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1 P R O C E E D I N G S

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3 CHAIRWOMAN SHOWALTER: We are here in the
4 case of a petition of Eschelon. I'm not sure what the
5 title is, but the docket number is UT-033039, and we
6 are here for oral arguments on the recommendations of
7 the administrative law judge's recommended opinion, and
8 we have agreed that we will hear first from
9 Ms. Endejan. Why don't you enter your names on the
10 record first.

11 MS. ENDEJAN: Good afternoon, Chairwoman
12 Showalter, Commissioners Oshie and Hemstad. Judy
13 Endejan appearing for the petitioner and complainant,
14 Eschelon Telecom of Washington, Inc. Also listening in
15 on the phone is Dennis Ahlers, who is a senior counsel
16 with the petitioner.

17 MS. ANDERL: Your Honors, Lisa Anderl,
18 in-house counsel representing Respondent Qwest
19 Corporation.

20 CHAIRWOMAN SHOWALTER: I think we've agreed
21 that Ms. Endejan will speak for approximately five
22 minutes and then we will turn to Ms. Anderl for
23 approximately half an hour and then hear rebuttal back
24 from Ms. Endejan. Go ahead.

25 MS. ENDEJAN: Thank you, Your Honor. The

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1 reason that I have estimated that I will only need five
2 minutes is from the standpoint of Eschelon, it appears
3 that really the only remaining issue in this case is
4 not a question as to whether Eschelon is entitled to
5 the McLeod rate of \$21, but, in fact, when it is
6 entitled to have gotten that rate, and I say that
7 because as both the administrative law judge
8 acknowledges and even Qwest in the declaration of
9 Mr. Christiansen acknowledges, Eschelon has entered
10 into an agreement with Qwest as of last fall whereby
11 Qwest provides to Eschelon the UNE-star rate, which is
12 at the genesis or at the source of this lawsuit.

13 Perhaps I might briefly take you back to how
14 this case came about, and I understand that Ms. Strain
15 from the Commission staff has provided you with a time
16 line of events leading up to this, but really what is
17 at issue is the UNE-P rate that was made available to
18 McLeod that Eschelon asked for on October 29th of 2002.
19 The agreements between McLeod and Qwest and Eschelon
20 and Qwest are laid out on the time line of events, but
21 I would emphasize that what is sort of critical here is
22 that McLeod and Eschelon were entitled to the same
23 \$24-a-month rate pursuant to respective amendments with
24 their interconnection agreements, and despite the fact
25 that the term of the McLeod interconnection agreement

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1 expired earlier than the term of the Eschelon agreement
2 and despite the fact that McLeod had a different volume
3 commitment than Eschelon, they both were given the same
4 \$24 rate.

5 Then McLeod entered into negotiations with
6 Qwest and negotiated an amendment to this \$24 UNE-star
7 rate dropping it to 21.16 as of September 20th, 2002.
8 Approximately a month later, Eschelon wrote to Qwest in
9 a fairly straightforward letter stating that they
10 wanted to invoke their rights under Section 252(i) of
11 the Federal Telecommunications Act to that same rate;
12 in other words, substituting the \$24 rate that they had
13 both been paying for the \$21.16 rate that McLeod was
14 now paying.

15 Thereupon, a lot of issues ensued, but
16 ultimately, the parties did reach an agreement, and
17 Qwest is giving Eschelon the same UNE-star rate as
18 McLeod, so I think that the issue of entitlement to
19 that rate should be pretty much off the table, and in
20 fact, what really needs to be resolved is simply the
21 timing. The issue before the Commission is whether
22 Eschelon is entitled to the benefit of its opt-in
23 request, which asked for the rates and the term of the
24 McLeod amendment setting forth the \$21.16 rate.

25 We would submit that and we have supported

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1 the recommended decision of the administrative law
2 judge. She pretty much lays out the facts of the case,
3 the arguments made by the parties, and the rationale
4 for justifying Eschelon's entitlement to the benefit of
5 that opt-in procedure and the benefit of that rate, and
6 we would ask the Commission to accept the recommended
7 decision.

8 We would also like to emphasize that this
9 issue has been litigated in other jurisdictions between
10 Qwest and Eschelon. The Minnesota Commission, in fact,
11 has agreed with the position of Eschelon, and the
12 Minnesota Public Utilities Commission on December 2nd
13 of 2003 issued an order permitting the opt-in and
14 requiring a refund, thereby giving Eschelon the benefit
15 of its opt-in.

16 CHAIRWOMAN SHOWALTER: One clarification
17 there. My understanding of the Minnesota case is they
18 gave Eschelon relief as of the date that Eschelon made
19 its request of Qwest, not retroactive to that date, and
20 my understanding of your position in this case is you
21 are asking for refunds or compensation prior to the
22 date you made the request of Qwest, your original first
23 letter.

