Invoice Tool) that allows CLEC to access electronic copies of Qwest repair invoice information. The repair invoice information will include the time and material information that Qwest provides to its retail End User Customers on their time and material invoices. Qwest, through this tool, will provide access to at least the telephone number or circuit identification, CLEC ticket number, Qwest ticket number, End User Customer Address, End User Customer Name, USOC, Quantity, Start Date, End Date, Disposition Code, and any related remarks (comments by repair technician). Such invoice information will be available to CLEC within two (2) business days of ticket closure for POTS services and ten (10) business days for non-POTS services. Invoice information will be retained and available to CLEC via this tool for at least twelve (12) months.</u></p>	<p>verifying the accuracy of Qwest's repair bills and providing its own customers with timely and accurate bills.</p> <p>Eschelon's proposal requires no change by Qwest, as Qwest already employs the terms outlined in this Section. This includes the web based tool described in Section 12.4.4.3. When Qwest provides repair services to its retail customers, Qwest provides a statement of time and materials and applicable charges to the customer at the time the work is completed. When Qwest provides repair services to its CLEC wholesale customers, however, Qwest previously did not do so. This placed CLECs at a disadvantage. CLECs cannot dispute a charge at the time the work is completed, when all of those involved are most likely to know the facts necessary to determine the accuracy of the charge, without a statement of time and materials. Eschelon pointed out in the Arizona 271 proceeding that it could not obtain an invoice of applicable repair charges at the time repair work was completed, but</p>		

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		<p>rather had to wait until Qwest sent the monthly wholesale invoices. This placed Eschelon at a disadvantage in that it was not able to dispute such charges on a real time basis. The Arizona staff agreed with Eschelon and said that “this is a very important issue” that “needs to be resolved. (AZ 271 Staff Report, ¶86) The staff indicated it did not need to take further steps, however, because Qwest indicated it was already working on a solution with CLECs. The Maintenance and Repair Invoice Tool described in Section 12.4.4.3 resulted largely from this effort. Given that Eschelon has already litigated this issue with Qwest and spent almost two years on helping to develop that solution, the solution (i.e., the web-based invoice tool) should be available with at least the current functionality for the term of the ICA, unless amended. Qwest will not commit to this. If Qwest decreases that functionality or eliminates the tool, however, Eschelon will be back to square one, where it was before the 271 proceedings. Qwest should not be</p>		

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		<p>allowed to back-slide in this manner. The time periods in Section 12.4.4.3 are already longer than those for Qwest retail customers. This language is needed in the ICA to prevent Qwest from increasing these time periods to place Eschelon at an even greater disadvantage as compared to Qwest retail customers.</p> <p>Qwest proposes to replace all of Eschelon’s ICA proposal with a reference to its web-based PCAT. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i>, ¶32)</p>		
<p>CONTROLLED PRODUCTION</p> <p>Issue 12-87</p> <p>Section 12.6.9.4</p> <p>Controlled Production</p>	<p>12.6.9.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 (or mutually agreed upon substitute) standards definitions and complies with all Qwest business rules. Controlled production</p>	<p>Eschelon’s proposal requires no change by Qwest, as Qwest does this today. See http://www.qwest.com/wholesale/downloads/2006/060425/IMA_EDI_Implementation_Guidelines_19_2_042406.pdf (pages 47 and 50). It is necessary to include Eschelon’s proposed language in the ICA because, without it, the broader language in the remainder of the</p>	<p>12.6.9.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 (or mutually agreed upon substitute) standards definitions and complies with all Qwest business rules. Controlled production consists of the</p>	<p>“Controlled production” is a testing mechanism to ensure that CLEC systems will work properly with Qwest systems with no negative impact on Qwest or other CLECs.</p> <p>Eschelon is trying to have veto power over when it will participate in controlled production. This is inappropriate. Qwest needs the ability to determine when controlled</p>

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RATES FOR SERVICES Issue 22-88 Section 22.1.1 Rates in Exhibit A	consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned. <u>Controlled production is not required for recertification, unless the Parties agree otherwise. Recertification does not include new implementations such as new products and/or activity types.</u>	paragraph may suggest that controlled production is required for recertification, when it is not. The first sentence, for example, broadly states: “Qwest and CLEC will perform controlled production.” That is not always the case, and the ICA should be clear on this point when outlining the terms of controlled production.	controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account and order data. All certification orders are considered to be live orders and will be provisioned. Controlled production is not required for recertification, unless the Parties agree otherwise. Recertification does not include new implementations such as new products and/or activity types.	testing is required to ensure that no one using Qwest’s OSS is negatively impacted.
	22.1.1 The rates in Exhibit A apply to the services provided by Qwest to CLEC pursuant to this Agreement.	Eschelon proposes striking the phrase “by Qwest to CLEC” because Exhibit A also includes rates for services provided by CLEC to Eschelon. <i>See, e.g., Sections 7.3.7.1 and 7.3.7.2</i> (charges for local, ISP-bound and intraLATA toll transit traffic);	22.1.1 The rates in Exhibit A apply to the services <u>by Qwest to CLEC</u> provided pursuant to this Agreement.	In the event the CLEC wishes to charge Qwest for services, those charges should be specifically identified.

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Issue 22-88 (a) Exhibit A Section 7.11 Rates on Exhibit A	Qwest's Washington- Access Service Tariff	9.2.5.2 and 9.2.5.2.1 (trouble isolation); and 10.2.5.5.4 and 10.2.5.5.5 (Qwest Requested LNP Managed Cuts). Qwest's language, which limits the scope of Exhibit A to services provide by Qwest, is inaccurate and unnecessary. The parties have agreed on the mutual exchange of traffic, including intraLATA toll traffic. See Section 7.2.1.2.2. At line 7.11 of Exhibit A, Qwest has proposed the inclusion of a reference to Qwest's Washington Access Service Tariff as establishing the rate for intraLATA toll traffic. However, because the parties will mutually exchange this traffic, they should also mutually compensate one another. Accordingly, Eschelon proposes deleting the word "Qwest's" from line 7.11 to clarify that, when Eschelon is carrying Qwest's intraLATA toll traffic, Eschelon's Washington rates will apply.	Qwest's Washington Access Service Tariff	In order to ensure uniformity of CLEC treatment and to make implementation of cost docket decisions efficient, Qwest urges this commission to make Exhibit A applicable to Qwest rates and not include CLEC rates. Eschelon's proposal is unnecessary and creates administrative burdens for Qwest.
Section 22.4.1.1 – See Issue 22-90 (Section 22.6) below				

