BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996	Docket No. UT-063061

ESCHELON TELECOM OF WASHINGTON, INC. ANSWER TO QWEST'S PETITION FOR RECONSIDERATION

November 7, 2008

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I. INTRODUCTION

1 On October 28, 2008, the Commission issued a Notice Requesting Answer to Petition for Reconsideration, with a deadline of November 7, 2008. In response to that Notice, Eschelon Telecom of Washington, Inc. ("Eschelon"), 730 2nd Ave. South, Suite 900, Minneapolis, MN 55402, submits this Answer to Qwest Corporation's ("Qwest's") Petition for Reconsideration ("Petition for Reconsideration" or "Petition") of the Commission's Final Order, Order 18, dated October 16, 2008 in this matter (Commission's "Order" or "Order 18").

2 The issues for which Qwest seeks reconsideration relate to conversions, except for one issue relating to billing for commingled arrangements. A **conversion** occurs when an unbundled network element ("UNE") is converted to a non-UNE alternative arrangement, such as due to a finding of "non-impairment."[1] By definition, conversions will take place on live circuits that are up and running and currently supporting service to end user customers.[2] According to the Federal Communications Commission ("FCC"), conversions should be "seamless" to the end user customer, should amount to largely a billing function, and should, therefore, not negatively affect Eschelon's business or the service quality perceived by Eschelon's end user customers.[3] The Commission adopted Eschelon's proposals for conversions, as recommended by the Arbitrator.[4] **Commingling** is the connecting of a UNE or UNE Combination with other wholesale facilities and services obtained from Qwest.[5] A Commingled EEL is an example of a commingled arrangement. Eschelon's first language proposal required a single bill for the components of a Commingled EEL, and Eschelon's alternative language required that Qwest

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1 Starkey Dir., Exh. No. 62, 142: 7-9.
2 Starkey Dir., Exh. No. 62, 142: 9-13.
3 TRO ¶¶586, 588. The FCC found that conversions "should be a ***seamless*** process that does not alter the customer's perception of service quality" and that conversions are 'largely a billing function." *Id*. (emphasis added). See Starkey Surreb. Exh. No. 71, 165: 9-12.
4 Order 18, p. 26, ¶67 (second sentence); Arbitrator's Report, Order 16, p. 29, ¶91.
5 For a more complete definition, see the agreed upon language in ICA Section 24.1.1.1 & TRO ¶579.

relate the UNE and non-UNE segments of the Commingled EEL[6] so Eschelon can track the individual loop and transport components of the EEL for billing purposes.[7] Consistent with the FCC's mandate to eliminate restrictions on commingling,[8] the Commission adopted Eschelon's alternative proposal, as recommended by the Arbitrator.[9]

3 Eschelon opposes Qwest's petition seeking Commission reconsideration of the Commission's rulings on these issues. A Petition for Reconsideration "must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and each law or commission rule that the petitioner relies on to support its petition, and must present brief argument in support of its petition."[10] Qwest's Petition for Reconsideration, however, contains remarkably few citations to the extensive record in this matter.

4 Despite WAC 480-07-850(2)'s requirement to cite the record, Qwest asks the Commission to reverse its well-considered rulings based largely on unsupported assertions.[11] For example, Qwest alleges in its Petition, with no requisite cite to any "portion of the record,"[12] that Qwest's service quality obligations under the Performance Assurance Plan ("PAP") apply only to UNEs, whereas the PAP is "inapplicable" to non-UNEs.[13] This assertion is not only devoid of any citation to the record, but also it is contrary to this Commission's ruling in Docket UT-061625. Both UNE and their substitute non-UNE services are a part of Qwest's PAP in

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[6] Disputed Issues Matrix, pp. 72-74.

[7] Denney Dir., Exh. No. 130, 154:14 – 155:2. See also Arbitrator's Report, Order 16, p. 36, ¶118 (". . .Eschelon has an interest in ensuring that it is properly billed for each commingled element. Absent some information on the bill separately identifying these components, it will be onerous for Eschelon to track and verify the elements.").

[8] TRO ¶¶579, 581; *id.* ("we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3)"). Incumbent LECs place no such restrictions on themselves for providing service to any customers by requiring, for example, two circuits to accommodate telecommunications traffic from a single customer or intermediate connections to network equipment in a collocation space.").

[9] Order 18, pp. 36-37, ¶99; Arbitrator's Report, Order 16, p. 36, ¶118.

[10] WAC 480-07-850(2).

[11] See, e.g., Qwest Petition for Reconsideration, pp. 3-4, ¶¶ 5-6; p. 9, ¶17; p. 11, ¶20; p. 12, ¶22; p. 13, ¶24; p. 14, ¶15, & p. 15, ¶29, which contain sweeping factual allegations with no cite for those allegations to any "portions of the record." See WAC 480-07-850(2).

[12] WAC 480-07-850(2).

[13] Qwest Petition for Reconsideration, p. 11, ¶20.

Washington.[14] There is no basis in Qwest's Petition on which to assume that Qwest's other unsupported assertions are any more reliable than this one, particularly as the absence of any citation in Qwest's Petition to any portion of the record to support these allegations is in violation of WAC 480-07-850(2).[15] Contrary to Qwest's claim, Qwest does not meet "the standard that governs petitions for reconsideration."[16]

5 To the extent that it cites portions of the record at all, Qwest cites its own testimony, which has already been rejected by this Commission. Qwest's Petition does not contain a single citation to Eschelon's extensive evidence to establish that any fact relied upon by Qwest is undisputed. The disputed facts were properly resolved by this Commission and appropriately resulted in adoption of Eschelon's position on the challenged issues. Qwest asks the Commission to reject the Commission's well-considered conclusions largely by repeating arguments that it advanced without success in the evidentiary proceedings, post-hearing briefs, and Petition for Review. Qwest presents no new evidence. The Commission's rulings on the issues challenged by Qwest are consistent with the facts, the law, and the public interest. The Commission should deny Qwest's Petition for Reconsideration.

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[14] *In the Matter of the Petition of Qwest Corporation For an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Order No. 8, Docket No. UT-061625, September 6, 2007, ¶ 42 ordering clause 1(c).

[15] Another example of ignoring the requirements of WAC 480-07-850(2): As alleged support for its jurisdictional argument, Qwest asserts at least ***five times*** in its Petition - with no requisite cite to any portion of the record in any instance - that in virtually all cases or most cases CLECs use "Qwest's *interstate* private line service when they convert from a Section 251 UNE service and when they purchase a commingled EEL." See Qwest Petition for Reconsideration, p. 3, ¶ 4 (emphasis in original) ("virtually all cases"); see also id. p. 1, ¶ 1 ("most cases"); p. 9, ¶ 17 ("almost always"); p. 18, ¶ 35 ("usually"); p. 18, ¶ 36 ("most cases"). Qwest provided no data to show that there are no *intrastate* situations, which Qwest does not deny fall within the Commission's jurisdiction. In fact, its claim without citation to the record that conversions "usually" involve interstate products is a concession that there are also conversions to intrastate products. Contrary to Qwest's suggestion, the Commission's Order should not "at a minimum rule that the requirement does not apply when CLECs convert to any of Qwest's interstate services," *id.* p. 10, ¶17, because the Commission has authority regarding conversions and commingled EELs, for the reasons discussed below regarding jurisdiction.

[16] Qwest Petition for Reconsideration, p. 2, ¶ 2.

II. DISCUSSION

6 In its Petition, Qwest first addresses what it describes as "the threshold jurisdictional question of the scope of a state commission's authority,"[17] followed by discussion of three rulings:[18]

> This petition is for the limited purpose of requesting that the Commission reconsider three discrete rulings relating to two issues addressed in the Final Order: (1) the ruling that Qwest must retain the same circuit identification number when it converts Eschelon's service from an unbundled network element ("UNE") provided under Section 251 of the Telecommunications Act of 1996 (the "Act") to a non-UNE service provided in most cases through an interstate, FCC tariff;[19] (2) the Commission's determination that the $25 conversion charge negotiated and adopted in the "Wire Center Proceeding" will permit Qwest to recover the significant costs imposed by the UNE conversion requirements adopted in the Final Order;[20] and (3) the ruling relating to the bills and customer service records ("CSRs") that Qwest's systems generate for point-to-point commingled EELs that would require Qwest to include information in the bills and CSRs that cross-references the UNE and the non-UNE component of each point-to-point commingled EEL.[21]

7 Specifically, Qwest seeks reconsideration of the following paragraphs of the Commission's Order 18, all relating to Conversions, except for one relating to Billing for Commingled Arrangements: ¶68[22] (under the Order's heading of "Conversions" and sub-heading "Commission Jurisdiction"); ¶83 & ¶85[23] (under the Order's heading of "Conversions" and sub-heading "Change in Circuit ID"); ¶87 & ¶91[24] (under the Order's heading of "Conversions" and sub-heading "Conversion charge"); and ¶99[25] (under the Order's heading of "Commingled Arrangements – Billing"). The Disputed Issues Matrix shows that "Conversions

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[17] Qwest Petition for Reconsideration, p. 2, ¶ 3.
[18] The direct quote is from Qwest Petition for Reconsideration, pp. 1-2, ¶ 1 (footnotes in original).
[19] "This issue was identified as Issue No. 9-43 in the arbitration." Qwest Petition, p. 1, footnote 1.
[20] "The issue relating to the conversion charge is encompassed by Arbitration Issue Nos. 9-43 and 9-44." Qwest Petition, p. 2, footnote 2. Actually, the conversion charge (ICA Sections 9.1.13.5.2, 9.1.14.6, and 9.1.15.2.1) is identified as Issue 9-40, which is one of the wire center issues that was deferred until after resolution of the wire center case and then resolved by agreement. See Disputed Issues Matrix, pp. 130-131; Order No. 17, ¶3.
[21] "This issue was assigned Issue No. 9-58(c) in the arbitration." Qwest Petition, p. 2, footnote 3.
[22] Qwest Petition for Reconsideration, pp. 7 & 8 at footnotes 10 & 14.
[23] Qwest Petition for Reconsideration, pp. 13, 14 & 16 at footnotes 25, 27, 28 & 30.
[24] Qwest Petition for Reconsideration, pp. 16 & 17 at footnotes 30 & 32.
[25] Qwest Petition for Reconsideration, p. 18 at footnote 35.