24 MS. ENDEJAN: To remove that, perhaps, as an
25 issue from the table, after consultation with my

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1 client, Eschelon does not want to dispute whether or
2 not it's entitled to any refund prior to the date of
3 its opt-in, and it accepts and acknowledges the
4 appropriateness of the Minnesota decision. So to the
5 extent that Ms. Anderl would like to address that point
6 and point out some of the issues associated with that,
7 I think we can take that off the table.

8 COMMISSIONER HEMSTAD: October 29th, 2003?

9 MS. ENDEJAN: That is correct.

10 CHAIRWOMAN SHOWALTER: There goes some of the
11 argument time.

12 MS. ENDEJAN: I suppose it does. I can't
13 speak for Ms. Anderl. With that, Your Honor, again, I
14 can't say it any better than the administrative law
15 judge did in the recommended decision, and we would
16 urge you to support it.

17 CHAIRWOMAN SHOWALTER: I think that was only
18 five minutes. Ms. Anderl?

19 MS. ANDERL: Good afternoon, Chairwoman
20 Showalter, Commissioners Hemstad and Oshie. It's nice
21 to be back here. I actually haven't been before you
22 for awhile. I wanted to take my time here now, of
23 course, on the first and third issues that I raised in
24 our comments on the initial order. It's always nice to
25 have a small victory under my belt even before I open

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1 my mouth, so if the effective date of the rate for the,
2 quote unquote, McLeod rate for Eschelon will be October
3 29th, 2002, we think if Eschelon is otherwise entitled
4 to relief, of course, that is the appropriate date, so
5 we won't spend any more time discussing that.

6 Most importantly, we think that Eschelon is
7 not entitled to the relief that it requested, that they
8 did not make a proper opt-in request, that August of
9 2003 was really the soonest we learned that they were
10 not trying to assert -- or that August of 2003 is when
11 they claimed they were not trying to ask for things
12 beyond that which they were entitled to under a
13 legitimate opt-in, even though we had been pursuing
14 them for seven or eight or nine months asking them if
15 that were indeed the case.

16 As soon as they made their intentions clear
17 to us, we did amend their interconnection agreement.
18 Even the amendment that we entered into with them in
19 September of '03, I don't know that you would
20 technically call that an opt-in, because really, they
21 didn't opt in to the McLeod rate. The McLeod rate is
22 \$21.16. The amendment that Eschelon has now with Qwest
23 is \$21.51, so they never did ultimately opt in.
24 Ultimately what we agreed to do was amend their
25 interconnection agreement to reach a price that was

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1 satisfactory to both of us.

2 Let me kind of start at the beginning and
3 take you through why at the time we received the
4 Eschelon letter in October of 2002, we did not believe
5 they were making a legitimate opt-in request. I've
6 provided each of you with a packet of documents, all of
7 which are already in the record. I just thought it
8 would be handy to have them all together. Behind Tab 1
9 is the Eschelon opt-in letter.

10 When we received this letter, we had a couple
11 of questions for Eschelon. One was what exactly did
12 they want to opt in to? If they wanted to opt in to
13 the prices of the McLeod agreement, our question to
14 them was, were they also opting into the same service
15 package as McLeod, and we will get to that in just a
16 minute, because the service packages are really very
17 different, and the second question we had for them is,
18 will you accept the McLeod termination date for the
19 prices that you are asking for.

20 Eschelon has claimed that it's very clear
21 that all along, they only wanted the McLeod rate
22 through December 31st of '03. We don't think that's
23 the case. If you read this letter, and if you see at
24 the bottom of the first page of the letter the
25 statement that says, "Eschelon requests that Page 9 of

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1 Attachment 3.2 of Eschelon's interconnection agreement
2 amendment." So in other words, they are asking that
3 Page 9 of their own agreement be amended to add the
4 rates in the attached page from the McLeod amendment
5 under the heading "prices for offering." They are not
6 trying to opt in to the McLeod page. They are just
7 trying to pull some rates out.

8 If you pull rates out of the McLeod agreement
9 and enter them into the Eschelon agreement, what you've
10 effectively done is made those rates effective for the
11 entire duration of the Eschelon agreement, which is
12 through 2005. We weren't willing to agree to that, and
13 that was one of the main reasons why we had this issue
14 with Eschelon and corresponded with them almost
15 immediately to raise this issue of the termination
16 date.

17 Based on the information in the record at
18 that time and even up until August or September of last
19 year, of '03, we didn't know that Eschelon was willing
20 to accept the December 31st, 2003, termination date for
21 these prices that they were purporting to opt in to.