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Issue 88 (b) Section 22.4.1.3 Cost proceeding	<u>22.4.1.3 Nothing in this Agreement shall waive any right of either Party to request a cost proceeding at the Commission to establish a Commission-approved rate to replace an Interim Rate.</u>	This issue is linked to the parties' dispute regarding Eschelon's proposed Section 22.6, which sets forth terms under which either party may seek Commission approval for an interim rate. The opportunity to obtain Commission-approved rates is necessary to assure that rates are fair and reasonable.	<u>22.4.1.3 Intentionally Left Blank</u>	This provision is unnecessary.
Issue 22-89 Intentionally Left Blank UNAPPROVED RATES				
Issue 22-90 Sections 22.6 and subparts; See subparts (a) & (b) below for related issues in 22.6.1.1 & 22.4.1.1 Unapproved Rates	22.6.1 If Qwest offers a Section 251 product or service for which a price/rate has not been approved by the Commission in a TELRIC Cost Docket ("Unapproved rate"), Qwest shall develop a TELRIC cost-based rate and submit that rate and related cost support to the Commission for review within sixty (60) Days of the later of (1) the Effective Date of this Agreement, or (2) Qwest offering the rate to CLEC, unless the Parties agree in writing upon a negotiated rate. <u>Qwest will provide notice to CLEC of such filing and the proposed rate and, upon request, will provide a copy of the related filing and the proposed rate and,</u>	Closed language in this Section provides that Qwest must submit cost support with its proposed rates when filing with the Commission. Closed language also provides that the Parties may agree upon a rate. To negotiate a rate with Qwest and to know whether it objects to a rate filed with the Commission, a CLEC needs access to the cost support to assist in making these determinations. Eschelon's proposal clarifies that Qwest will provide notice to CLEC of its filing and proposed rate and, upon request, will provide a copy of the related cost support to CLEC.	22.6.1 If Qwest offers a Section 251 product or service for which a price/rate has not been approved by the Commission in a TELRIC Cost Docket ("Unapproved rate"), Qwest shall develop a TELRIC cost-based rate and submit that rate and related cost support to the Commission for review within sixty (60) Days of the later of (1) the Effective Date of this Agreement, or (2) Qwest offering the rate to CLEC, unless the Parties agree in writing upon a negotiated rate. Qwest will provide notice to CLEC of such filing and the proposed rate and, upon request, will provide a copy of the related cost support to CLEC. If the Parties	This provision is unnecessary. CLECs do not need a separate notice to know of a proposed rate when it already would be included in an interconnection agreement. Furthermore, Commission cost docket procedures will ensure that the CLEC has adequate opportunity to challenge any proposed rate.

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Issue 24-91 Intentionally Left Blank	upon request, will provide a copy of the related cost support to CLEC. If the Parties do not agree upon a negotiated rate and the Commission does not establish an Interim Rate, CLEC may order, and Qwest shall provision, such product or service using such Qwest proposed rate (including during the 60) Day period) shall be an Interim Rate under this Agreement.		do not agree upon a negotiated rate and the Commission does not establish an Interim Rate, CLEC may order, and Qwest shall provision, such product or service using such Qwest proposed rate until the Commission orders a rate. In such cases, the Qwest proposed rate (including during the aforementioned sixty (60) Day period) shall be an Interim Rate under this Agreement.	
INTER- CONNECTION ENTRANCE FACILITY				
Issue 24- 92 Section 24.1.2.2 Interconnection Entrance Facility	24.1.2.2 When Qwest provides an Interconnection Entrance Facility, Interconnection Entrance Facilities may not be used for Interconnection with Unbundled Network Elements. A CLEC may not use remaining capability in an existing Mid-Span Meet POI to gain access to UNEs. Entrance Facilities and Mid-Span Meet	The issues that Qwest attempts to address in its proposed Section 24.1.2.2 are more completely and more appropriately dealt with in Sections 7.1.2.1 and 7.1.2.5 of the ICA, which contain language that has been agreed to between the parties. Those sections in Section 7 fully address interconnection through Entrance Facilities and	24.1.2.2 When Qwest provides an Interconnection Entrance Facility, Interconnection Entrance Facilities may not be used for Interconnection with Unbundled Network Elements. A CLEC may not use remaining capability in an existing Mid-Span Meet POI to gain access to UNEs. Entrance Facilities and Mid-Span Meet POI are not available for	In the TRO, the FCC established that the dedicated transport ILECs are required to unbundle is limited to transmission facilities within an ILEC's network that run between ILEC switches. TRO, ¶ 366. Consistent with this ruling, any facilities that Qwest may provide for local interconnection cannot be used to obtain access to UNEs or

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	<p>POI are not available for Commingling. See Sections 7.1.2.1 and 7.1.2.5</p>	<p>Mid-Span Meets. Thus, Section 24.1.2.2 is, at best, redundant and, at worst, creates potential ambiguities that could give rise to future disputes. This is an interconnection issue that, as a matter of overall structure of the contract, is more appropriately dealt with in Section 7, which contains terms relating to interconnection, than in Section 24, which contains terms relating to commingling. Including these terms in Section 7 is also more consistent with the <i>TRO</i>, where the impairment analysis applicable to entrance facilities and interconnection facilities is discussed by the FCC in the context of access to UNEs, not in the portion of the order that addresses commingling. See <i>TRO</i> at ¶ 365. All of the issues and concerns that the FCC deals with in the <i>TRO</i> are addressed in the agreed upon language in Sections 7.1.2.1 and 7.1.2.5.</p>	<p>Commingling. See Sections 7.1.2.1 and 7.1.2.5</p>	<p>for commingling. Without a restriction on the use of interconnection entrance facilities and mid-span meets, Eschelon could circumvent the FCC's ruling establishing that the dedicated transport ILECs are required to unbundle is limited to transmission facilities within an ILEC's network that run between ILEC switches.</p>
<p>Section 24.3.2 – See Issue 9-58(e) (Section 9.23.4.4.3.1) above</p>				

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Section 24.4 and subparts – See Issue 9-61 (Section 9.23.9) above Exhibit A		For Eschelon’s position statement regarding placement of this language, see Issue 9-61 (Section 9.23.9) above.		Qwest believes 9.23.9 and its subparts should be moved to this section 24.4.
Section 7.1.1 See Issue 88(a)				
UN- APPROVED RATES				
Issue A-93	Reference REC NRC	8.1.1.2 Augment Quote Preparation Fee	Reference REC NRC	8.1.1.2 Augment Quote Preparation Fee
Exhibit A	8.1.1.2		\$1386.47	8.8.1 ICDF Quote Preparation Fee
Qwest vs Eschelon	8.8.1		\$1386.47	Qwest has agreed to a filing process for unapproved TELRIC Rates (See Section 26.1). The merits of interim treatment of unapproved rates should be treated as a part of that process and not as a part of this arbitration.
proposals for rates not approved in a cost docket		Eschelon has accepted the majority of Qwest’s proposed rates on an interim basis. The cost study provided by Qwest is not consistent with prior Commission decisions.		
		Eschelon proposes a new interim rate of \$820.21. Arizona and Colorado have an approved rate for this element which averages \$700.25. Eschelon’s proposed rate is much closer to this average.		