– Circuit ID" (ICA Section 9.1.15.2.3) is identified as Issue 9-43;[26] "Manner of Conversions" (ICA Section 9.1.15.3 and subparts) is identified as Issue 9-44 and subparts;[27] and Billing for Commingled Arrangements (ICA Section 9.23.4.6.6 and subparts) is identified as Issue 9-58(c).[28] The corresponding pages of the Disputed Issues Matrix are provided in **Attachment 1** to this Answer for ease of reference in comparing the language proposed by each party for these Issues.[29]

8 Eschelon will reply in the order in which Qwest raised issues in its Petition for Reconsideration. As the discussion below shows, Qwest is incorrect as to both of its conclusions leading to Qwest's assertion that the Commission's Order should be reversed as to these issues because they have "far-reaching, impermissible consequences."[30] First, contrary to Qwest's claim,[31] this Commission properly concluded that conversions and commingled arrangements clearly fall within its jurisdiction.[32] Second, Qwest's claims in its Petition of "a risk of service disruptions, harm to other CLECs, and financial harm to Qwest"[33] are often without citation to any "portion of the record"[34] contrary to the requirements of WAC 480-07-850(2), and they have already been raised and properly rejected by this Commission. Qwest's proposal, in the alternative, to modify the single circuit ID requirement for conversions[35] is untimely and, because it does not address Eschelon's timely expressed concerns, it should be rejected for the same reasons that the Commission previously rejected Qwest's position.

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[26] Disputed Issues Matrix, p. 50.
[27] Disputed Issues Matrix, pp. 50-51.
[28] Disputed Issues Matrix, pp. 72-74.
[29] Attachment 1 contains excerpts from the Disputed Issues Matrix for these issues, as well as pages from the proposed ICA for Issue 9-40. All references to the Disputed Issues Matrix are to the Updated Disputed Issues Matrix dated August 23, 2007. (See footnote 199 to page 1 of Appendix A to the Arbitrator's Report, Order 16.)
[30] Qwest Petition for Reconsideration, p. 2, ¶ 2.
[31] Qwest Petition for Reconsideration, pp. 2-3, ¶¶3-4.
[32] Order 18, ¶¶ 68-70; see also Docket UT-043013, Order 17, p. 60, ¶¶150, 287 and 291.
[33] Qwest Petition for Reconsideration, pp. 3-4, ¶¶5-6.
[34] WAC 480-07-850(2).
[35] Qwest Petition for Reconsideration, pp. 4-5, ¶ 7.

A. JURISDICTION/COMMISSION AUTHORITY

9 Qwest previously argued that the Commission should address conversions in a separate docket (specifically identifying Docket No. UT-053025, the TRRO investigation), which suggested that Qwest acknowledged the Commission's jurisdiction, albeit in a different docket.[36] Here, Qwest argues that each of the three challenged rulings "directly implicates" the "threshold jurisdictional question of the scope of a state commission's authority when serving as an arbitrator under Section 252 of the Act."[37] Qwest errs, however, in framing the threshold question here as whether the Commission has authority over elements that Qwest asserts fall outside of a CLEC's arbitration rights under Section 251 and 252 of the Act (e.g., Section 271 rights).[38] The proper threshold question is whether conversions and commingled arrangements are within the scope of a CLEC's arbitration rights (Section 251/252 rights). This Commission properly concluded that conversions and commingled arrangements clearly fall within those rights and its jurisdiction.[39]

1. Case Law Cited by Qwest is Not Applicable.

10 None of the cases cited by Qwest[40] deal with whether UNE conversions and commingled arrangements fall within the scope of a CLEC's 251/252 arbitration rights. As a result, the cases are irrelevant to this Commission's determination that UNE conversions and commingled EELs are within the scope of this arbitration. The only new[41] court case cited by Qwest is the Eighth Circuit Court of Appeals opinion in *Southwestern Bell Telephone v. Missouri Public*

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[36] Million Responsive, Exh. No. 52, 6:14-18.
[37] Qwest Petition for Reconsideration, p. 2, ¶ 3.
[38] Qwest Petition for Review, p. 2, ¶3 ("obligations that fall outside Sections 251(b) and (c)").
[39] Order 18, ¶¶ 68-70; see also Docket UT-043013, Order 17, p. 60, ¶¶150, 287 and 291.
[40] See Qwest Petition for Reconsideration, footnotes 6, 7, 8, 11 and 12.
[41] The decision was issued after Qwest's Petition for Review.

Service Commission, 530 F.3d 676 (8th Cir. 2008) ("*Southwestern Bell*").[42] This case is also not on point. Specifically, the dispute in *Southwestern Bell* arose in an arbitration proceeding under Section 252 of the Act, when the MPSC ordered Southwestern Bell ("SBC") to allow CLECs access to network elements mandated by *§* 271.[43] The case does not address whether or not UNE conversions or commingled EELs fall within section 251 of the Act, but instead the primary issue in the case was "the authority of states to enforce §271."[44] The court concluded, "the plain language of *§ 271* makes clear states have no authority to interpret or enforce the obligations of *§ 271*."[45]

11 The issue of the authority of states to enforce §271 was not raised by either party in the three rounds of testimony or the hearing with regard to these issues,[46] because that simply is not the issue here. By Qwest's own admission, all of the cases relied upon by Qwest relate only to "obligations that fall outside Sections 251(b) and (c)."[47] While the WUTC has not asserted authority over § 271 network elements, it has clearly and properly determined that conversions and commingled EELs are within the scope of Sections 251 and 252 of the Act.[48] It is undisputed that the Commission has authority over Section 251 obligations.[49]

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[42] Qwest Petition for Reconsideration, p. 2, ¶ 3.
[43] *Southwestern Bell*, (8th Cir. 2008) at 681 - 682.
[44] *Southwestern Bell*, (8th Cir. 2008) at 681.
[45] *Southwestern Bell*, (8th Cir. 2008) at 682.
[46] E.g., an electronic search of the three rounds of testimony and the hearing transcript shows that neither party made any reference to "271" in discussion of Issues 9-43, 9-44, or 9-58.
[47] Qwest Petition for Review, p. 2, ¶3.
[48] For example, the Commission noted, [i]n Docket UT-043013, the Arbitrator rejected Verizon Northwest Inc.'s argument that disconnect or conversion charges are outside the scope of Sections 251 and 252 and state commission review... We affirmed that ruling." Commission Order, p. 27, ¶ 69. The Commission continues, "it is clear from both the FCC's perspective and our own that we have jurisdiction to address conversion-related issues." Commission Order, p. 27, ¶ 70.
[49] See, e.g., Qwest Petition for Review, p. 2, ¶3 ("Over the past three years, federal courts throughout the country have addressed this question and have ruled unanimously that **state commissions <u>are authorized</u>** only **to set terms and conditions** relating directly to the obligations imposed on ILECs and CLECs **under Sections 251(b) and 251(c)**.") (emphasis added).

2. The Commission has Authority per Congress and FCC Regulations.

12 In its Petition for Reconsideration, Qwest claims: "It is Congress, not the FCC, which determines the authority of state commissions, including the authority of commissions to serve as arbitrators."[50] This broad assertion is contrary to the language of Section 252(c) itself, which establishes standards for state commission arbitration of interconnection agreements. Section 252(c) requires that state commissions, in resolving any open issues, "shall ensure that such resolution and conditions meet the requirements of section 251, ***including the regulations prescribed by the Commission*** pursuant to section 251."[51] Given that the federal Act mandates that state commissions ensure that its arbitration rulings comply with such FCC regulations, Qwest is incorrect when it asserts that "the Commission ***erred in looking to statements from the FCC*** to determine the scope of its arbitration jurisdiction instead of relying on the language of Section 252 delineating that authority."[52]

13 Moreover, Qwest fails to show that the Commission did not rely on the language of Section 252 (including the above-quoted language) in determining the scope of its jurisdiction. Section 251 of the Act defines the duties of incumbent local exchange carriers ("ILECs") like Qwest to provide just, reasonable, and nondiscriminatory interconnection and unbundled access to CLECs, and Section 252 of the Act defines the role of the state commissions in implementing and enforcing those duties. The Commission specifically references Sections 251 and 252 of the Act in its discussion of jurisdiction.[53] The Commission also explicitly states that, while it has taken into consideration the "FCC's perspective," it is relying on its "own" perspective in

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[50] Qwest Petition for Reconsideration, p. 7, ¶12.
[51] Section 252(c)(1) of the Act (emphasis added). The "Commission" in Section 252 refers to the FCC.
[52] Qwest Petition for Reconsideration, p. 8, ¶13 (emphasis added). To the extent that in these paragraphs Qwest is simply re-stating its "non-251" argument in another manner, Eschelon addresses that claim in its discussion above regarding the inapplicability of Qwest's cited case law and the correct conclusions of this Commission that conversions and commingled arrangements fall within its jurisdiction.
[53] Order 18, pp. 26-27, ¶¶68-69.

determining the scope of its authority.[54] Ironically, while criticizing the Commission for looking to FCC statements, Qwest looks to FCC statements to support its own position in the very next paragraphs of its Petition.[55] Qwest simply disagrees with the Commission's reading of the same FCC orders. In the Triennial Review Order ("TRO")[56] and Triennial Review Remand Order ("TRRO"),[57] the FCC addressed the unbundling, interconnection, and nondiscrimination obligations of ILECs under Section 251 of the Act. Those orders provide guidance as to the obligations of Sections 251 and 252. The Commission properly interpreted the FCC's statements contained in the TRO and TRRO.

14 In those orders, the FCC determined that ILECs no longer had unbundling obligations as to several unbundled network elements and that CLECs are required to convert from using those elements to alternative service arrangements — a process known as "UNE conversions." As discussed below, the FCC indicated that conversion issues would be decided by the state commissions under Section 252 of the Act.