22 Indeed, it was even an issue at the
23 prehearing conference when the ALJ sat before us and
24 asked Mr. Ahlers and I to define the issues, and I
25 asked specifically, noted that it appeared whether the

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1 termination date should be December of '03 or December
2 of '05 was still an issue. At that point on the
3 record, Mr. Ahlers said, no, it wasn't. They were
4 willing to accept the '03 termination date, which was
5 fine with us. Obviously, that's what we wanted, but I
6 raise this issue and I emphasize it because this
7 commission's interpretive policy statement has noted
8 that the term of the agreement is a legitimately
9 related term.

10 We were not trying to be obstructionist with
11 Eschelon here. We were not trying to pretend that we
12 didn't understand what they were asking for. We were
13 legitimately seeking to understand, do you really want
14 the McLeod service package and the termination date if
15 you want this price, or are you seeking to do something
16 else, which is, in essence, not opt in to the McLeod
17 agreement so much as it is to amend your own agreement
18 to receive something comparable to McLeod.

19 There is nothing wrong with that, but there
20 are certainly different processes associated with
21 opting in versus just trying to negotiate a business
22 deal and have a subsequent amendment.

23 CHAIRWOMAN SHOWALTER: It seems to me that
24 there are actually three possibilities. One is that,
25 as you were just suggesting, Eschelon was requesting to

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1 pull into the new rate but for the full term of its
2 agreement. At the other end, and there is some
3 indication in the record of this interpretation, the
4 new rate with a termination date of the whole agreement
5 earlier, in which case it doesn't keep going. I think
6 that's what the Qwest employee was concerned about,
7 actually a shortening of the termination date of the
8 whole agreement, and then the third possibility, which
9 is the one that was arrived at, is the new rate for a
10 temporary time and the full agreement still goes on
11 after that.

12 MS. ANDERL: Right, and I think option two
13 you just listed was what Eschelon was concerned about.
14 I think Eschelon was concerned that Qwest was going to
15 try to say, Look, if you get the McLeod price, you must
16 end your entire agreement on December 31st, 2003, but
17 we never told them that.

18 CHAIRWOMAN SHOWALTER: My question leading
19 from those three scenarios is, are you saying that --
20 can a company request to opt in to a new rate that
21 another company has with this middle, temporary
22 arrangement? Is that an opt-in or an amendment? I
23 think there is a lot of differences, maybe, as this
24 case developed as to what is a legitimate opt-in in
25 terms of subject matter versus when you fall over the

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1 line into an amendment. Can you address that?

2 MS. ANDERL: I'm not entirely sure I
3 understand the question, but let's say there are two
4 carriers who have identical agreements except for
5 different termination dates, and one carrier somehow
6 smartly negotiates a lower rate for one particular
7 service. The other carrier could opt in to that lower
8 rate, but that lower rate would have to expire when the
9 first interconnection agreement expired, but the rest
10 of Carrier 2's interconnection agreement could go on.

11 CHAIRWOMAN SHOWALTER: So what you are saying
12 is if it were clear that Eschelon was requesting the
13 lower rate for only up to McLeod's date that you would
14 consider that a legitimate opt-in, but that if Eschelon
15 were requesting or might be requesting a lower rate for
16 a longer amount of time or a lower rate and Eschelon's
17 whole agreement ends earlier that those two things are
18 not comparable, so those two scenarios, you would say
19 that falls over into the amendment category?

20 MS. ANDERL: All other things being equal,
21 and that's assuming we are past all the issues with
22 whether the service packages are the same or not, but
23 the only thing you said that kind of troubled me is, I
24 don't think we would object if Eschelon wanted to end
25 their whole agreement earlier, because they can do that

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1 separately. They can get the amendment for whatever
2 period of time was appropriate for the lower rate, but
3 then if they wanted for some reason to walk away from
4 their interconnection agreement earlier than the stated
5 termination date, they are entitled to do that. There
6 is a provision in all interconnection agreements that
7 allows either side to terminate on a certain amount of
8 notice, so that was never an issue for us.

9 CHAIRWOMAN SHOWALTER: So you are saying it
10 was the ambiguity surrounding a potentially longer
11 arrangement for the lower rate that was not the same as
12 McLeod; therefore, you felt until that was clear,
13 anyway, it was in the amendment category.

14 MS. ANDERL: That's exactly right.
15 Otherwise, low rates that have been incumbent have
16 negotiated for a set period of time would never die
17 because a carrier could just opt in to those low rates,
18 extend them for the length of their own interconnection
19 agreement, which is potentially longer, and then
20 somebody else could opt in and extend them even further
21 and kind of leapfrog and keep the low rate alive into
22 perpetuity as opposed to having it end in 12 months.

23 So I think that's probably the reason the
24 Commission has determined that the termination date of
25 a particular term is a legitimately related term and

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1 condition, and that's certainly why Qwest believes that
2 agreements or amendments are only available for opt-in
3 for the same duration that the original underlying
4 agreement was originally created.