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		<p>This rate is one of the minority of rates for which Eschelon proposes a new interim rate. The following sections of Exhibit A represent the majority of Qwest proposed Exhibit A rates, which Eschelon has accepted on an interim basis:</p> <p>8.1.16 - Joint Inventory Visit Fee, per Visit (NRC)</p> <p>8.1.20.2 - Splitter Shelf Charge (RC & NRC)</p> <p>8.1.20.4.5 - Splitter on the MDF - Data to 410 Block (RC & NRC)</p> <p>8.8.2 - DS0 Circuit, per 200 Legs (RC & NRC)</p> <p>8.8.3 - DS1 Circuit, per Two Legs (RC)</p> <p>8.8.4 - DS3 Circuit, per Two Legs (RC)</p> <p>8.8.5 - Fiber Circuit, per Two Legs (RC & NRC)</p> <p>8.13.1.1.1 - Quote Preparation Fee (NRC)</p> <p>8.13.1.1.2 - Power Reduction Charge (NRC)</p> <p>8.13.1.2.1 - Quote Preparation Fee (NRC)</p> <p>8.13.1.2.2 - Power Reduction Charge (NRC)</p> <p>8.13.2.1 - Power Restored to Qwest Inventory (NRC)</p> <p>8.13.2.2 - Power Maintenance</p>		

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		<p>Charge (RC)</p> <p>8.15.2.3 - Site Survey Fee (NRC)</p> <p>8.17.1 - Set-Up Fee (price contains a one hour set-up fee) (NRC)</p> <p>8.17.2 - Test Time Fee, per Half Hour (NRC)</p> <p>9.3.3.1.1 - Installation (NRC)</p> <p>9.3.3.1.2 - Disconnection (NRC)</p> <p>9.3.3.2.1 - Installation (NRC)</p> <p>9.3.3.2.2 - Disconnection (NRC)</p> <p>9.3.5.1 - Subloop MTE - POI Site Inventory, per Request (NRC)</p> <p>9.3.7.2 - FCP Set-up, per Request (NRC)</p> <p>9.3.7.3 - FCP Splicing, per 25 Pairs (NRC)</p> <p>9.3.7.4 - FCP Reclassification Charge (NRC)</p> <p>9.19.1.1 - Records Quote Preparation Fee (NRC)</p> <p>9.19.1.2 - Construction Quote Preparation Fee (NRC)</p> <p>10.1.2.1 - Standard Managed Cuts, per Person, per Half Hour (NRC)</p> <p>10.1.2.2 - Overtime Managed Cuts, per Person, per Half Hour (NRC)</p> <p>10.1.2.3 - Premium Managed Cuts, per Person, per Half Hour (NRC)</p> <p>Qwest Proposes as Market Based Rates and Eschelon willing to accept as interim rates</p>		

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Issue A-93 (a)	Reference REC NRC	8.1.15 - Collocation Space Option Fee (RC) 10.7.13 - Access Agreement Consideration (NRC).	Reference REC NRC	
Exhibit A Qwest vs Eschelon proposals for rates not approved in a cost docket	8.8.4 <u>\$329.00</u>	8.8.4 ICDF DS3 Circuit, per two legs Eschelon has accepted the majority of Qwest's proposed rates on an interim basis. This rate is one of the minority of rates which Eschelon proposes a new interim rate. (See Issue A-2, Section 8.1.1.2.) Qwest did not provide a cost study for this rate element. Eschelon is proposing to use the Special Access Tariff as an interim rate.	8.8.4 <u>\$1199.14</u>	8.8.4 ICDF DS3 Circuit, per two legs Qwest has agreed to a filing process for unapproved TELRIC Rates (See Section 26.1). The merits of interim treatment of unapproved rates should be treated as a part of that process and not as a part of this arbitration.
Issue A-93 (b)	Reference REC NRC		Reference REC NRC	
Exhibit A Qwest vs Eschelon proposals for rates not approved in a cost docket	8.15.2.1 <u>\$529.00</u> 8.15.2.2 <u>\$831.50</u>	8.15.2.1 Special Site Assessment Fee 8.15.2.2 Network Systems Assessment Fee	8.15.2.1 <u>\$1058.00</u> 8.15.2.2 <u>\$1663.00</u>	8.15.2.1 Special Site Assessment Fee 8.15.2.2 Network Systems Assessment Fee

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	<p>10.7.10 <u>\$60.08</u></p> <p>10.7.12.1 <u>\$0.2906</u></p> <p>12.3 <u>\$0.000464</u></p>	<p>10.7.10 Transfer of Responsibility</p> <p>10.7.12.1 Microduct Occupancy Fee, per Microduct, per Foot ,per Year</p> <p>12.3 Daily Usage Record File, per Record</p> <p>Eschelon has accepted the majority of Qwest's proposed rates on an interim basis. This rate is one of the minority of rates which Eschelon proposes a new interim rate. (See Issue A-2, Section 8.1.1.2.) Qwest did not provide cost study support for this rate element. Eschelon proposes alternative interim rates.</p>	<p>10.7.10 <u>\$120.15</u></p> <p>10.7.12.1 <u>\$0.4310</u></p> <p>12.3 <u>\$0.00110</u></p>	<p>10.7.10 Transfer of Responsibility</p> <p>10.7.12.1 Microduct Occupancy Fee, per Microduct, per Foot ,per Year</p> <p>12.3 Daily Usage Record File, per Record</p> <p>Qwest has agreed to a filing process for unapproved TELRIC Rates (See Section 26.1. The merits of interim treatment of unapproved rates should be treated as a part of that process and not as a part of this arbitration.</p>
<p>Issue A-93 (c)</p> <p>Exhibit A</p> <p>Qwest vs Eschelon proposals for rates not approved in a cost docket</p>	<p>Reference REC NRC</p> <p>9.2.8 <u>\$26.94</u></p> <p>9.23.6.5 <u>\$26.94</u></p> <p>9.23.7.6 <u>\$26.94</u></p>	<p>9.2.8 Private Line/Special Access to UNE loop Conversion</p> <p>9.23.6.5 Private Line/Special Access to LMC Conversion</p> <p>9.23.7.6 Private Line/Special Access to EEL Conversion</p>	<p>Reference REC NRC</p> <p>9.2.8 <u>\$36.86</u></p> <p>9.23.6.5 <u>\$36.86</u></p> <p>9.23.7.6 <u>\$36.86</u></p>	<p>9.2.8 Private Line/Special Access to UNE loop Conversion</p> <p>9.23.6.5 Private Line/Special Access to LMC Conversion</p> <p>9.23.7.6 Private Line/Special Access to EEL Conversion</p>

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		<p>Eschelon has accepted the majority of Qwest's proposed rates on an interim basis. This rate is one of the minority of rates which Eschelon proposes a new interim rate. (See Issue A-2, Section 8.1.1.2.) Eschelon proposes alternative interim rates. Arizona and Utah have approved rates for this element. The average of the approved rates in those two states is \$27.45, which is consistent with Eschelon's proposed interim rate.</p>		<p>Qwest has agreed to a filing process for unapproved TELRIC Rates (See Section 26.1). The merits of interim treatment of unapproved rates should be treated as a part of that process and not as a part of this arbitration.</p>
<p>Issue A-93 (d) Exhibit A Qwest vs Eschelon proposals for rates not approved in a cost docket</p>	<p>Reference REC NRC g) 9.6.12 \$84.49 i) 9.23.6.8.1 \$82.88 j) 9.23.6.8.2 \$110.02 l) 9.23.7.7.1 \$82.88 m) 9.23.7.7..2 \$110.02</p>	<p>Private Line/Special Access to UDIT Conversion LMC Rearrangement- DSO LMC Rearrangement- High Cap EEL Rearrangement- DSO EEL Rearrangement- High Cap Eschelon has accepted the majority of Qwest's proposed rates on an interim basis. This rate is one of the minority of rates which</p>	<p>Reference REC NRC g) 9.6.12 \$126.01 i) 9.23.6.8.1 \$135.13 j) 9.23.6.8.2 \$153.38 l) 9.23.7.7.1 \$135.13 m) 9.23.7.7.2 \$153.38</p>	<p>Private Line/Special Access to UDIT Conversion LMC Rearrangement- DSO LMC Rearrangement- High Cap EEL Rearrangement- DSO EEL Rearrangement- High Cap Qwest has agreed to a filing process for unapproved TELRIC Rates (See Section 26.1). The merits of interim treatment of unapproved rates</p>