15 In the TRO, the FCC also addressed "commingled EELs" — a combination of a UNE with a non-UNE service, often consisting of a UNE loop commingled with an access service or private line transport service. In the TRO, the FCC lifted it previous restriction on commingling and specifically permitted CLECs to "commingle UNEs and combinations of UNEs with services (e.g. switched and special access/private line services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such

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[54] Order 18, p. 27, ¶70.
[55] Qwest Petition for Reconsideration, pp. 8-9, ¶¶14-15.
[56] Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 17 FCC Rcd 16978 (2003), vacated in part, remanded in part, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).
[57] Order on Remand, *Review of the Section 251 Unbundling Obligations of ILECs*, 20 FCC Rcd 2533 (2005), *aff'd Covad Communications Co. v. FCC*, 450 F. 3d 528 (D.C. Cir. 2006).

commingling upon request."[58] Thus, a commingled EEL is one circuit consisting of both UNE and non-UNE components.[59] The UNE component is priced at TELRIC at a price set by the Commission. The non-UNE may be priced at a tariffed or other non-UNE rate. It is not the physical facility but the pricing that distinguishes the different types of loop-transport combinations.[60] In the agreed upon definition of "Commingled EEL" in the ICA, Qwest agreed that pricing distinguishes the different types of loop-transport combinations. It states:

> Commingled EEL – If CLEC obtains **at UNE pricing** part (but not all) of **a loop-transport Combination**, the arrangement is a Commingled EEL. (Regarding Commingling, see Section 24.)[61]

In addition, Qwest's witness testified:

> Q. I want you to think of a hypothetical circuit that before the TRRO was a UNE EEL and after the TRRO is a commingled EEL.
> A. Yes.
> Q. The difference between those two things is the price, correct?
> A. Typically, yes.[62]

16 The terms and conditions for both conversions from UNEs to non-UNEs and the provision of commingled EELs are addressed under those rules and orders because both involve the rights of CLECs and the duties of ILECs under the Act, including the duty of nondiscrimination. The Commission has authority under Sections 251 and 252[63] and state law[64] to ensure nondiscrimination. For example, in the Covad-Qwest arbitration, the Commission pointed out

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[58] TRO, at ¶ 579.
[59] See TRO ¶594 ("the UNE loop ***portion of a commingled circuit***") (emphasis added).
[60] Order 18, ¶98 ("The primary distinction between a UNE EEL and a commingled EEL is the price change for the component, which should not be unduly cumbersome for Qwest to incorporate into its existing systems.").
[61] See ICA Section 9.23.4 (emphasis added). This language appears in the Qwest Proposed Language column of the Disputed Issues Matrix, p. 65. See also TRO ¶ 593 ["To ensure that our rules on service eligibility are not gamed in whole or in part, we make clear that the service eligibility criteria must be satisfied (1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (commingled EEL)."]
[62] Exh. No. 179, Arizona Hearing Transcript, Vol. 2, 181: 15-21 (Ms. Stewart of Qwest).
[63] See also 47 C.F.R. §51.313(b).
[64] See, e.g., RCW 80.36.186; RCW 80.36.180.

that previous case law had found that the authority to include performance benchmarks and penalties in interconnection agreements is appropriate under the Section 252 process (not Section 271) to "encourage compliance with nondiscrimination rules."[65] Although Qwest seeks to limit the TRO and TRRO to a single "deregulatory purpose,"[66] the purposes of those orders and the federal Act include ensuring nondiscrimination[67] and protecting the public interest.[68] It is only by ignoring these clearly articulated purposes of the orders that Qwest reaches the erroneous conclusion that "the Commission has improperly turned an order designed to deregulate markets into a vehicle for expanding the reach of regulatory authority."[69] The Commission appropriately concluded that it has authority over the commingling and conversion issues in this case and appropriately balanced the interests of affected parties.

a. Commingling

17 The Commission has authority pursuant to Sections 251 and 252 to effectuate the Act's provisions and FCC's rulings on these issues. In the TRO, the FCC said: "we conclude that the billing and operational issues raised by Verizon do not warrant a permanent commingling restriction, but instead can be addressed through the same process that applies for other changes in our unbundling requirements adopted herein, i.e., through change of law provisions in interconnection agreements."[70] This Commission properly found with respect to

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[65] UT-043045, Order 6, p. 20, ¶48, citing *Indiana Bell*, 2003 WL1903363 at 6, 8.
[66] Qwest Petition for Reconsideration, p. 9, ¶15.
[67] See, e.g., TRO ¶581 ("restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3)").
[68] For example, the FCC found that conversions "should be a seamless process that does not alter the customer's perception of service quality." TRO ¶586. See also, e.g., TRO ¶588 ("conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments").
[69] Qwest Petition for Reconsideration, p. 8, ¶15.
[70] TRO ¶583. In footnote1802 to paragraph 583 of the TRO, the FCC said: "We note that, taken to its extreme, the incumbent LEC argument would prevent any modification of our UNE rules because billing and operational changes would certainly follow any such change."

commingling that "commingled arrangements must be offered in a manner that avoids operational barriers and makes them useful products to CLECs. If these commingled arrangements are not offered in a functional manner, then the FCC's ruling allowing such arrangements ***will not serve its intended goal***; to lift the restriction on commingling which placed CLECs at a competitive disadvantage and constituted an unjust and unreasonable practice."[71] In contrast, Qwest's position taken to its logical conclusion would leave commingled EELs in no-man's land, with no agency having jurisdiction to ensure that the intended goal of commingling was met, because the Commission would have no jurisdiction as a portion is allegedly not a UNE, while the FCC would not proceed because a portion is a UNE. That is contrary to the intended goal of ensuring that commingled EELs are a useful offering and a meaningful alternative to the UNE EEL product it is replacing.

18 The Commission has jurisdiction to ensure that commingled EELs are offered in a nondiscriminatory manner.[72] The FCC said: "restricting commingling would be inconsistent with the nondiscrimination requirement in section 251(c)(3)."[73] Qwest admits that state commissions "are authorized" to "set terms and conditions" under Section 251(c)(3).[74] If access to a service is inferior when a portion of the service is provided via unbundled access (such as the UNE component of a commingled EEL), as compared to a service that is provided via all non-UNEs (such as private line/special access), the result is discriminatory access to that UNE component in violation of Section 251 of the Act.[75] The TRO provides that "incumbent

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[71] Order 18, ¶ 99 (emphasis added). See also id. ¶ 106 ("in order for the right to order commingled arrangements to be more than a hollow victory, we must ensure that CLECs have the opportunity to exercise the right to order these products without operational barriers.").

[72] Section 251(c)(3) of the Act; see also 47 C.F.R. §51.313(b) (requiring incumbent LECs to provide access to UNEs on terms and conditions no less favorable to those under which the incumbent LECs provides such UNEs to itself).

[73] TRO ¶581.

[74] Qwest Petition for Reconsideration, p. 2, ¶3.

[75] Section 251(c)(3) of the Act.

LECs shall not deny access to UNEs and combinations of UNEs on the grounds that such facilities or services are somehow connected, combined, or otherwise attached to wholesale services."[76] Creating operational barriers is a form of denying access to the UNE[77] and, in this case, Qwest is creating those operational barriers on the grounds that the UNE is connected to a wholesale service (i.e., commingled), which is not permissible.[78]

19 Qwest's cumbersome process creates operational barriers for Commingled EELs that do not exist for either UNE EELs or private line EELs.[79] Absent an identified relationship between the UNE and non-UNE segments of the same EEL (such as to track and verify bills), Eschelon cannot feasibly use a Commingled EEL.[80] This is not an acceptable implementation of the FCC's mandate to eliminate restrictions on commingling,[81] and the Commission's Order properly prevents Qwest from tilting the field to the advantage of its more expensive retail products.[82] Eschelon should not have to accept an inferior billing process, when Qwest is getting more money with commingling for a portion of a service that at one time was available with all of it priced at UNE rates. The Commission's Order properly helps prevent that discriminatory and unjust result.

20 The FCC clearly contemplated that such issues would be decided by the state commissions under Section 252 of the Act. For example, in the TRRO, the FCC said: "We expect that

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[76] TRO ¶579.

[77] The FCC has read Section 251's nondiscriminatory access requirement for UNEs to apply broadly and has required that UNEs must be provisioned in a way that would make them "useful." *First Report and Order* at ¶268; see Starkey Dir., Exh. No. 62, 128:17-19. See Order 18, p. 36, ¶99 ("commingled arrangements must be offered in a manner that . . .makes them useful"). See also Eschelon's testimony and briefing relating to Issue 9-31 (Non-Discriminatory Access to UNEs) in this matter. The Commission adopted Eschelon's proposal for Issue 9-31. See Arbitrator's Report, Order 16, p. 25, ¶78 (aff'd).

[78] TRO ¶579.

[79] See, e.g., Denney Dir., Exh. No. 130, 133:13 - 134:6.

[80] Denney Dir., Exh. No. 130, 154:19 – 155:2; Denney Reb., Exh. No. 137, p. 97, lines 2-4 ("Qwest's language allows Qwest to provide bills for the components of the commingled EEL that are not related in any way and thus extremely difficult to review and verify.").

[81] TRO ¶¶579, 581.