5 The other problem that we had with the
6 Eschelon opt-in is that these two carriers did not have
7 the same service package at the time Eschelon sent us
8 the opt-in letter. They weren't paying the same price
9 for that service package. I know that Eschelon will
10 cite to a provision in the recommended decision where I
11 think it's in Footnote 1 where there is a reference to
12 Qwest agrees that the terms UNE-P, UNE-star, UNE-M, and
13 UNE-E may be used interchangeably, and say, Well, of
14 course the service packages are the same. Qwest agreed
15 that UNE-P, UNE-star, UNE-M, and UNE-E could be used
16 interchangeably.

17 Eschelon in their petition said, Well, we are
18 going to use those terms interchangeably, and in our
19 answer we said, Well, that's fine if Eschelon wants to
20 do that. That's all we meant by that. Clearly, they
21 are different service packages. UNE-M and UNE-E are
22 shorthand terms for UNE-McLeod and UNE-Eschelon, and
23 they are custom service packages that we created for
24 each of those carriers that they negotiated with us.
25 UNE-star is just a star being an asterisk, a

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1 placeholder for any kind of UNE combination, and UNE-P,
2 of course, is just a UNE platform. The UNE-E and UNE-M
3 were types of UNE-P's.

4 CHAIRWOMAN SHOWALTER: Is the 35 cents part
5 of UNE-E, or is the 35-cent service in addition to the
6 UNE-E?

7 MS. ANDERL: It's part of UNE-E, and that's
8 what I wanted to take you to next. If you would take a
9 look at the documents that I handed you, the Tabs 4, 5,
10 and 6 have what I believe are important things to be
11 aware of when you look at this opt-in request as of the
12 date Qwest received it last year, or the year before
13 last, rather.

14 Tab 4 is a document that was an exhibit to
15 the original petition filed by Eschelon. It is the
16 McLeod prices prior to the McLeod amendment that is at
17 issue here, and if you turn to Page 7 in that document,
18 you see that in the pricing table, the Washington rate
19 is \$24. You also see that the features included in the
20 flat-rated UNE business package, there is a list of
21 features there, and then you turn to Page 8 and you see
22 a list of features included in existing Centrex common
23 blocks.

24 The McLeod agreement and the McLeod package,
25 UNE-P package that we were selling to McLeod, had a

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1 number of Centrex lines, and therefore, the focus of
2 that service package is basically a Centrex-based UNE-P
3 type product because that's how McLeod was structuring
4 its business, so that's leg one of the three-legged
5 stool here.

6 If you turn to Tab 5, you can see the McLeod
7 amendment, and on the second page, it does show that we
8 reduced those platform recurring rates to \$21.16, and
9 that is the entirety of the amendment, and it did not
10 change any of the features or Centrex features that
11 were included in the McLeod package.

12 Now we come to Tab 6, which is what the
13 Eschelon prices were prior to Eschelon's opt-in
14 request. This is an interconnection agreement
15 amendment that was executed on July 31st of '01, so the
16 rates had been in effect for some time, and if you look
17 at Page 3, you can see that the Washington rate is
18 \$24.35, and as you can also see on that page, we are
19 referring to this as a UNE-P business package. I don't
20 know that the interconnection agreements actually use
21 the phrase UNE-E or UNE-M. That was just a convention
22 that the parties kind of adopted amongst themselves. I
23 think the amendments more often than not refer to
24 packages as UNE-P business combinations.

25 If you go to Exhibit A, and I apologize for

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1 how difficult this is to read. It's been faxed a
2 number of times, but these are the features that are
3 available on the various UNE-P lines that Eschelon
4 purchased, and if you look down, you will see that the
5 first block in the table has features that in some ways
6 match up with some of the McLeod features, but as you
7 go down about three-quarters, two-thirds of the way
8 down the page, you will see a heading that says CLASS,
9 all caps, C-L-A-S-S. None of those CLASS features, to
10 my knowledge, is included in the McLeod agreement. So
11 there were all of these CLASS features that Eschelon
12 had negotiated for with us specifically that were
13 included in their agreement that were not included in
14 the McLeod agreement.

15 If you go further down the next block in the
16 table is entitled "listings," and there are headings in
17 there for primary listings, additional listings. These
18 are all directory services that Eschelon had negotiated
19 specifically with us.

20 CHAIRWOMAN SHOWALTER: Just so I'm clear, are
21 these items on this page subject to the part on the
22 35-cent tariffed rates, or are they negotiated as part
23 of the package?

24 MS. ANDERL: They are what Eschelon can have
25 for \$24.35 per line per month.

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1 CHAIRWOMAN SHOWALTER: But could they have
2 them all by themselves for 35 cents a month?

3 MS. ANDERL: You can't have most of these
4 unless you have a line, so no. In fact, you can't
5 really have any of these unless you have UNE-P
6 switching, unbundled switching from us, so because
7 Eschelon was purchasing UNE-P, they are basically
8 purchasing the loop and the switch, and these features
9 are from the switching functionality that they buy from
10 us.