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		Eschelon proposes a new interim rate. (See Issue A-2, Section 8.1.1.2.) The cost study provided by Qwest is not consistent with prior Commission decisions.		should be treated as a part of that process and not as a part of this arbitration.
ADDITIONAL EXHIBIT A ISSUES				
Issue A-94 Exhibit A Section 8.6.1.3.1.1 Remote Collocation -48 Volt DC power	8.6.1.3.1 Power Usage (uses rate from 8.1.4.1.2.1) 8.6.1.3.1.1 Less than or equal to 60 amps, per Ampere-Ordered .	This rate should apply up to and including 60 amps. If there is one provision for less than 60 amps and another for greater than 60 amps, neither addresses 60 amps.	8.6.1.3.1 Power Usage (uses rate from 8.1.4.1.2.1) 8.6.1.3.1.1 Less than 60 amps, per Ampere Ordered	Qwest's rate element description accurately reflects the way it applies the rate.
Issue A-94(a) Exhibit A Section 8.6.1.3.1.2 Remote Collocation -48 Volt DC power	8.6.1.3.1.2 Greater than 60 Amps \$3.1.3 B	The Commission approved these rates. They are currently available to other carriers under their ICAs and should be available to Eschelon as well.	8.6.1.3.1.2 Greater than 60 Amps \$3.1.3 B	Qwest is unaware of application where 60 amps is needed in a remote collocation site.
Issue A-95	<u>Note: Please see Exhibit A section 8.13.1 through 8.13.2.1</u>	The Commission has not approved rates for these elements. Therefore,	<u>Note: Please see Exhibit A section 8.13.1 through 8.13.2.1 for the</u>	Qwest has agreed to a filing process for unapproved TELRIC Rates (See

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Exhibit A 8.13 & subparts DC Power Reduction	for the disputed rates. This is to exhaustive a change to reflect in this matrix.	<p>an interim rate is needed. Eschelon has proposed Qwest's own rates from the Qwest ICA negotiations template, which Qwest has offered to all CLECs for a period of time. When Qwest proposes a rate in a cost case and that rate is actively challenged, the rate often goes down from Qwest's initial request to the rate the Commission ultimately approves. Although Eschelon believes that the rates Qwest proposes in its negotiations template are similarly high, Eschelon offers to pay the rates from Qwest's negotiations template, on an interim basis. Qwest has refused to accept its own negotiations template rates, however. For the first time, on August 1, 2006, Qwest provided Eschelon with its current proposal for new rates that are even higher than those in Qwest's negotiations template. Eschelon objects to these unapproved significant rate increases. Such unapproved rate increases to unapproved rates should not be implemented when Qwest's own negotiations template rates, which Qwest has made available to other CLECs, are</p>	disputed rates. This is to exhaustive a change to reflect in this matrix.	Section 26.1. The merits of interim treatment of unapproved rates should be treated as a part of that process and not as a part of this arbitration.

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Exhibit A Sections 9.3.3.3.1, 9.3.3.3.2, 9.3.3.4.1, 9.3.3.3.2, see Issue 50 (d) & (e)		available on an interim basis.		
Exhibit A, Sections 9.20.13.1 9.20.13.1.1 9.20.13.1.2 9.20.13.2				
See Issue 4-5 (d) Exhibit A, Section 9.20.14				
See Issue 12-67 (g) Section 9.20.16 Exhibit A				
See 9.20.5 & 9.20.12 above Exhibit A, Section 9.23.6 and subparts – See Section				

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9.23.9 [24.4.] of ICA (Issue 9-61)				
Issue A-96 Exhibit A Sections 9.23.7.8.1, 9.23.7.8.2, 9.23.7.8.3 – EEL Transport, Nonrecurring	<u>No charge</u>	Non-recurring charges relating to the installation and disconnection of EELs are reflected in Exhibit A in connection with loop portion of the EEL. To clarify and confirm that there are no additional charges associated with the installation and disconnection of the transport portion of the EEL, Eschelon proposes to add the words “No Charge” in the NRC column for these elements. Similar terminology is used elsewhere in Exhibit A when there is no charge. See, e.g., Section 7.9.4.1 of Exhibit A.	<u>No charge</u>	Qwest sees no purpose in adding “No charge”. When recurring rates are listed in the Exhibit A without listing nonrecurring rates it can be assumed that there will be no non-recurring charge for that UNE. This is a convention used throughout the Exhibit. Adding “no charge” here will add needless confusion.
EXHIBIT C				
Exhibit C, 2.0 UCCRE – See Section 9.9 of ICA above				
Exhibit C, 2.0 Rearrangement – See Section 1.7.2 of ICA above				
Exhibit C,6.0– See Section				

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9.23.9 [24.4] of ICA above				
Exhibit C, 9.0 (LIS Trunking) – See Section 1.7.2 of ICA above				
EXHIBIT I				
Exhibit I – See Section 1.7.2 of ICA above				
EXHIBITS N & O				
Exhibits N & O – See Section 1.7.2 of ICA above				
POTENTIALLY STAYED ISSUES 9-37 through 9-42				
Issue 9-37 Sections 9.1.13.3 See (a) & (b) below for related issues in 9.1.14.4 & 9.1.15.1 Wire Center	<u>9.1.13.3 If the Commission conducts a proceeding(s) to consider which Qwest Wire Centers satisfy the Wire Center thresholds described in Sections 9.2.1.3 and 9.2.1.4 or the Tier Wire Center designations described in Sections 9.6.2 and 9.7.1.2 and, as a result, identifies and approves non-impaired Wire</u>	<i>Note: Eschelon does not believe that this issue is currently an issue in the Washington wire center proceeding. Eschelon is willing to discuss deferment of this issue until later in this case, however, if the Commission will address it in the wire center proceeding, provided that the issue is either resolved before the statutory nine-month deadline or that deadline is</i>	<u>9.1.13.3 As part of the reasonably diligent inquiry described in Section 9.1.13, CLEC shall ensure that a requested unbundled DS1 or DS3 Loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 9.2.1.3.</u>	[Move this statement to the "potentially stayed issues" at the end of the matrix.] Paragraph 234 of the FCC's <i>Triennial Review Remand Order ("TRRO")</i> requires that before submitting an order for DS1, DS3 or dark fiber transport or for a high-capacity loop, a CLEC must make a reasonably diligent inquiry to determine if it is entitled to unbundled access to a transport