[82] Denney Dir., Exh. No. 130, 154:19 – 155:2.

incumbent LECs and competing carriers will implement the Commission's findings as directed by Section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order."[83] The Commission properly rejected Qwest's claim that the Commission does not have jurisdiction regarding commingled arrangements.[84]

b. Conversions

21 The FCC also clearly contemplated that conversion issues would be decided by the state commissions under Section 252 of the Act.[85] The FCC specifically addressed the conversion of wholesale services like tariffed services to UNEs or UNE combinations (including EELs), and the reverse, i.e., converting UNEs or UNE combinations to wholesale services.[86] The FCC determined that, if the element is not required to be offered as a UNE, the ILEC may require the CLEC to convert the UNE or UNE combination to the equivalent wholesale service following the conversion procedures established by the parties ***through negotiation***.[87] The FCC did not, however, adopt rules governing the conversions themselves. Instead, it made clear that carriers were to establish these procedures through the Section 252 process.[88] Contrary to Qwest's suggestion that these issues should be sent to Qwest's CMP at this late

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[83] TRRO, at ¶ 233.
[84] Order 18, p. 35, ¶ 95 (citing Qwest Petition for Review, p. 27, regarding commission authority) & Order 18, pp. 36-37, ¶ 99 (adopting Eschelon's alternative proposal and thus rejecting Qwest's position).
[85] See, e.g., TRO ¶ 588.
[86] TRO ¶ 585 & footnote 1808. This Commission previously pointed out that "the FCC specifically prohibited 'gating mechanisms' or practices that would make it more difficult or burdensome for CLECs to convert wholesale services to UNEs, or EELs." Docket UT-043013, Order 17, p. 60, ¶291. Changing circuit IDs is a practice that would make it more difficult and burdensome to convert from UNEs to wholesale services.
[87] TRO ¶ 585 ("We decline the suggestions of several parties to adopt rules establishing specific procedures and processes that incumbent LECs and competitive LECs must follow to convert wholesale services (*e.g.*, special access services offered pursuant to interstate tariff) to UNEs or UNE combinations, and the reverse, *i.e.*, converting UNEs or UNE combinations to wholesale services. Because both the incumbent LEC and requesting carriers have an incentive to ensure correct payment for services rendered, and because both parties are bound by duties to ***negotiate*** in good faith, we conclude that these carriers can establish any necessary procedures to perform conversions with minimal guidance on our part.") (emphasis added).
[88] TRO ¶ 585 (quoted in above footnote).

date,[89] the FCC, being fully aware of the availability of CMP,[90] referred specifically to negotiations between "both parties"[91] and not any "collective group,"[92] such as CMP.[93]

22 The FCC established parameters in the TRO for the conversion processes to be included in interconnection agreements. For example, at paragraph 586 of the TRO, the FCC found that such conversions should be seamless such as not to affect service quality:

> Converting between wholesale services and UNEs or UNE combinations should be a seamless process that does not affect the customer's perception of service quality.

The FCC codified the requirement that conversions should be seamless from the perspective of the CLEC's end user in 47 CFR §51.316(a) as follows:

> (b) An incumbent LEC shall perform any conversion from a wholesale service or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

23 The FCC further provided that conversions should be performed expeditiously, with the parties identifying timeframes in their interconnection agreements.[94] The FCC found that termination charges, reconnect and disconnect fees, or non-recurring charges are inappropriate as they could deter legitimate conversions.[95] The FCC also found these charges inconsistent with the duty to provide nondiscriminatory access to UNEs and UNE combinations, as ILECs are not required to perform conversions for their own customers.[96]

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[89] Qwest Petition for Reconsideration, p. 4, ¶6.
[90] Starkey Dir., Exh. No. 62, 22:1-16.
[91] TRO ¶ 585 (quoted in above footnote).
[92] Qwest Petition for Reconsideration, p. 4, ¶6. Although Qwest speculates that it may have to make or prioritize system changes, *see id*., it cites no data or evidentiary support for its claim.
[93] See also Docket UT-043013, Order 17, p. 60, ¶291.
[94] *Id*., ¶ 588.
[95] *Id*., ¶ 587.
[96] *Id*.

24 Thus, it is clear that the FCC contemplated that conversions should not be disruptive for the customer and recognized that the process was basically a billing function. It is also clear that the FCC assumed that the terms and conditions of conversions would be a part of the interconnection agreement between the parties and, by definition, subject to the authority of the state commissions.

25 The Commission determined that the terms and conditions surrounding the process and implementation of conversions are matters to be addressed in interconnection agreements and thus are clearly within the purview of the Commission. It concluded: "thus, the FCC specifically anticipated that disputes about '***any***' rate, term or condition related to conversions would be addressed within the context of negotiating or arbitrating changes to existing interconnection agreements;"[97] "[w]e have previously addressed this issue."[98]; "[w]e affirmed that ruling."[99]; and "[a]ccordingly it, is clear from both the FCC's perspective and our own that we have jurisdiction to address conversion-related issues."[100]

26 Qwest has provided no reason to alter the Commission's decision regarding jurisdiction over conversions and commingled arrangements.

B. ALLEGED "RISK OF SERVICE DISRUPTIONS, HARM TO OTHER CLECS, AND FINANCIAL HARM TO QWEST"[101]

27 With respect to both conversions and commingled EELs, Qwest alleges that the Commission's Order creates "a risk of service disruptions, harm to other CLECs, and financial harm to Qwest."[102] Eschelon will first address each of these claims, which Qwest asserts are generally

[97] Order 18 at ¶ 68.
[98] Order 18 at ¶ 69.
[99] Order 18, ¶ 69.
[100] Order 18 ¶ 70.
[101] Qwest Petition for Reconsideration, pp. 3-4, ¶¶5-6.
[102] Qwest Petition for Reconsideration, p. 3, ¶5 (with no cite to the record).

applicable to all of the issues, and will then discuss allegations specific to each of the three rulings challenged by Qwest (circuit ID for conversions; charges for conversions; and billing for commingled EELs).

1. Qwest's General Allegations as to Both Conversions and Commingling

28 As discussed in the Introduction to this Answer, there are multiple places in Qwest's Petition for Reconsideration where Qwest makes one or more of its claims without a citation to any "portion of the record,"[103] contrary to the requirements of WAC 480-07-850(2). Not providing citations to the record both deprives Eschelon of an opportunity to review and respond to the particular allegation as reflected in the record (if it is in the record) but also creates the potential for Qwest to make new claims that are not properly grounds for reconsideration because they are not in the evidentiary record. If Qwest had evidence that supported its position, it would have provided that evidence in testimony (in accordance with the deadlines for presenting testimony in this matter), when Eschelon would have had a full opportunity to respond with its own testimony.

29 To illustrate, Qwest makes an unsupported assertion, at this belated reconsideration stage, that risks of service disruption "caused" Qwest to discontinue using the same circuit IDs for UNE and non-UNE circuits.[104] Earlier in the same paragraph of its Petition, Qwest cited testimony for the more general claim that using the same circuit IDs caused "problems."[105] That unverified[106] testimony about manual tasks and costs does *not* identify service disruption as a

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[103] WAC 480-07-850(2).

[104] Qwest Petition for Reconsideration, p. 13, ¶24 (no cite to the record for the claims of service disruption or causation).

[105] Qwest Petition for Reconsideration, p. 13, ¶24, citing Million Dir., Exh. No. 51 (TKM-1T), 18:4-24. Page 18 of Ms. Million's Direct Testimony is provided as Attachment 2 to this Answer, for ease of reference in comparing Qwest's testimony then to Qwest's unsupported claim now.

[106] Qwest attempts to explain away its history of using the same circuit ID with the claim that it discontinued this practice in April 2005 (at about the same time that Qwest was getting ready to implement its secret TRRO PCAT) because it was "experiencing difficulty in managing the large number of circuits" and "incurring a substantial

cause or even as a problem (as shown in **Attachment 2** to this Answer). It does not mention service disruption or end user customers at all. If service disruption were a cause of Qwest's unilateral choice to discontinue using the same circuit IDs for UNE and non-UNE circuits, surely Qwest's witness would have identified service disruption when cataloging the alleged problems leading to Qwest's decision. The fact that Qwest raises it as an alleged cause only now, on reconsideration, undermines the claim. Such unsupported assertions that are not only not in the record but contrary to the record are untimely and improper grounds for reconsideration.[107]

a. Alleged Service Disruptions due to Eschelon's Proposal

30 Regarding service disruptions, Qwest makes the improbable claim that Eschelon desires ICA terms that are more likely to disrupt its own customers' service (to the detriment of Eschelon, its reputation, and its end user customers) than the terms proposed by Qwest. There is nothing in Qwest's Petition or the record to suggest that Eschelon would act against its own interest in that manner. Eschelon is the party seeking seamless conversions. Eschelon wants to ensure that its customers' service is not disrupted when conversions take place on live circuits that are currently supporting service to end user customers at the time of the conversions for pricing purposes from UNEs to non-UNEs.[108] As Eschelon's witness testified, Eschelon "is highly motivated to ensure that conversions can be accomplished reliably, efficiently and cost-effectively."[109] Therefore, Eschelon's proposed ICA language for conversions, which was adopted by the Commission, requires that the circuit ID not change, so there is no change to

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amount of expense." Million Dir., Exh. No. 51, 18:13; Starkey, Exh. No. 73 (MS-9) at Million, MN TR., Vol. 2, p. 86. Qwest did not, however, provide any supporting data or evidence concerning the alleged difficulties.

[107] WAC 480-07-850(2).

[108] Starkey Dir., Exh. No. 62, pp. 142-143.

[109] Starkey Dir., Exh. No. 62, 143:5-7.

prompt a service disruption.[110] Although Qwest initially claims in its Petition that its allegations about service disruptions apply as well to commingled EELs,[111] Qwest offers no explanation as to how relating two components of one EEL on the bills to Eschelon would disrupt a customer's service. And, when specifically discussing commingled EELs, Qwest does not make that claim.[112]

b. Alleged Harm to Other CLECs

31 Regarding harm to other CLECs, Qwest ignores the key fact that CLECs opposed Qwest's efforts to remove these issues from individual negotiations and arbitrations and instead address them belatedly in one setting for all CLECs, Qwest's Change Management Process ("CMP"). Specifically, after Qwest unilaterally developed terms relating to these issues outside of CMP and after Eschelon raised these issues in its negotiations and arbitration proceedings, Qwest tried to avoid addressing them in arbitration by introducing them in its Change Management Process ("CMP").[113] Like Eschelon, other CLECs said that conversions and commingled arrangements are appropriately dealt with in individual ICA negotiations, particularly as the need to address these issues resulted at least in part from changes in law.[114] If other CLECs had believed they would be harmed or prejudiced by individual negotiations and arbitrations, such as this one, they would have said so. Qwest provided no evidence of any such CLEC assertion, even though the CMP discussions are documented in minutes prepared by Qwest.. Qwest claims – with no cite to any portion of the record – that "no CLECs have requested the

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[110] Eschelon's proposed language for Section 9.1.15.2.3, Disputed Issues Matrix, p. 50.
[111] Qwest Petition for Reconsideration, p. 3, ¶5 (with no cite to the record).
[112] Qwest Petition for Reconsideration, pp. 18-19, ¶¶35-38 (with no cite to the record to support any factual claim made in these paragraphs).
[113] See Starkey Dir., Exh. No. 62, pp. 65-78; Starkey Surreb., Exh. No. 71, pp. 35-47.
[114] See, e.g., Starkey Reb., Exh. No. 67, 20:5-7, citing Exhibit BJJ-7, p. 4 (11/17/04 CMP November monthly meeting minutes prepared by Qwest).