11 COMMISSIONER HEMSTAD: But the features vary
12 with the party with whom you are contracting, so would
13 the cost of the line change dependent upon those
14 features?

15 MS. ANDERL: No. What we did is we
16 negotiated with Eschelon, and I wasn't privy to the
17 negotiations, but my understanding of what happened is
18 we looked at all of the lines they had, looked at the
19 type of features they bought, and, of course, looked at
20 what the Commission's orders on what we could charge in
21 terms of UNE rates were for certain features, and
22 amongst us, between Eschelon and Qwest, we determined
23 that the rate for UNE-P for Eschelon with all of these
24 things on this Exhibit A or any combination thereof
25 would be \$24.35. Some lines that Eschelon would buy

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1 from us wouldn't have all of these features.

2 COMMISSIONER HEMSTAD: Why then would you
3 concede or acknowledge that Eschelon would have the
4 right to opt in at \$21.16?

5 MS. ANDERL: We didn't, and that's what --

6 COMMISSIONER HEMSTAD: For the line itself,
7 or maybe I'm missing something.

8 CHAIRWOMAN SHOWALTER: What I just understood
9 you to say is that I guess with McLeod and with
10 Eschelon, you are saying you agreed on a total rate,
11 which included tariff features, but your total rate was
12 per line, and not every line gets every feature. It's
13 not as piecemeal as maybe -- Eschelon is bursting at
14 the seams to tell us, but you will get a chance.

15 MS. ANDERL: Yes, that's my understanding,
16 and when we changed the rate in the Eschelon agreement,
17 which at one point was \$24 -- that's no secret that we
18 had an agreement with Eschelon where we had a \$24 rate,
19 but after this 2001 amendment, the rate was \$21.35, and
20 that 35 cents was not simply an increment in respect to
21 AIN or class features. It was determined that the
22 total \$24.35 was an appropriate package price because
23 of the additional features that Eschelon wanted to be
24 able to buy, and as I understand it from the people who
25 negotiated the package, they actually looked at all the

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1 lines that Eschelon had and came up with a weighted
2 additional price for the types of services that we
3 thought Eschelon would be buying from us, and both
4 parties agreed that \$24.35 would be a fair price. In
5 our view, it was not just a 35-cent adder. It was a
6 different rate.

7 CHAIRWOMAN SHOWALTER: You are not out of
8 time yet, but I want to make sure we cover all the
9 issues that are live right now. So getting back to
10 whether the original request was a valid opt-in, you
11 are saying it was not because the termination date
12 requested was not clear and the services were not the
13 same.

14 Now, is there anything else on that prong of
15 your arguments that you want to cover, and if not, you
16 should move to the other set, if there is another set.

17 MS. ANDERL: The statute of limitations
18 issue, and I was going to get to that, and I don't
19 really have a lot of time to spend on that.

20 If you read all the pleadings in the case,
21 you may have seen that at the beginning of the
22 discussions back and forth between Eschelon and Qwest,
23 we had some questions of Eschelon as to whether they
24 would also make the same volume commitments that McLeod
25 had made in their agreement. We internally decided not

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1 to pursue that with Eschelon. Although, when we
2 initially sent the letter back to them on November 8th,
3 which is behind Tab 2 -- it's our response to the
4 opt-in -- we said, Gee, the volume limits in the two
5 agreements are kind of different too. What are your
6 intentions with regard to that, but that is not an
7 issue that we are asserting, so I think we can just
8 leave that lie.

9 Right now, from October of 2002 until August
10 of 2003, we believe that Eschelon was seeking to extend
11 the term of the McLeod rate and was seeking basically
12 and essentially a lower rate than what McLeod had
13 gotten because Eschelon was starting from a higher
14 point and was yet in our view still seeking a \$21.16
15 rate.

16 We sought to clarify that. I think that our
17 letter of November 8th, 2002, back to Eschelon did tee
18 up those issues pretty fairly. We didn't really hear
19 back from them for two months, and when we did, they
20 didn't answer our questions, and when we wrote to them
21 again, we kind of teed it up again in February of '03.
22 Go ahead, Chairwoman.

23 CHAIRWOMAN SHOWALTER: You just raised a
24 point I wanted to remember to say. It was just in one
25 of your documents I saw that there is reference to

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1 another letter from Eschelon, and is that in the
2 record, because when you are putting in lots of
3 correspondence and there are references to letters, you
4 kind of wonder what they said.

5 MS. ANDERL: There was a January 16th, 2003,
6 Eschelon letter to Qwest. I don't know why Eschelon
7 didn't submit it as part of their filing, but it didn't
8 have any information in it that we thought particularly
9 bore on the issues, so we didn't submit it with our
10 filing either.