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List	<p><u>Centers satisfying such criteria, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit in such Wire Centers when the Wire Center is identified on the applicable Commission-approved list. CLEC will transition such UNEs impacted by the Commission-approved list as described in Section 9.1.14.</u></p>	<p><u>extended.</u></p> <p>In the <i>TRRO</i>, the FCC determined impairment for unbundled access to high capacity loops and transport on a wire center basis, using the number of business lines and fiber-based collocators as the criteria for determining whether competition would be impaired without access to high capacity loops and transport in a particular wire center. <i>TRRO</i> ¶ 146, 155, 166, 174, 178, 182, and 195. Pursuant to the rules set out in the <i>TRRO</i>, the CLEC must “undertake a reasonably diligent inquiry” into whether high capacity loops and transport meet these criteria and then must self-certify to the ILEC that the CLEC is entitled to unbundled access. <i>TRRO</i> ¶ 234. Based upon such self-certification by the CLEC, the ILEC must “immediately process” the UNE order and then may subsequently bring a dispute before the state commission or other authority if it contests the CLEC’s right to unbundled access. <i>Id.</i> Eschelon and a number of CLECs have expressed concern regarding the lack of information to verify the</p>	<p><u>9.2.1.3.2, 9.2.1.4 and 9.2.1.4.2 that a requested unbundled DS1, DS3 or Dark Fiber transport circuit is not between Wire Centers identified on the list of Wire Centers that meet the applicable non-impairment threshold specified in Section 9.6.2.2.1, 9.6.2.2.2, 9.6.2.3.1, 9.6.2.3.2, and 9.7.1.1.1.</u></p>	<p>circuit or a loop in a particular wire center. Qwest’s lists of non-impaired wire centers, which are developed using the data specified by the FCC in the <i>TRRO</i>, are based on objective and readily obtainable facts relating to whether there is impairment in a wire center. As part of its mandatory “reasonably diligent inquiry,” Eschelon should be required to rely upon these lists. Under its proposal, Eschelon would not be required to consult these lists and would improperly limit its “reasonably diligent inquiry” to whether a wire center is on a Commission-approved list of non-impaired wire centers. This could result in Eschelon submitting orders for transport and loop UNEs despite the existence of facts demonstrating an absence of impairment in a wire center.</p>

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		<p>accuracy of Qwest's identification of "unimpaired" wire centers and, at the request of those CLECs, the Commission has now commenced an investigation of this issue. See <i>In the Matter of the investigation concerning the status of competition and impact of the FCC's Triennial Review Remand Order on the competitive telecommunications environment in Washington State, U-0530251 (WA Wire Centers)</i>. To the extent that proceeding does not fully resolve all issues regarding the application of the FCC's impairment analysis, those issues will need to be arbitrated in this proceeding. Eschelon has proposed contract language to give effect to the FCC's wire center impairment rules. Eschelon opposes Qwest's language, which would violate Eschelon's obligation to conduct a reasonable diligent inquiry by requiring Eschelon to rely upon the unverified assertions of its major vendor/competitor instead of conducting the type of inquiry being conducted in the wire center proceeding. Qwest's language raises the very same concerns that led the Commission to commence</p>		

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Issue 9-37 (a) Section 9.1.14.4 Wire Center List - Additional Non-Impaired Wire Centers (1 of 2 issues in Section 9.1.14.4.1 For 2 nd issue, see Section 9.1.14.4 below)	<p>9.1.14.4 – Disputed portion (issue 1):</p> <p>Qwest-Commission adds the Wire Center(s) to the Wire Center list <u>described in Section 9.1.13.3.</u></p> <p>9.1.14.4 – Entire provision:</p> <p>9.1.14.4 Additional Non-Impaired Wire Centers. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in this Agreement and Qwest-Commission adds the Wire Center(s) to the Wire Center list <u>described in Section 9.1.13.3.</u></p> <p>Qwest shall provide notice to CLEC. Thirty (30) Days after notification from Qwest, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for</p>	<p>its wire center impairment investigation. CLECs should not have to “take on faith” Qwest’s identification of unimpaired wire centers.</p> <p>See discussion of Section 9.1.13.3.</p>	<p>9.1.14.4 – Disputed portion (issue 1):</p> <p>Qwest-Commission adds the Wire Center(s) to the Wire Center list, <u>described in Section 9.1.13.3;</u></p> <p>9.1.14.4 – Entire provision:</p> <p>9.1.14.4 Additional Non-Impaired Wire Centers. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in this Agreement and Qwest-Commission adds the Wire Center(s) to the Wire Center list, <u>described in Section 9.1.13.3;</u></p> <p>Qwest shall provide notice to CLEC. Thirty (30) Days after notification from Qwest, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for</p>	<p>[Move this statement to the "potentially stayed issues" at the end of the matrix.] Qwest will update its list of non-impaired wire centers to the extent that additional wire centers meet the FCC's TRRO criteria in the future. The FCC has emphasized that the rules in the TRRO are self-effectuating, and that “our unbundling rules are designed to remove unbundling obligations over time.” TRRO, at ¶ 3. Thus, going forward, if updates to the list of non-impaired wire centers are required, Qwest will update the list of non-impaired wire centers using the same counting methodologies endorsed by the FCC.</p> <p>To update lists of wire centers, Qwest proposes a single, unified process that includes Commission involvement and approval. The proceeding should be narrowly focused and should not be prolonged or used as a means for delay. Qwest would file the</p>

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	<p>loops) or between (for transport) those additional Wire Centers. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have <u>twelve (12) months to transition DS1 and DS3 UNEs and one hundred eighty (180) Days</u> to transition to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change.</p>		<p>transport) those additional Wire Centers. <u>CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service.</u> CLEC will have <u>twelve (12) months to transition DS1 and DS3 UNEs and one hundred eighty (180) Days</u> to transition and Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change.</p>	<p>updates to the wire center list with the Commission and provide notice to all CLECs through the Qwest/CLEC Change Management Process notification process that an additional wire center is non-impaired. Parties would then have 30 days to raise objections to the Commission, and if no objections are raised, the updated wire center list would be deemed approved through operation of law.</p>
<p>Issue 9-37 (b) Section 9.1.15.1 Wire Center List - Change in UNE status</p>	<p>9.1.15.1 If Qwest believes or asserts that a particular UNE's availability status has changed, Qwest shall notify CLEC of Qwest's claim and the basis for the claim and upon request, provide sufficient data, <u>including the data described in Section 9.1.13.4.1.2</u> to enable CLEC to identify and agree upon any impacted facility(ies). <u>If the Commission has not conducted a proceeding(s) to consider Qwest Wire Centers as described in Section 9.1.13.3 or otherwise approved a list of non-impaired</u></p>	<p>See discussion of Section 9.1.13.3.</p>	<p>9.1.15.1 If Qwest believes or asserts that a particular UNE's availability status has changed, Qwest shall notify CLEC of Qwest's claim and the basis for the claim and upon request, provide sufficient data, including the data described in Section 9.1.13.4.1.2 to enable CLEC to identify and agree upon any impacted facility(ies). If the Commission has not conducted a proceeding(s) to consider Qwest Wire Centers as described in Section 9.1.13.3 or otherwise approved a list of non-impaired <u>Wire Centers, Qwest shall, upon</u></p>	<p><u>Move this statement to the "potentially stayed issues" at the end of the matrix.</u> Eschelon's proposal relating to the information it would obtain from Qwest to evaluate whether there is impairment in a wire center would improperly require Qwest to provide large amounts of information that goes beyond the impairment criteria identified by the FCC in the TRRO. As Qwest will explain as this proceeding progresses, the detailed information Eschelon is seeking not needed for Eschelon to determine whether</p>