change imposed by the Commission's rulings.[115] Even if true, a more likely explanation is that other CLECs may want to avail themselves of the ability to opt-in to the Eschelon interconnection agreement when available, as is their right,[116] rather than expend the resources on arbitrating these issues for themselves. Certainly, Qwest cited nothing in the record to show that other CLECs indicated they want the circuit ID to change, at their cost and inconvenience, or that other CLECs indicated they want the bills for the UNE and non-UNE components of commingled EELs to be unrelated, so they are unable to track and verify the bills for the complete commingled EEL.

c. Alleged Financial Harm to Qwest

32 Regarding alleged financial harm to Qwest, these claims are wholly unsubstantiated; Qwest is the cost causer; and Qwest does not account for costs to Eschelon caused by Qwest's unilateral conduct. Qwest introduced no cost study or data to support its claims. In its Petition for Reconsideration, Qwest refers to a specific dollar amount of "$1 million" with no cite to the record or explanation as to where this figure came from.[117] Qwest essentially concedes that the figure is speculative when it states only that it "may" incur such a cost,[118] which recognizes that Qwest also may *not* incur such a cost. Similarly, in the only portions of the record cited in all of Qwest's Petition for Reconsideration,[119] there is no set dollar amount given and Qwest only states that it ***should not*** have to incur unspecified "millions" of dollars – not that it

[115] Qwest Petition for Reconsideration at p. 4, ¶ 6.
[116] Section 252(i) of the Act.
[117] Qwest Petition for Reconsideration at p. 4, ¶ 6 & p. 19, ¶37.
[118] Qwest Petition for Reconsideration at p. 4, ¶ 6; see also id. p. 19, ¶37 ("it appears initially"). Eschelon's proposed language for Issues 9-43 and 9-58(c) has not changed since August of 2006. See Disputed Issues Matrix, Exhibit 1 to Qwest's Petition for Arbitration, dated 8/9/06. Qwest does not explain why, at this late date, it is speculating about proposed alleged costs with no data to support its claim.
[119] Million Dir. (TKM-1T), Exh. No. 51, pp. 14-18 (selected portions); Million Reb./Surreb. (TKM-3RBT), Exh. No. 53, p. 10.

actually would incur such a dollar amount.[120] Even assuming Qwest would incur costs, Qwest has failed to show that it is not the cost causer of any costs.[121] Qwest itself did not use CMP or any Commission proceeding when developing the process that it now claims is its existing process.[122] If Qwest ultimately incurs costs in changing processes that it should not have put in place unilaterally and over Eschelon's objections, Qwest is the cost causer and should bear those alleged costs.[123] Further, Qwest's position does not account for the work and costs that Qwest's position inflicts upon CLECs.[124]

2. Specific Claims Regarding the Three Rulings Challenged by Qwest

33 Qwest's jurisdictional arguments and general allegations of harm, discussed above, constitute the bulk of Qwest's claims on reconsideration. Qwest's claims specific to Circuit ID for conversions, charges for conversions, and billing for commingled EELs are discussed in this Section.

a. Circuit ID - Conversion of UNEs to Non-UNEs

34 As indicated, a conversion occurs when a UNE is converted to a non-UNE alternative arrangement, such as due to a finding of non-impairment.[125] A circuit identification ("ID") is a number or code that identifies a specific circuit, generally by defining its two end points – referred to as the "A" and "Z" location.[126] Eschelon's proposal for Issue 9-43 states that the

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[120] Million Dir. (TKM-1T), Exh. No. 51, 17:22; Million Reb./Surreb. (TKM-3RBT), Exh. No. 53, 10:20.
[121] Qwest testified that "to ensure that the conversion process is transparent to the CLEC and its customers' services, Qwest interjects a number of manual activities into the process…" Million Direct, Exh. No. 51, 15:14-16. This shows that it is Qwest who is interjecting this manual work into conversions rather than this work being required to accomplish a conversion consistent with the FCC rules. Starkey Reb., Exh. No. 67, 106:12-17.
[122] Starkey Reb., Exh. No. 67, pp. 108-110; Starkey Surreb., Exh. No. 71, pp. 165-166.
[123] Starkey Reb., Exh. No. 67, p. 109, footnote 283. See UT-003013, 41st Supplemental Order, p. 51, ¶184 (in which Qwest argues that a party that is the cost causer should "be solely responsible to pay" those costs); see also UT-003013, 32nd Supplemental Order, p. 19, ¶53; UT-003013, 13th Supplemental Order, p. 129, ¶425.
[124] See, e.g., Starkey Reb., Exh. No. 67, 101:12;
[125] Starkey Dir., Exh. 62, p. 142.
[126] Starkey Dir., Exh. 62, 154:7-11.

circuit ID for the facility that is being converted will not change as a result of the conversion.[127]

35 It is important to note that "conversions" involve only changing the rate charged for the facility and, in the vast majority of circumstances, the CLEC and its end user customer should be using the same facility that was used prior to the conversion.[128] These conversions are required solely for purposes of implementing a regulatory construct and have nothing to do with improving or otherwise managing the end user customer's service. This reinforces the need for conversions to be transparent to Eschelon's end user customers as any disruption in service would be unexpected and difficult to explain. In other words, even though these conversions are being undertaken to effectuate Qwest's reduced legal obligations relative to UNEs, it is Eschelon who bears all the risk of failure.[129] Particularly when viewed in this light, Qwest's allegations of a risk of service disruptions and degradation if the Commission's decision to adopt Eschelon's proposal is affirmed[130] are improbable and contrary to the facts.

i. Increased Risk of Service Disruptions

36 In addition to the evidence in this case, logic dictates that not changing the circuit ID on a customer's existing facility that is up and running just fine (as proposed by Eschelon) is less likely to cause service disruption than changing the circuit ID (as proposed by Qwest). As discussed above, the Commission clearly has authority to set terms and conditions to ensure that conversions are "seamless."[131] The Commission appropriately found:

> Further, we find that retaining the circuit ID appears to be the best method to ensure that the transition from UNE to non-UNE classification is a seamless transition.

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[127] Disputed Issues Matrix, p. 50 (ICA Section 9.1.15.2.3) (Attachment 1 to this Answer).
[128] Starkey Dir., Exh. 62, 142: 14-17.
[129] Starkey Dir., Exh. 62, 142:17 – 143-2.
[130] Qwest Petition for Reconsideration, p. 12, ¶22 & p. 13, ¶24.
[131] The FCC said in TRO ¶586 that conversions "should be a ***seamless*** process that does not alter the customer's perception of service quality" and that conversions are "largely a billing function" (emphasis added).

> Although Qwest appears to have conducted a significant number of conversions without complaint that CLEC customers were disrupted, we are not persuaded that Qwest's use of the current process alone should govern the outcome of this issue. We share Eschelon's concern that Qwest's procedure to process circuit ID changes through "disconnecting" the UNE and "reconnecting" the non-UNE product increases the risk of problems with either the "disconnection or "reconnection" phase, or both. That risk may increase as Qwest classifies more wire centers as non-impaired and the number of conversions increases. We agree with Eschelon that the risk of end-user customer disconnection is inherent in this processing method. Therefore, we affirm the Arbitrator's ruling on this issue.[132]

37 Qwest attacks this Commission finding, stating:

> The Commission's ruling relating to circuit IDs is also based an additional erroneous factual finding – that the use of different circuit IDs creates significant risks of problems relating to disconnections and reconnections of circuits. This finding is based on the Commission's determination that changing the circuit ID involves "'disconnecting' the UNE and 'reconnecting' the non-UNE product." However, the process of changing circuit IDs does not involve any ***physical*** disconnection and reconnection of the actual physical circuit. Qwest does use an "order-out" and "order-in" process to move the circuits from its internal UNE systems to its systems for non-UNEs, but that process does not involve any physical changes – such as disconnects and reconnects – to the circuits. The Commission's finding relating to the risks of disconnects and reconnects resulting from changing circuit IDs thus appears to be based upon an incorrect understanding of the process follows [sic].[133]

38 Qwest is wrong. Qwest mischaracterizes its own statement, as well as the Commission's conclusions. In paragraph 85 of its Order, the Commission cited Qwest's Petition for Review at page 20, in which Qwest states: "Qwest must generate two orders of its own, one to disconnect the UNE and the other to establish the new private line service."[134] In paragraph 85, the Commission refers to the "'disconnection' or 'reconnection' phase."[135] On

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[132] Order 18, p. 32, ¶85.
[133] Qwest Petition for Reconsideration, pp. 13-14, ¶25 (emphasis added).
[134] Qwest Petition for Review, p. 20, ¶45.
[135] Order 18, p. 32, ¶85. Before the Commission issued its Order, it had available to it Eschelon's Post-Hearing Brief, in which Eschelon said at page 25: "Qwest acknowledges that a converted circuit uses the same physical facilities after the conversion as it did before and the conversion does not involve making any physical changes to the circuit. [Starkey Dir., Exh. No. 62, p. 151; Starkey Exh. No. 73 at Million, MN TR. at Vol. 2, 70:13-24 & 72:21-25.] Indeed, the process that Qwest claims it must undertake involves ***a purely paperwork "disconnection"***

reconsideration, Qwest erroneously suggests that the Commission found that changing circuit IDs involves "physical" disconnection,[136] to the exclusion of a paperwork disconnection. Paragraph 85 of the order makes no reference to physical disconnection. The Commission states that the "'disconnection' or 'reconnection' phase, or both" "increases the risk of problems."[137] The Commission's statement is entirely consistent with the evidence in the record. Although Eschelon pointed out in testimony facts that cast doubt on Qwest's claim that Qwest's process would not result in physical work/changes,[138] the evidence demonstrated that the risk of service disruption is increased even assuming a purely paperwork disconnection and reconnection. Qwest's witness, Ms. Million, testified:

> In order to ensure that the conversion process is transparent to the CLEC and its customers' services, Qwest interjects a number of manual activities into the process so that certain automated steps do not occur that could otherwise result in disruption of those services. The purpose of many of the tasks included in the conversion process is to avoid placing the CLECs' end user customers at risk.[139]

39 In other words, the CLECs' end user customers *are* at risk if the Qwest typist makes an error and the disconnection order flows through, which is how the automated steps are intended to work for a disconnection order (*i.e.*, they "result in disruption of those services" [140]). A disconnection order tells Qwest to disconnect the circuit. Under Qwest's proposal, only if a human being "interjects"[141] himself or herself into the process and manually and successfully stops the automated process will the circuit not be disconnected. This is obviously an increase in the risk of service disruption over making no change at all. The evidence clearly showed

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and "re-connection" to convert a circuit, which involves exactly the kinds of activities for which the FCC has made clear CLECs cannot be charged. [Million Dir., Exh. No. 51, p. 14, fn. 8]" (emphasis added).