11 CHAIRWOMAN SHOWALTER: All right.

12 MS. ANDERL: I don't know if it's safe to
13 assume that if it helped Eschelon, they would have
14 submitted it, but that would certainly be my
15 assumption.

16 Then we didn't hear from Eschelon again until
17 April of '03, and the substance of that conversation is
18 detailed in Larry Christiansen's affidavit that was a
19 part of our answer to the original petition, and again,
20 Eschelon at that time sought to clarify some points in
21 terms of asking Qwest some questions but never
22 volunteered to us that they had either a solution for
23 the pricing discrepancy issue that we had brought up or
24 a solution for the termination date issue that we had
25 brought up, and it wasn't really until Eschelon started

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1 filing their regulatory complaints in August or
2 September of '03 that it became clear to us that what
3 they really wanted was their \$24.35 rate lowered to
4 \$21.16 plus 35 cents.

5 At that time, it didn't take us very long to
6 say, We don't think this is an opt-in necessarily, but
7 it's something we are willing to give them. We gave it
8 to them in September, and at that point, we still
9 thought we might have to litigate the termination date.
10 As I said at the beginning of this proceeding, I
11 thought it would be an issue as to whether it was
12 December of '03 or December of '05 on the termination
13 date, but once McLeod conceded that issue, we didn't
14 really have any other issues with them, other than the
15 opt-in date.

16 I just wanted in sum on that issue to say, we
17 don't really have any incentive to not grant a proper
18 opt-in request. We know what this commission's
19 authority is. We know that dragging our feet is not
20 ever going to help us. I think in 2003, we have filed
21 96 interconnection agreements and amendments with your
22 commission. I think seven or eight of those were
23 opt-ins.

24 This is not certainly anything that Qwest did
25 in order to somehow pressure Eschelon or somehow

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1 benefit Qwest. This is what we believe was a
2 legitimate dispute with enough ambiguity in the request
3 that we did not have an obligation to treat it as an
4 opt-in request. Had Eschelon wished a different
5 outcome, they had a lot of time during which they could
6 have corrected or clarified the ambiguities, which I
7 guess kind of leads right into the six-month statute of
8 limitations question, and that is, the administrative
9 law judge ordered --

10 CHAIRWOMAN SHOWALTER: Just clarify for me
11 why this is still relevant. I'm just trying to
12 remember. If Eschelon has conceded that the earliest
13 date is the date of request --

14 MS. ANDERL: October 29th, 2002. They filed
15 their complaint on September 12th of '03, so now we are
16 arguing about the period of time between October 29th,
17 '02 and March 12th of '03, so it's about another
18 three-and-a-half, four months worth of refund.

19 CHAIRWOMAN SHOWALTER: Before you go to the
20 issues under our RCW's -- I'm not sure why we are going
21 to our RCW's anyway, and isn't this under our authority
22 delegated to us by the legislature to carry out the
23 terms of the Telecom Act to enforce interconnection
24 agreements, and where that leads us I'm not sure, but
25 are we even under a complaint state statutory

0036

1 enforcement scheme?

2 MS. ANDERL: I don't know. I think that
3 might be a question of first impression if under the
4 Telecommunications Act your authority to enforce an
5 interconnection agreement really enables you to award a
6 refund based on a differential in a rate that you
7 should have been properly granted under 252(i), the
8 opt-in provisions.

9 I have not seen any authority on that. It
10 was my impression that Eschelon was arguing for the
11 refund under RCW 80.04.220, and that is how we
12 responded. I know the administrative law judge in her
13 initial order mentions that there is authority under
14 the Telecom Act to enforce interconnection agreement,
15 but it seems to me that unless or until there is any
16 authority to the contrary, that enforcement authority
17 is an ability to enforce things on a going-forward
18 basis to order a company to take action with regard to
19 the provision of the interconnection agreement terms
20 and conditions.

21 COMMISSIONER HEMSTAD: What did the Minnesota
22 UTC do on this, or was it at all an issue in that
23 proceeding?

24 MS. ANDERL: The Minnesota UTC was asked to
25 order a refund and did order a refund back to October

0037

1 29, '02.

2 COMMISSIONER HEMSTAD: Is there a similar
3 statutory scheme there?

4 MS. ANDERL: I don't know whether we raised a
5 state statute of limitations in the Minnesota case or
6 not, Your Honor. I'm sorry.

7 CHAIRWOMAN SHOWALTER: By the way, I asked
8 Ms. Strain to get this together and just put down every
9 date that might be relevant. No comment on what is
10 relevant, but just to anchor us here, August 14th,
11 2003, is the date that Eschelon needed -- that's to
12 file a petition. That's the date you say that things
13 became clear. However, the Minnesota date, the
14 comparable date, would be October 29th, 2002.