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	<p><u>Wire Centers, Qwest shall, upon request, provide at least the data described in Section 9.1.13.4.1.2 to CLEC with Qwest's notice. If the Parties do not reach agreement, Qwest must continue to provide the UNE to CLEC until the Dispute is resolved. See Section 9.1.14.</u></p>		<p>request, provide at least the data described in Section 9.1.13.4.1.2 to CLEC with Qwest's notice. If the Parties do not reach agreement, Qwest must continue to provide the UNE to CLEC until the Dispute is resolved. See Section 9.1.14.</p>	<p>there is impairment. An obligation for Qwest to provide this information would impose significant burdens and costs without any compelling business justification.</p>
<p>Issue 9-38 Section 9.1.13.4 and subparts Processing of High Capacity Loop and Transport Requests</p>	<p>9.1.13.4 Upon receiving such a request for access to a <u>High Capacity Loop or high capacity transport UNE</u>, Qwest must immediately process the request. <u>Qwest shall not prevent order submission and/or order processing (such as via a system edit or by requiring affirmation of the information in the self-certification letter through remarks in the service request or such facility, unless the Parties agree otherwise in writing. The Parties agree that, no later than thirty (30) Days after the Effective Date of this Agreement, they will meet to commence discussions (potentially with other CLECs as well) regarding potential processes and/or system</u></p>	<p><i>Eschelon does not believe that this issue is currently an issue in the Washington wire center proceeding. Eschelon is willing to discuss deferment of this issue until later in this case, however, if the Commission will address it in the wire center proceeding, provided that the issue is either resolved before the statutory nine-month deadline or that deadline is extended.</i></p> <p>Agreed upon language in Section 9.1.13 describes the requirements for ordering high capacity loops and transport. Section 9.1.13.4 provides that upon receiving “such” a request, Qwest must immediately process the request, as required in the TRRO, ¶ 234. Use of “such”</p>	<p>9.1.13.4 Upon receiving a request for access to a <u>high capacity Dedicated Transport or High Capacity Loop UNE or High Capacity EEL</u> that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit or by requiring affirmation of the information in the self-certification letter through remarks in the service request or through other means) for any such facility, unless the Parties agree otherwise in writing. The Parties agree that, no later than thirty (30) Days after the Effective Date of this Agreement, they will meet to</p>	<p>[Move this statement to the "potentially stayed issues" at the end of the matrix.] Per paragraph 234 of the TRRO, Eschelon has an obligation to determine that any high-capacity transport or a high-capacity loops it orders from Qwest meet the impairment criteria in the TRRO. Qwest's proposal incorporates that obligation, but Eschelon's proposal does not. Eschelon's proposal could result in Eschelon ordering and receiving transport and loop UNEs despite the existence of facts demonstrating an absence of impairment in a wire center. In addition, Eschelon's proposal assumes incorrectly that Qwest can only reject orders and implement processes for rejecting orders if the parties reach agreement on those issues. Qwest's</p>

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	<p><u>modifications to allow Qwest, on mutually agreeable terms, to reject orders for unbundled High Capacity Loops and/or high capacity transport in Wire Centers on the Commission approved Wire Center list described in Section 9.1.13.3 that meet the criteria in this Agreement for non-impaired status. If the Parties reach agreement, this Agreement will be amended pursuant to Section 5.30 to reflect the terms agreed upon.</u></p>	<p>incorporates the agreed upon terms of Section 9.1.13 without having to repeat them. While it may seem obvious that “immediate” processing of a request requires processing the order and not rejecting it, Qwest has already initiated a Change Request through its Change Management Process to implement a systems change to block CLEC orders, even when CLECs have self-certified, if Qwest unilaterally determines a wire center is non-impaired. [See Qwest CR #SCR083005-01 (currently in deferred status).] Whether blocking orders in these circumstances is ever appropriate may be decided by this Commission in the wire center proceeding, but at a minimum it should not be allowed without Eschelon’s agreement in writing. Consistent with the FCC’s unequivocal requirement that Qwest immediately process such requests, Qwest also cannot delay or forego its response by requiring the CLEC to affirm information that it has already provided in the self-certification letter (such as in remarks that must be manually typed on each service order, which</p>	<p>commence discussions (potentially with other CLECs as well) regarding potential processes and/or system modifications to allow Qwest, on mutually agreeable terms, to reject orders for unbundled High Capacity Loops and/or high capacity transport in Wire Centers on the Commission approved Wire Center list described in Section 9.1.13.3 that meet the criteria in this Agreement for non-impaired status. If the Parties reach agreement, this Agreement will be amended pursuant to Section 5.30 to reflect the terms agreed upon.</p>	<p>rights and obligations relating to these issues are governed by law and are dependent upon the parties reaching agreement.</p>

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Issue 9-39 Section 9.1.13.4.1.2 and subparts Review of Wire Center list	<p>9.1.13.4.1.2 If the Commission conducts a proceeding(s) to consider Qwest Wire Centers as described in Section 9.1.13.3, the Parties will follow any procedures established by the Commission with respect to exchange of data and Confidential Information and updating the approved Wire Center list. <u>If the Commission has not conducted such a proceeding or otherwise approved a list of non-impaired Wire Centers, the Parties will follow the procedures described in this Section.</u> Pursuant to Section 5.18.2 of this Agreement, <u>prior to any other formal Dispute resolution proceedings, each Party will negotiate in good faith to resolve the Dispute. To facilitate good faith negotiations and in an attempt to avoid further proceedings, the Parties will work together to verify the qualification</u></p>	<p>adds work and time to the ordering process). Although the Commission may decide some of these issues in the wire center proceeding, the latter issue may not be addressed there.</p> <p><i>Eschelon does not believe that this issue is currently an issue in the Washington wire center proceeding. Eschelon is willing to discuss deferral of this issue until later in this case, however, if the Commission will address it in the wire center proceeding, provided that the issue is either resolved before the statutory nine-month deadline or that deadline is extended.</i></p> <p>The wire center proceedings are just beginning in the various states and will not result in state commission orders for many months. Eschelon therefore reasonably provides language setting out the procedures that parties will follow in the absence of a Commission wire center determination. Eschelon anticipates that the parties will cooperate to verify the information supporting a CLEC request for high</p>	<p>9.1.13.4.1.2 If the Commission conducts a proceeding(s) to consider Qwest Wire Centers as described in Section 9.1.13.3, the Parties will follow any procedures established by the Commission with respect to exchange of data and Confidential Information and updating the approved Wire Center list. If the Commission has not conducted such a proceeding or otherwise approved a list of non-impaired Wire Centers, the Parties will follow the procedures described in this Section. Pursuant to Section 5.18.2 of this Agreement, prior to any other formal Dispute resolution proceedings, each Party will negotiate in good faith to resolve the Dispute. To facilitate good faith negotiations and in an attempt to avoid further proceedings, the Parties will work together to verify the qualification information of any High Capacity</p>	<p>[Move this statement to the "potentially stayed issues" at the end of the matrix.] Per paragraph 234 of the TRRO, Eschelon has an obligation to determine that any high-capacity transport or a high-capacity loops it orders from Qwest meet the impairment criteria in the TRRO. Eschelon's proposal relating to the information it would obtain from Qwest when the parties disagree about whether there is impairment would improperly require Qwest to provide large amounts of information that Eschelon does not need to conduct an evaluation of impairment. As Qwest will explain as this proceeding progresses, the detailed information Eschelon is seeking relating to the CLEC circuits on individual routes is not needed for Eschelon to determine the number of circuits on a route. An obligation for Qwest to provide this</p>