136 Qwest Petition for Reconsideration, pp. 13-14, ¶25 (emphasis added).

137 Order 18, p. 32, ¶85.

138 See, e.g., Starkey Reb., Exh. No. 67, pp. 104-107.

139 Million Dir., Exh. No. 51, 15:14-18.

140 Million Dir., Exh. No. 51, 15:16-17.

141 Million Dir., Exh. No. 51, 15:15.

that Qwest's proposal, even assuming a paperwork only disconnection, increases the risk of customer service disruption. The Commission hit the nail on the head with its analysis.

ii. Successful Use of a Single Circuit ID

40 Qwest is similarly incorrect about in its criticism of paragraph 84 of the Order. Qwest alleges:

> In requiring Qwest to use the same circuit ID for the UNE and the converted non-UNE-circuit, the Final Order relies in substantial part on the conclusion that in the past, Qwest successfully converted special access circuits to UNEs without changing the circuit ID. According to the Commission, Qwest's success in this regard demonstrates that it should be able to use the same circuit ID when converting from UNEs to non-251 services. However, this conclusion is incorrect, as it fails to recognize testimony establishing that Qwest's attempt to use the same circuit ID for conversions from special access service to UNEs proved unworkable and had to be stopped after a short period.[142]

41 Initially, Qwest is incorrect that the Commission relies "in substantial part"[143] on this conclusion. In the previous paragraph, the Commission states: "In considering whether Qwest may change the circuit ID . . . , we are guided ***primarily*** by the FCC's conclusion that conversion is largely a billing function. . . .[W]e cannot escape the fact that the actual underlying facilities being used at the time of conversion do not change; only the *classification* of those facilities changes. As Eschelon points out, customers are served over exactly the same facilities before and after the conversion. The only change is that Qwest is not entitled to bill Eschelon for these facilities in a manner differently than it billed UNEs."[144]

42 More importantly, the Commission properly recognized that Qwest previously used the same circuit ID for UNE and non-UNE circuits. As discussed in Section B(1) above, the unverified testimony upon which Qwest relies about manual tasks and costs does *not* identify service disruption as a cause or even as a problem (as shown in Attachment 2 to this Answer). It does

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[142] Qwest Petition for Reconsideration, pp. 12-13, ¶ 23.
[143] Qwest Petition for Reconsideration, p. 12, ¶ 23.
[144] Order 18, p. 31, ¶83 (emphasis added). See TRO ¶588 (conversions are "largely a billing function"). Paragraph 83 of the Order succinctly rejects the same claims that are made in paragraphs 19-21 of Qwest's Petition for Reconsideration, none of which are new.

not mention service disruption or end user customers at all. This makes sense, because making no change would not cause any disruption to service.

43 In Qwest's testimony (quoted in part above), Qwest admits that its current unilaterally developed process for conversions is manually-intensive.[145] Ironically, Qwest's criticism of its own previous practice of using the same circuit ID for conversions (as proposed by Eschelon) is that it is manually-intensive.[146] In other words, even assuming the facts as alleged by Qwest, the Commission chose between two manually-intensive processes, both of which interject[147] or impose[148] manual tasks to accomplish the conversion. Only one proposal (Qwest's proposal), however, results in disconnection of the end user customer's service if the manual task fails to stop automated processing of the order "to disconnect the UNE."[149] That order activity is triggered by the change in circuit ID, which does not occur under Eschelon's proposal. Qwest's complaints about the alleged manual activities associated with Eschelon's proposal are no basis on which to reconsider the Commission's rulings, when Qwest admits that its proposal is manually-intensive and Qwest's testimony shows that a mistake in its manual process results in processing of a disconnect order (*i.e.*, service disruption). Qwest's unilaterally developed process was correctly rejected by the Commission as increasing the risk of service disruption.

iii. Service Quality Obligations

44 Qwest's claim that separate circuit IDs are necessary because of "different service quality obligations" between UNE and non-UNE circuits[150] is also incorrect. As discussed in the Introduction to this Answer, both UNEs and their substitute non-UNE services are a part of

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145 Million Dir., Exh. No. 51, 15:14-18.
146 Million Dir., Exh. No. 51, 18:4-24.
147 Million Dir., Exh. No. 51, 15:15 (referring to Qwest's current unilaterally developed process).
148 Qwest Petition for Reconsideration, p. 13, ¶ 24 ("imposition of extensive manual-intensive tasks") (referring to Qwest's previous same-circuit ID practice).
149 Qwest Petition for Review, p. 20, ¶45.
150 Qwest Petition for Reconsideration, p. 11, ¶ 20.

Qwest's Performance Assurance Plan in Washington.[151] In fact, in order to include UNE substitutes as a part of the PAP, Qwest was required to create a process for tracking that dealt with differences in the elements circuit IDs.[152] This special process would not be necessary for converted circuits, if Qwest did not make changes to the circuit ID. Qwest's claims about alleged costs and burdens do not recognize the efficiencies and savings afforded by Eschelon's proposal.

iv. Parity

45 Parity is the standard for repair when comparing a DS1 capable loop and a DS1 special access/private line circuit.[153] This calls into doubt Qwest's claims about alleged delays in completing repairs if the same circuit ID is used.[154] Qwest not only does not mention delay as a reason for discontinuing use of the same circuit ID in the testimony upon which it relies,[155] but also Qwest provided no data to show that any delays affected its performance during the period of time when its practice was to use the same circuit ID for conversions. Qwest claims that, without a change in circuit ID, Qwest will not know "which maintenance and repair center is responsible for performing services on a circuit that is experiencing trouble."[156] This statement suggests that Qwest requires Eschelon to use different processes, systems, and Qwest Centers to report trouble for an unbundled DS1 loop versus a special access/private line circuit.

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[151] *In the Matter of the Petition of Qwest Corporation For an Alternative Form of Regulation Pursuant to RCW 80.36.135*, Order No. 8, Docket No. UT-061625, September 6, 2007, ¶ 42 ordering clause 1(c) ("The QPAP terms must apply to all wholesale services provided by Qwest as a substitute for unbundled network elements during the term of the AFOR, unless the affected parties agree otherwise.").#

[152] *In the Matter of the Petition of Qwest Corporation For Commission Approval of Stipulation Regarding Certain Performance Indicator Definitions and Qwest Performance Assurance Plan Provisions*, Order No. 6, Docket No. UT-073034, May 23, 2008, ¶ 34 adopts the 2008 Partial Settlement. Exhibit 2. Sections 4.3 and 4.4 describe the process used by Qwest to apply the PAP to UNE substitute services.

[153] See Exhibit B to the ICA (PIDs)at MR-6 (mean time to restore): unbundled loops, DS1 capable loops – parity with DS1 Private Line.

[154] Qwest Petition for Reconsideration, p. 12, ¶ 22.

[155] Million Dir., Exh. No. 51, 18:4-24 (Attachment 2), cited in footnote 26 to ¶24 of Qwest's Petition.

[156] Qwest Petition for Reconsideration, p. 12, ¶ 22.

Qwest's own Maintenance and Repair PCAT demonstrates that is not the case.[157] It confirms that Eschelon uses the same system and contacts the same Qwest repair center to report trouble on a DS1 capable loop as it does a DS1 special access/private line circuit, because the Qwest repair centers are organized by the classification of a service as designed or non-designed. Both a DS1 capable loop and a special access/private line circuit are classified by Qwest as designed services.[158]

46 Qwest asserts: "Without a change in circuit IDs, Qwest's systems will not be able to determine ***which testing parameters apply*** to a circuit."[159] When considering this assertion (which is devoid of any cite to any portion of the record), it is important to keep in mind the particular factual situation at issue. These are *conversions*. As the Commission said, "the actual underlying facilities being used at the time of conversion do not change; only the *classification* of those facilities changes. As Eschelon points out, customers are served over exactly the same facilities before and after the conversion."[160] Qwest presents no evidence or explanation as to why Qwest would (or should be allowed to) apply different testing parameters, before and after a pricing change, for the exact same facility. These types of claims by Qwest raise more questions than they answer, and they do not constitute grounds for reconsideration.

v. Embedded Base

47 Qwest attempts to escape the Commission's conclusion that conversions are part of the transition away from UNEs[161] by attempting to characterize this as an issue that implicates only non-UNEs.[162] Qwest's argument ignores the key fact that, like Qwest's previous practice

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157 Qwest (Albersheim), Exh. No. 17, p. 13.
158 Albersheim Exh. No. 18, p. 45 line 24 – p. 46, line 2.
159 Qwest Petition for Reconsideration, p. 12, ¶ 22 (emphasis added).
160 Order 18, p. 31, ¶83.
161 Order 18, ¶¶ 68-70; see also Docket UT-043013, Order 17, p. 60, ¶150.
162 See, e.g., Qwest Petition for Reconsideration, p. 3, ¶ 4.

of using the same circuit ID for UNEs and non-UNEs,[163] the obligation to use the same circuit ID ordered by the Commission applies only to the embedded base of UNEs being converted to wholesale services. In other words, it is clearly part of the conversion. For non-conversions, including new orders for non-UNEs, as well as new orders for commingled EELs,[164] the Commission does not require use of a single circuit ID. As Qwest's own evidence shows,[165] using the same circuit ID for the embedded base only, while allowing different circuit IDs for new ordering, results in a diminishing number of circuits with the same circuit ID over time (i.e., over a transitional period).