15 MS. ANDERL: No. The October 29th, 2002,
16 date is the date that Eschelon sent the opt-in letter
17 for all of its estates. I'm not sure when Eschelon
18 filed their complaint in Minnesota.

19 COMMISSIONER HEMSTAD: But then the Minnesota
20 UTC adopted the October 29th, 2002, date?

21 MS. ANDERL: On the basis that Eschelon had
22 made a proper opt-in request.

23 COMMISSIONER HEMSTAD: Proper as of the date
24 of that letter.

25 MS. ANDERL: Right.

0038

1 CHAIRWOMAN SHOWALTER: All right. So the
2 Minnesota case is they found it was a proper opt-in.
3 Therefore, I don't know if theirs was October 29th, but
4 if it was, at least in our realm, that's October 29th.

5 COMMISSIONER HEMSTAD: It's the same letter.

6 MS. ANDERL: They did a multistate letter.

7 CHAIRWOMAN SHOWALTER: So if the October 29th
8 date is valid as a valid opt-in, then you are saying
9 nevertheless, because the complaint was not brought
10 until September 12th, a refund can't go six months
11 earlier than that date.

12 MS. ANDERL: That's right.

13 CHAIRWOMAN SHOWALTER: On the other hand, if
14 October 29th was not a valid opt-in date, then in your
15 view, the first time it became valid was when it became
16 clear, which is August 14th, 2003, or you are just
17 willing to do that.

18 MS. ANDERL: I think we can concede that,
19 Your Honor. At that point, we were able to begin to
20 negotiate or -- that's the problem that I have is I'm
21 still not sure if it was ever a valid opt-in request.
22 It was at that point that their intent became clear
23 enough to us that we were able to prepare what we
24 believe was just an amendment to their interconnection
25 agreement, not a McLeod opt-in.

0039

1 CHAIRWOMAN SHOWALTER: In that view, it would
2 really be an amendment because --

3 MS. ANDERL: The rate didn't go to \$21.16.
4 That's why it's not an opt-in. The rate went to \$21.16
5 plus 35 cents, but that's the wrong way to look at it,
6 if the rate went to \$21.51, which is a different rate
7 for Eschelon than for McLeod for a different set of
8 services.

9 CHAIRWOMAN SHOWALTER: I think your time is
10 up.

11 MS. ANDERL: I'm happy to rest on my written
12 pleadings with regard to the statute of limitations
13 argument. I think I've only spent a couple of
14 paragraphs on it in the comment that we filed on the
15 15th, Paragraphs 19, 20 and 21, and I will allow Your
16 Honors to make your decision based on that. I really
17 didn't have a lot to add on it.

18 CHAIRWOMAN SHOWALTER: All right,
19 Ms. Endejan, and I hope you can start with the issue of
20 was the October 29th letter a valid opt-in request;
21 That is, was it sufficiently clear.

22 MS. ENDEJAN: That is precisely where I was
23 going to start, Your Honor, and with all due respect to
24 my esteemed colleague, I think we differ quite
25 profoundly on the clarity with which the opt-in request

0040

1 was made.

2 I think if you turn to the opt-in request
3 itself -- it's behind Tab 1 here. I'm going to read it
4 to you, because Eschelon quite specifically says what
5 we want is the rates in the attached page from the
6 McLeod amendment to the end of the platform rates
7 column under the heading "prices for offering" and to
8 indicate the specified time period within the term of
9 the Eschelon amendment that the McLeod amendment rates
10 apply, e.g., effective as of September 20th, 2002, as
11 noted on Page 2 of the McLeod amendment.

12 If you turn to the McLeod amendment, which I
13 believe is --

14 CHAIRWOMAN SHOWALTER: I'm just going to stop
15 you there, because I really do think this gets at the
16 ambiguity. It's clear that Eschelon would want to go
17 back to September 20th, but what the ambiguity that's
18 alleged here is the other end of how long does it go,
19 and don't you think that the "e.g." leaves hanging this
20 open question?

21 MS. ENDEJAN: Two responses to that. First,
22 if you would please turn to the amendment behind Tab 5
23 and look at what's set out on the top half of the page.
24 Up there it says, "platform recurring rates effective
25 on September 20th, 2002, and ending December 31st,

0041

1 2003."

2 CHAIRWOMAN SHOWALTER: Put us on the right
3 page.

4 MS. ENDEJAN: It's behind Tab 5. It's the
5 McLeod amendment. It was also Exhibit 6 to the
6 petition, but go to the page that has the rates.

7 CHAIRWOMAN SHOWALTER: We just have two pages
8 here.

9 MS. ENDEJAN: There is two pages. It says
10 "interconnection agreement." That's Page 1. Then the
11 second page has a series of states with rates, and then
12 the upper right-hand corner says, "platform recurring
13 rates effective on September 20th, 2002, and ending
14 December 31st, 2003."