Issue#/ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION ⁵
	<p><u>information of any High Capacity Loop or high capacity transport UNE that Qwest challenges. To do so, Qwest shall provide at least the following information to CLEC (with any Confidential Information being subject to Sections 5.16 and 5.18.3.1.4 of this Agreement or as ordered by the Commission or other appropriate authority):</u></p> <p><u>9.1.13.4.1.2.1 For Wire Centers:</u></p> <p><u>9.1.13.4.1.2.1.1 The number, for each Wire Center, of undisputed Fiber-Based Collocators (i.e., the Carrier has not indicated disagreement with Qwest's designation as a Fiber-Based Collocator); the total number of CLECs collocated in each Wire Center; and the date of each count; and</u></p> <p><u>9.1.13.4.1.2.1.2 The number, for each Wire Center, of Business Lines, including a breakdown of Qwest business analog switched access lines, Qwest business digital switched access line equivalents by type of digital line (e.g., 64 Kbps, DS), business UNE Loops provided not in combination with other</u></p>	<p>capacity loop or transport when Qwest challenges the request. Eschelon's language also clarifies the information that Qwest must provide to allow CLECs to analyze Qwest's assessment of wire centers for non-impairment status and Qwest's count of loops for loop cap determination. Qwest, on the other hand, is silent on procedure, creating a serious gap in the absence of completed wire center determinations. Such silence is not necessary to avoid confusion if the Commission later determines its own procedure for wire center disputes; by its terms, Eschelon's proposal comes into play in the absence of such a Commission determination. Therefore, because the Commission has already commenced a wire center proceeding in Washington, the open language may never apply at least as to the wire centers in issue at the time. If there is no process for additions to the wire center list after that proceeding, this language could then apply to those additions. In any event, the terms of the language acknowledge that the Commission determination</p>	<p>Loop or high capacity transport UNE that Qwest challenges. To do so, Qwest shall provide at least the following information to CLEC (with any Confidential Information being subject to Sections 5.16 and 5.18.3.1.4 of this Agreement or as ordered by the Commission or other appropriate authority):</p> <p>9.1.13.4.1.2.1 For Wire Centers:</p> <p>9.1.13.4.1.2.1.1 The number, for each Wire Center, of undisputed Fiber-Based Collocators (i.e., the Carrier has not indicated disagreement with Qwest's designation as a Fiber-Based Collocator); the total number of CLECs collocated in each Wire Center; and the date of each count; and</p> <p>9.1.13.4.1.2.1.2 The number, for each Wire Center, of Business Lines, including a breakdown of Qwest business analog switched access lines, Qwest business digital switched access line equivalents by type of digital line (e.g., 64 Kbps, DS), business UNE Loops provided not in combination with other</p>	<p>information would impose significant burdens and costs without any compelling business justification.</p>

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³ <u>(e.g., 64 Kbps, DS), business UNE Loops provided not in combination with other Unbundled Network Elements, the total number of lines of those identified pursuant to this Section that are served by remote Switch(es); and the date of each count.</u> <u>9.1.13.4.1.2.3 For all: Other data upon which Qwest relies for its position that CLEC may not access the UNE.</u>	ESCHELON POSITION ⁴ controls. See also discussion of Section 9.1.13.3.	QWEST PROPOSED LANGUAGE <u>Unbundled Network Elements, the total number of lines of those identified pursuant to this Section that are served by remote Switch(es); and the date of each count.</u> <u>9.1.13.4.1.2.3 For all: Other data upon which Qwest relies for its position that CLEC may not access the UNE.</u>	QWEST POSITION ⁵
Issue 9-40 Sections 9.1.13.5.2, 9.1.15.2.1 NRCs for Conversions	<u>9.1.13.5.2 Regarding nonrecurring charges, see Section 9.1.14.6.</u> <u>9.1.14.6 If CLEC converts a facility to a Qwest-provided analogous or alternative service arrangement pursuant to a Section 9.1.14 transition, or because access to a UNE has become unavailable and no transition period applies, Qwest may charge the nonrecurring rate in Exhibit A for Private Line/Special Access to UNE Conversion as an Interim Rate subject to the Commission</u>	<i>Eschelon does not believe that this issue is currently an issue in the Washington wire center proceeding. Eschelon is willing to discuss deferment of this issue until later in this case, however, if the Commission will address it in the wire center proceeding, provided that the issue is either resolved before the statutory nine-month deadline or that deadline is extended.</i>	<u>9.1.13.5.2 CLEC is also responsible for all applicable non-recurring charges associated with the appropriate alternative service arrangements.</u> <u>9.1.14.6 CLEC is also responsible for all applicable non-recurring charges associated with the applicable alternative</u> <u>9.1.15.2.1 CLEC is responsible for all applicable nonrecurring charges associated with the applicable alternative service arrangements.</u>	<u>[Move this statement to the "potentially stayed issues" at the end of the matrix].</u> When Eschelon converts from a UNE to a tariffed alternative service arrangement, Qwest is entitled to charge a tariffed non-recurring rate for the conversion. Eschelon has other non-Qwest service options available when it is required to convert UNE. If it voluntarily chooses to obtain an alternative service from Qwest after a conversion, Qwest is not required to charge a UNE rate for the conversion and, instead, is