48 This is a reasonable approach to effectuating the intent that conversions be seamless. As the Commission pointed out, it is particularly appropriate in light of Qwest's position – throughout negotiations, the filing of its Petition in August of 2006, three rounds of testimony, the hearing, and post-hearing briefing – that it would "decline to offer alternative ICA language."[166] If Qwest had issues with the specific language, it had ample opportunity to raise, negotiate, and arbitrate them in the years preceding its reconsideration petition.

vi. Qwest's Alternative Modified Proposal

49 At this late date, Qwest proposes, in the alternative, that Qwest be permitted "to change the prefix of the circuit ID while keeping the rest of the circuit ID the same."[167] Despite the suggestion that this is a new proposal that Qwest believes would "balance the needs of both

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[163] Million Dir., Exh. No. 51, 18:9 & 18:17-19 (same circuit ID retained for embedded base, whereas different circuit IDs required for "circuit additions or changes").

[164] Arbitrator's Report, Order 16, p. 35, ¶114, aff'd.

[165] Under Qwest's process where the same circuit ID remained for UNEs and non-UNEs for the embedded base but different circuit IDs were used for new orders after a certain date, Ms. Million testified that the number of circuits with the same circuit ID was currently fewer than 7% of all DS1 and DS3 UNEs. Million Dir., Exh. No. 51, 18:17-21. Despite Qwest's allegations of tracking difficulties, Ms. Million was able to identify and quantify these circuits for her testimony and even testified that she had accounted for them in cost studies. See *id*. 18:21-24.

[166] Order 18, p. 30, ¶78. See also Starkey Dir., Exh. No. 62, pp. 147-148.

[167] Qwest Petition for Reconsideration, p. 15, ¶ 28.

parties,"[168] Qwest's proposal is no different from what Qwest described in the Oregon wire center docket in 2006.[169] That was before the same Qwest witness filed direct testimony in this case.[170] Qwest's so-called "compromise"[171] proposal is no compromise.

50 It does not resolve the issues raised by Eschelon in this arbitration. As Qwest did not indicate otherwise, it appears Qwest proposes to make a partial change in the same manner as it would change the entire circuit ID (using disconnect and new orders). The problems and increased risk of service disruption associated with the disconnection phase, discussed in Section B(2)(a)(i) above, would remain unchanged. It also does not "balance the needs of both parties."[172] It addresses Qwest's desire to change the circuit ID, albeit with fewer of the digits, without addressing in any way the burden on Eschelon to make corresponding changes in its systems if the circuit ID is modified in any respect. Qwest states that it uses the entire circuit IDs for tracking (the 15.HCFU in addition to the numerical portion of the ID).[173] Likewise, Eschelon's systems track circuit IDs by the entire circuit ID, not just the numerical portion. Numerous Eschelon systems rely on that circuit ID in providing ongoing billing and customer service to the end user customer.[174] To the extent Qwest is allowed to change the circuit ID in this manner, Eschelon's systems will be substantially, adversely, and unnecessarily affected, with accompanying notable cost and inconvenience.[175]

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[168] Qwest Petition for Reconsideration, p. 15, ¶ 29.
[169] Qwest Response 017 by Ms. Million (same Qwest witness as in this docket), attached to the publicly filed testimony of Mr. Denney in Oregon Docket No. UM 1251, May 19, 2006. The Order in this Oregon case is Exh. No. 169 (DD-36). See Denney Surreb., Exh. No. 152, 9:25-27, stating: "Documents related to this order, including the order are available at: http://apps.puc.state.or.us/edockets/docket.asp?DocketID=13173."
[170] Ms. Million's direct testimony in this matter is dated Sept. 29, 2006.
[171] Qwest Petition for Reconsideration, p. 15, ¶ 30.
[172] Qwest Petition for Reconsideration, p. 15, ¶ 29.
[173] Qwest Petition for Reconsideration, p. 15, ¶ 28.
[174] Starkey Dir., Exh. No. 62, 155:1-2.
[175] Starkey Dir., Exh. No. 62, 155:5-7.

51 Qwest's proposal continues to raise the questions about repairs. Qwest has made no commitment that the same numerical portion of the circuit ID is not already in use with the other prefix. This could create confusion and possibly lead to rejection of orders or, worse yet, disruption of another carrier's service. For example, assume that the circuit ID in Eschelon's system for an Eschelon customer's working service is 15.HCFU.043644.NW, whereas at the same time the circuit ID in another carrier's system for its customer's working service is 15.HCGS.043644.NW. Qwest has provided no evidence, nor any assurance to Eschelon or this Commission, that this scenario cannot occur. If Qwest changes the prefix of Eschelon's circuit in Qwest's system to 15.HCGS.043644.NW, it is unclear whether Qwest's system will reject the change or will maintain two circuits with that number. In addition, as Eschelon's system will continue to reflect a circuit ID number of 15.HCFU.043644.NW, that is the number which Eschelon's personnel will place on any trouble report when reporting trouble to Qwest. (If Qwest's answer to this is that Eschelon must go into its systems and change each and every circuit ID, then this clearly shows that Qwest's proposal suffers from the same problems as before.) Even assuming Eschelon does not have to make the change in its systems, it is unclear whether Qwest would reject Eschelon's trouble report (because the ownership of the circuit would not match the circuit ID reflected in Qwest's system) or if somehow the trouble report could affect the other carrier, which already had that circuit ID, with the "HCGS" prefix. Qwest's alternative proposal does not resolve the issues related to a circuit ID change and should be rejected by this Commission for the same reasons that the Commission previously rejected Qwest's proposal for this issue.

b. Charge - Conversion of UNEs to non-UNEs

52 The amount of the non-recurring charge for conversions to be applied for a minimum three-year period was agreed upon as part of Issue 9-40 (ICA Sections 9.1.13.5.2, 9.1.14.6, & 9.1.15.2.1), and thus was removed from the disputed issues list before resolution by arbitration.[176] If it were to later become clear, for example, that the applicable economic costs are lower than the agreed upon dollar amount, then Qwest will have been over-compensated during the minimum three-year period for the conversions. Nonetheless, to resolve the dispute, the parties agreed to a negotiated dollar amount for a minimum three-year period.

53 In its Petition for Reconsideration, Qwest challenges language relating to *charges* within the Commission's discussion of Issues 9-43 and 9-44 (both relating to conversions).[177] Qwest's arguments regarding jurisdiction are addressed in the previous sections of this Answer.[178] For Issues 9-43 and 9-44, the Commission adopted Eschelon's proposed language for ICA Section 9.1.15.3 and subparts.[179] As the request for reconsideration in Qwest's Petition is limited to "the rate Qwest is permitted to charge to recover the costs of the UNE conversion requirements imposed by the final Order,"[180] Qwest has not sought reconsideration of the Commission's adoption of Eschelon's proposed language for ICA Section 9.1.15.3 and subparts. Instead, Qwest seeks reconsideration of the single point of "limiting Qwest to the $25 charge."[181]

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[176] See Attachment 1: Compare Disputed Issues Matrix, pp. 13-131, with pages of the proposed ICA showing agreed upon language for ICA Sections 9.1.13.5.2, 9.1.14.6, & 9.1.15.2.1.
[177] Qwest Petition for Reconsideration, p. 2, ¶1, footnote 2.
[178] Qwest argued as recently as its Petition for Review (p. 16, ¶35) that this Commission should address these issues in a generic docket – seemingly acknowledging the Commission's jurisdiction to decide the issues, albeit in another docket. Regarding Qwest's current jurisdiction claim (Qwest Petition for Reconsideration, p. 16, ¶ 31), this Commission has properly concluded that it has jurisdiction over the rate for conversions, as discussed above. The commissions in Colorado, Utah and Oregon also have found that state commissions have jurisdiction over the rate for conversions. See Denney Surreb. Exh. No. 152 at Exh. No. 168 (DD-35) (Utah Decision, p. 36 of ALJ Report; Exh. No. 169 (DD-36) (Oregon Decision, p. 19); and CO Decision No. C08-0969, CO Docket No. 06M-080T (Sep. 17, 2008), ¶62, p. 20.
[179] Disputed Issues Matrix, pp. 50-51 (Attachment 1).
[180] Qwest Petition for Reconsideration, p. 16, ¶ 31.
[181] Qwest Petition for Reconsideration, p. 17, ¶ 32.

Qwest, however, provided no cost studies in support of any cost recovery claim associated with Issues 9-43 and 9-44, despite a requirement that it do so.[182] Qwest simply does not explain on what evidence the Commission should at this time allow Qwest to charge more than $25.00, when Qwest provided no cost support for this claim.

54 Qwest argues, as it did in its Petition for Review,[183] that the $25 charge "does not include the costs of complying with the Commission-imposed requirements" for UNE conversions.[184] The Commission has already considered and rejected this argument. Qwest also argues that because the $25 charge was agreed upon before the Commission issued its order in the Eschelon arbitration, Qwest could not have considered the outcome of this Commission's ruling when agreeing to this rate.[185] Taken to its logical conclusion, Qwest's argument would deprive any arbitration decision of finality. Even though a party was fully aware of the other party's proposals throughout the arbitration, upon receiving a ruling, the party could then claim, "gee, had I known you weren't going to rule in my favor, I would have presented different evidence and arguments." Qwest was fully aware of Eschelon's proposal for these issues[186] and had ample opportunity to submit cost evidence in opposition to that proposal. As with Issue 22-90, however, Qwest chose not to submit cost support throughout this proceeding, despite a requirement that it do so.[187]

55 Although Qwest points to the date the Commission issued its Order in this arbitration,[188] the relevant date is the date upon which Qwest agreed that a rate of $25 would apply to conversions – ***June 2007***. This is when Qwest executed the wire center settlement

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[182] WAC 480-07-630(5)(c); see Arbitrator's Report, Order 16, ¶173.
[183] See, e.g., Qwest Petition for Review, p. 21, ¶48.
[184] Qwest Petition for Reconsideration, p. 17, ¶ 33.
[185] Qwest Petition for Reconsideration, p. 17, ¶ 33.
[186] Eschelon's proposed language for Issues 9-43 and 9-44 has not changed since August of 2006. See Disputed Issues Matrix, Exhibit 1 to Qwest's Petition for Arbitration, dated 8/9/06.
[187] Arbitrator's Report, Order 16, ¶173.
[188] Qwest Petition for Reconsideration, p. 17, ¶ 33.

agreement.[189] At the time Qwest executed the settlement agreement, Qwest was fully aware both that Eschelon was proposing a manner of conversion different from Qwest's approach and that Qwest had obtained no ruling in this matter rejecting that proposal. Obviously, there was no understanding that the $25 compromise rate covered only a certain manner of conversion, because the manner of conversion remained a known disputed issue. The wire center settlement agreement does not, for example, state that the rate will be $25 for the minimum three-year period only if conversions are handled in the manner proposed by Qwest. Qwest could have negotiated to obtain such language or, failing that, elected not to enter into the settlement, if Qwest wanted to ensure that the compromise rate only applied if certain conditions were met. Instead, Qwest voluntarily agreed to a compromise rate before the manner of conversion was decided. In Eschelon's view, with adoption of Eschelon's proposal, a non-recurring charge ("NRC") of $25 is a windfall for Qwest because Qwest is doing a simple billing change using a familiar process but is getting a high NRC for doing it. But, that is the compromise reached before the manner of conversion was decided, and Eschelon is not seeking to reduce the compromise rate on the grounds that it believes, given the Commission's more recent ruling, the rate should be closer to zero (as discussed below).