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	<p><u>establishing a rate. When the Commission approves a rate, that rate applies as ordered by the Commission without amendment of this Agreement.</u></p> <p><u>9.1.15.2.1 If CLEC converts a facility to a Qwest-provided analogous or alternative service arrangement pursuant to Section 9.1.15, or because access to a UNE has become unavailable and no transition period applies, Qwest may charge the nonrecurring rate in Exhibit A for Private Line/Special Access to UNE Conversion as an Interim Rate subject to the Commission establishing a rate. When the Commission approves a rate, that rate applies as ordered by the Commission without amendment of this Agreement.</u></p>	<p>access to a UNE. Eschelon's language would establish the Commission-approved charge for a private line/special access conversion to a UNE as the interim rate for a conversion from a UNE to private line/special access, while reserving the Parties rights to argue for a different rate in the wire center proceeding, where that issue is being addressed. The process is similar enough that use of the approved rate for this UNE conversion is reasonable. In the event the Commission approves a new rate for this conversion, the new Commission-approved charge will serve as the applicable rate per that Commission order.</p> <p>Qwest states that the CLEC will be responsible for applicable non-recurring charges associated with the appropriate alternative service arrangement. This proposal is both misplaced and vague. The UNE rate, not the associated special access rate, should apply to a process that is clearly UNE-centered. Section 252, including its cost provisions and its provisions giving authority to the Commission</p>		<p>permitted to assess a non-recurring charge. Qwest is entitled to recover its design change charge as an NRC for conducting the work associated with a conversion that Eschelon requests. Requiring a TELRIC rate for an NRC for a <i>tariffed interstate</i> private line service would be an inappropriate application of TELRIC rates and would be outside the scope of this Commission's jurisdiction. Nonrecurring TELRIC charges should only apply to <i>UNEs</i>, and <i>not</i> to a tariffed private line service.</p>

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		<p>to decide these issues, applies to conversions away from UNEs. In the Verizon arbitration, for example, the ALJ found that “the Commission specifically provided that the parties address through the Section 252 process the transition away from provisioning elements on an unbundled basis that the FCC has determined are no longer required to be unbundled.” (See Verizon WA ALJ Arbitration Order, ¶105, citing <i>TRO</i>, ¶¶ 700, 701; <i>TRRO</i>, ¶ 142 n.399, ¶ 198 n.524, ¶ 228 n.630, ¶ 233.) Furthermore, Qwest’s language fails to identify what the “applicable” non-recurring charge would be, which alternative service arrangements are “appropriate,” or how such determinations would be made or implemented. Qwest’s proposal should be rejected in favor of interim application of the Commission-approved non-recurring UNE rate, until such time as the Commission may approve a new rate for this circumstance.</p>		
Issue 9-41 Section	<p>9.1.14.4 CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to</p>	<p><i>Eschelon does not believe that this issue is currently an issue in the Washington wire center proceeding.</i></p>	<p>9.1.14.4 <u>CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an</u></p>	<p>[Move this statement to the "potentially stayed issues" at the end of the matrix.]The transition</p>

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<p>9.1.14.4</p> <p>Length of time period</p> <p>(2 of 2 issues in Section 9.1.14.4 ; For 1st issue, see Section 9.1.13.3 above)</p>	<p>an alternative service. CLEC will have one hundred eighty (180) Days to transition <u>DS1 and DS3 UNEs</u> and Dark Fiber transport to an alternative service.</p>	<p><i>Eschelon is willing to discuss deferment of this issue until later in this case, however, if the Commission will address it in the wire center proceeding, provided that the issue is either resolved before the statutory nine-month deadline or that deadline is extended.</i></p> <p>Eschelon has proposed that it have 1 year to transition DS1 and DS3 loops and 180 days to transition transport and Dark Fiber transport from UNEs to an alternative service. Although the parties agree that Dark Fiber transport should be subject to a 180 day transition period, Qwest has proposed that Eschelon have only 90 days to build facilities or otherwise transition high capacity loops and transport. Eschelon’s proposal is consistent with the transition scheme announced by the FCC in its <i>TRRO</i>. Qwest’s proposed transition period is unreasonably short and should be rejected.</p> <p>In the <i>TRRO</i>, the FCC adopted transition periods that would govern the implementation of its</p>	<p>alternative service. CLEC will have one hundred eighty (180) Days to transition <u>DS1 and DS3 UNEs</u> and Dark Fiber transport to an alternative service.</p>	<p>periods Eschelon is proposing are not supported by the <i>TRRO</i> and would improperly permit Eschelon to pay rates based on UNE rates, instead of tariffed rates, for extended periods in wire centers where there is no impairment.</p>

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		<p>impairment analysis. Under that plan, for wire centers determined pursuant to that analysis, to be “non-impaired,” CLECs would have twelve months from the Order’s effective date to transition its existing base of loops from, and transport between, such non-impaired wire centers. <i>TRRO</i> ¶¶ 142, 195. In adopting this twelve month transition period, the FCC noted it had previously proposed, in its Interim Order and NPRM, a six month transition period, but that a longer transition period of twelve months was necessary “for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions concerning where to deploy, purchase or lease facilities.” <i>TRRO</i> ¶¶ 143, 196.</p>		
<p>Issue 9-42 Section 9.1.14.4.1; See subpart for 9.1.15 Rate During</p>	<p><u>9.1.14.4.1 For the transition period, such facility(ies) that CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to 115% of the UNE recurring rate the state Commission has established or establishes.</u></p>	<p><i>Eschelon does not believe that this issue is currently an issue in the Washington wire center proceeding. Eschelon is willing to discuss deferment of this issue until later in this case, however, if the Commission will address it in the wire center proceeding, provided</i></p>	<p><u>9.1.14.4.1 CLEC is subject to back billing for the difference between the UNE and Tariff recurring rates beginning on the ninety-first (91st) Day for the existing DS1 and DS3 UNEs, and on Day one-hundred-eighty-one (181) for the existing Dark Fiber transport, as well as all</u></p>	<p>[Move this statement to the "potentially stayed issues" at the end of the matrix.] Eschelon's proposals relating to the rates and the length of the period during which they would apply are not supported by the <i>TRRO</i> and would improperly permit Eschelon to pay</p>

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Time Period		<p><i>that the issue is either resolved before the statutory nine-month deadline or that deadline is extended.</i></p> <p>Eschelon proposes that, during the transition period, it pay a rate for the element that is 115% of the Commission-approved recurring UNE rate for the element. Qwest proposes that, for a period of 90 days, Eschelon would pay the Commission-approved UNE rate and, thereafter, would pay the full tariffed rate. Here, too, Eschelon's proposal is more consistent with the transition scheme adopted by the FCC in the TRRO.</p> <p>In the <i>TRRO</i>, the FCC ruled that, during the transition period, the CLEC would pay a rate equal to 115% of the Commission-approved UNE rate for the element. In adopting this approach, the FCC found that "moderate price increases help ensure an orderly transition by mitigating the rate shock that could be suffered by competitive LECs if TELRIC pricing were immediately eliminated for these network</p>	<p><u>applicable nonrecurring charges associated with such conversions.</u></p>	<p>rates based on UNE rates, instead of tariffed rates, for extended periods in wire centers where there is no impairment.</p>

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		<p>elements, while at the same time, these price increases, and the limited duration of the transition (which will require current UNE purchasers to more quickly make these new service arrangements), provide sufficient protection for the interests of incumbent LECs in those situations where unbundling is not required.” <i>TRRO</i> ¶¶ 145, 198. The same reasoning should apply to transitional pricing when new wire centers are added to the non-impaired list. Eschelon’s proposed contract language essentially mirrors the FCC’s approach. Qwest’s proposal adopts the kind of “flash cut” approach that the FCC has cautioned may result in “rate shock” for CLECs. It is the Eschelon/FCC approach that best balances the competing interests of the parties.</p>		