56 In Qwest's Petition for Review, Qwest made unsupported assertions about the alleged basis for the rate and claimed (without any cite to any portion of the record) that it "relates solely to the costs Qwest incurs to receive and process the orders CLECs submit to convert from UNEs to alternative services."[190] Qwest does not cite any authority for this statement, because it has none. Both the wire center settlement agreement and the agreed upon ICA language state that

[189] On June 20, 2007, the parties filed in this matter a Joint Motion of Eschelon and Qwest for a Single Compliance Filing of the Interconnection Agreement, which stated on page 1 that "Qwest and Eschelon have both executed a settlement agreement ('Settlement Agreement') regarding the wire center issues" and attached a copy of the Settlement Agreement.

[190] Qwest Petition for Review, p. 21, ¶48.

the $25 is "for each facility converted from a UNE to an alternative service or product under this Settlement Agreement."[191] There is no language limiting the rate to receiving and processing orders. Moreover, the settlement agreement specifically provides that it "is made only for settlement purposes and does not represent the position that any Party would take if this matter were not resolved by agreement."[192] Qwest's claim that the compromise of $25 represents its position on manner of conversion is contrary to the express language of the settlement agreement. The parties agreed that the rate is applicable to conversions for at least three years, after which each party reserves its rights to seek a different rate for conversions.[193]

57 Qwest continues to ignore the substantial savings for both parties in not needing to physically convert circuits, and instead simply adding a surcharge to the bill to reflect the difference in price. Qwest protests too much about the alleged cost of the simple and familiar act of adding a surcharge to a bill. Certainly, Qwest provided no data in the record to support its cost claims. The Commission found that Qwest will be compensated for conversion-related activities by the non-recurring charge for the conversion.[194] Not only are the costs of re-pricing (by adding a surcharge to a bill) relatively minimal, but also Qwest is being over-compensated for the conversion. The only Commission to rule on the merits of the proper amount of the non-recurring conversion charge in the wire center proceedings is Colorado, which found the appropriate charge should be $0.00.[195] Also, in Arizona, the Staff had recommended $0.00.[196] Qwest is the cost causer, particularly as Qwest is not required to convert these circuits.[197] All of Qwest's arguments ignore that Qwest can avoid all costs by not asking for these circuits to

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191 Settlement Agreement, ¶IV(A); ICA Sections 9.1.13.5.2, 9.1.14.6, & 9.1.15.2.1.
192 Settlement Agreement, ¶VII(B).
193 Settlement Agreement, ¶IV(C); ICA Section 9.1.13.5.2.1.
194 Order 18, ¶91.
195 CO Decision No. R08-0164, CO Docket No. 06M-080T (Feb. 19, 2008), ¶114, p. 34.
196 AZ Docket Nos. T-03632A-06-0091 et. al., October 20, 2006, Executive Summary, point 7.
197 While the TRO allows Qwest to stop offering certain UNEs, it does not require Qwest to do so.

be converted. If it desires circuit conversion, Qwest has made a determination that conversion is beneficial to Qwest. Qwest is the only party benefiting from the conversion. The impact of the conversion to Eschelon is to pay higher rates, to Qwest's benefit. The FCC addressed conversion charges in paragraph 587 of the TRO:

> Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions.

58 Qwest cannot reasonably claim that it was unaware of the position of CLECs, including Eschelon, that a change in the circuit ID was unnecessary and a surcharge would be used at the time Qwest agreed to the $25 compromise rate. This issue was raised in both the wire center proceedings across Qwest's territory as well as in the Eschelon arbitrations, which as discussed above predated the settlement. Likewise, Eschelon was aware that it was agreeing to pay a $25 charge where an appropriate rate would be $0. The minimum three-year time frame for the rate, with the right to challenge the rate after three years, applies to both parties. The Commission's conclusion that "it is reasonable to assume that each party in that proceeding adequately represented its own interests in arriving at the rate"[198] is reasonable, particularly because both Qwest and Eschelon and their respective expert witnesses were involved in both the arbitrations and the wire center proceedings.

c. Billing for Commingled EELs

59 Qwest's discussion of billing for commingled EELs in its Petition is almost exclusively a restatement of its jurisdictional arguments, which are addressed above in Section B(2). The Commission struck a balance to achieve a workable commingling solution by rejecting Eschelon's preferred proposal (requiring a single order, single circuit ID, and single bill for

[198] Order 18, p. 34, ¶91.

commingled arrangements, as with a UNE EEL today[199]) and recommending adoption of Qwest's language[200] along with Eschelon's alternate language (requiring separate components to be identified and related), which Eschelon offered should Qwest's position on 9-58 be adopted.[201] With respect to billing, Eschelon's alternative proposal is that Qwest relate the separate components of Commingled arrangements on bills, so that Eschelon will be able to at least determine which separately identified components are combined to make up a completed service (so, for example, bills do not continue for one portion of a service but not the other when both should stop).[202] The alternative proposal represents a significant compromise by Eschelon. Using two or more circuit IDs for one end-to-end commingled arrangement, which then need to be related somehow for every operational and billing purpose, is a far cry from the single order, single circuit ID, single bill approach that is available to serve end users today with UNE EELs, but Qwest will not permit for commingled EELs, though only the price is different.[203]

60 Under the Commission's recommendations, when taken together, Qwest may require separate ordering, circuit IDs, and billing for the UNE and the non-UNE that comprise a commingled arrangement, but Qwest must then identify and relate the separate components on the bill. The Commission should affirm its rejection of Qwest's proposal to disturb that balance by deleting the ICA language. As with conversions,[204] Qwest's position – throughout negotiations, the filing of its Petition in August of 2006, three rounds of testimony, the hearing, and post-hearing briefing – has been that it would decline to offer alternative ICA language. If Qwest had issues

[199] Issues 9-58, 9-58(a), 9-58(b).
[200] Issue 9-58, Arbitrator's Report, ¶ 110. See also Issue 9-55, *id*. ¶ 101.
[201] Issues 9-58(c)-(d) & 9-59. Arbitrator's Report, ¶¶ 118, 122, 114.
[202] Denney Dir., Exh. No. 130, pp. 152-155.
[203] Denney Dir., Exh. No. 130, 145:13-18.
[204] Order 18, p. 30, ¶78.

with the specific language, it had ample opportunity to raise, negotiate, and arbitrate them in the years preceding its reconsideration petition. Moreover, the language adopted by the Commission specifically states that the steps identified in the ICA apply "unless the Parties agree in writing upon a different method(s)."[205] If Qwest finally responds to Eschelon's language with proposed revisions and the parties negotiate any compromise, they may amend the ICA accordingly at that time pursuant to this provision.

61 Qwest argues that it is not technologically possible to comply with the Commission's ruling without significant changes to Qwest's operating systems.[206] Qwest requests that the Commission "permit a delay in implementation to permit Qwest the time needed to assess feasibility and to perform the changes."[207] Eschelon believes Qwest's claims to be exaggerated; certainly they are not supported by data or any cite to any portion of the record. Moreover, Qwest identifies no proposed timeline, leaving its request open-ended and implementation uncertain. Without a specific proposal for an implementation timeline, Qwest's request is too vague and offers Eschelon no assurance that the Commission's ruling will ever be implemented. Qwest has been quick to suggest that Eschelon, which without question does *not* have the ability to access the information from Qwest's systems, "could readily track the related components of commingled arrangements by maintaining a simple spreadsheet that lists the circuit IDs associated with each arrangement."[208] If the Commission entertains Qwest's request, the Commission may want to require Qwest, which has previously proposed a spreadsheet solution, to regularly provide Eschelon with spreadsheets containing

[205] ICA Section 9.23.4.6.6, Disputed Issues Matrix, p. 72.
[206] Qwest Petition for Reconsideration, p. 19, ¶ 37.
[207] Qwest Petition for Reconsideration, p. 19, ¶ 38.
[208] Qwest Petition for Review at ¶ 68.

the information identified in Section 9.23.4.6.6 and subparts and relating the information on the bills for a defined interim period until the bills contain that information.

62 Alternatively, in light of the Commission's ruling, Qwest could avoid the alleged compliance issues if it agreed to use a single bill for Commingled arrangements, in which case none of the steps for relating the bills would be required, because there would only be one bill, as is true today for UNE EELs and private line/special access.[209]

63 The Commission properly found: "Qwest has an interest in *billing* at the appropriate rate; Eschelon has no less interest in ensuring that it is *paying* the appropriate rate. We conclude that the Arbitrator's approach appropriately balances both parties' interests."[210]

III. CONCLUSION

64 Based upon the foregoing and the evidence and briefing in this proceeding, Eschelon respectfully requests that the Commission confirm its prior decision and reject Qwest's Petition for Reconsideration.

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[209] See, Denney Dir., Exh. No. 130, pp.142 & 152-153.
[210] Order 18, ¶ 99.