15 Now that pretty clearly, and the ALJ agreed
16 and the Minnesota Commission agreed, indicated that
17 what Eschelon was trying to do was say under 252(i),
18 the chunk that I have identified with as much
19 specificity as I believe we could, we want that into
20 our agreement. That's what 252(i) allows.

21 Now, what's particularly important for you to
22 bear in mind is remember, the UNE platform here, if I
23 can analogize this, it's like I go to a car lot, and
24 let's say there is a law that requires all basic Hondas
25 to have the same price to give everybody the right to

0042

1 drive the same car, so McLeod pays \$24 to drive the
2 basic Honda. Eschelon was allowed to pay \$24 to drive
3 the basic Honda as of the prior amendments in 2001 and
4 2000. So Eschelon and McLeod were paying for the same
5 platform, the same Honda.

6 What Eschelon then did is they said, Well, I
7 want to add a special rearview mirror on my Honda, and
8 I will pay more for that. I will pay that 35-cent
9 adder so I can have the rearview mirror, but what they
10 were saying in their request to Qwest was, I still want
11 to pay the same platform rate that McLeod paid for the
12 underlying Honda.

13 Now, what happened, and I was not privy to
14 the discussions between Qwest, and I don't believe
15 Ms. Anderl was either, but as I understand it, Eschelon
16 in dealing with the Qwest folks, and I think that's
17 born out in the declaration of Mr. Christiansen, Qwest
18 told Eschelon, Well, we are happy to negotiate over
19 this. That means you are going to have to take the
20 same volume commitments and you are going to have to
21 take the same term as the McLeod entire agreement.

22 Eschelon said, No, I don't have to do that.
23 I don't have to opt in to the entire agreement of
24 McLeod. I under the law can pick and choose a related
25 term. Here the term was the rate for the specified

0043

1 period of time. That's all, and Eschelon, I believe,
2 made that clear in its opt-in request. It was clear
3 enough to the ALJ. It was clear enough to the
4 Minnesota Commission.

5 But in any event, if Qwest had the problem
6 they are saying here about, Gosh, we didn't understand
7 your request and we didn't know if you wanted it for
8 the whole period of your agreement through 2005, what
9 Qwest could have done but did not do was honor the
10 opt-in request at the McLeod rate and advise Eschelon
11 that that rate expires as of December 31st, 2003, and
12 does not include the 35-cent adder, period, end of
13 story.

14 Eschelon could not have complained about it
15 because that's what their agreement provided for, and
16 that's all that they were asking for. Qwest did not do
17 that. Instead they continued to insist that Eschelon,
18 quote, negotiate, and that's precisely why congress
19 enacted the pick-and-choose provision so that CLEC's
20 would not have to go through the delaying and expensive
21 negotiation process in order to avail themselves of
22 prices and terms for similarly situated terms and
23 conditions that other CLEC's were getting.

24 So in that context then, and I think you will
25 find in the ALJ's recommended decision that some of the

0044

1 arguments Qwest advances sort of are a bit, as to use
2 her words, disingenuous in the sense that it's clear
3 when you look at both the relationship of the parties
4 and the agreements that the 35 cents was always
5 intended to be an adder. It was added on top of the
6 \$24 rate that was the underlying platform rate that
7 McLeod and Eschelon paid, and it's disingenuous to
8 consider it otherwise.

9 But more importantly, in honoring their
10 obligations to opt-in requests, Qwest had it within its
11 power to simply state, Okay, you get exactly what
12 McLeod gets. You get this rate for that platform for
13 that period of time. What could Eschelon have done?
14 Nothing. But instead, we had this inevitable period of
15 delay forcing Eschelon to have to file a petition for
16 enforcement, forcing Eschelon to file a complaint, and
17 then when they filed the complaint, they get what they
18 are asking for, which is the platform rate plus the
19 35-cent adder.

20 So it would be incredibly unfair and unjust
21 to say to Eschelon now because Qwest didn't understand
22 there was some ambiguity inherent in your opt-in
23 request and you didn't phrase it right, we are going to
24 deny you the benefit of that term for the period for
25 which you asked it.

0045

1 CHAIRWOMAN SHOWALTER: It's not unfair if
2 there is an ambiguity. We are talking about a factual
3 issue here, and you made your case that you don't think
4 this letter is ambiguous, but doesn't it really get
5 down to that; that is, if this letter is clear in the
6 same terms as the parties are now agreeing on, if it's
7 clear that it is an opt-in request -- well, I'm not
8 even sure Ms. Anderl concedes that, but if it's clear,
9 it's one thing. If it's not, it's another. Doesn't
10 this get down to an argument over the facts of whether
11 this letter is sufficiently clear in the way that you
12 say it is?

13 MS. ENDEJAN: That's one aspect, but it goes
14 beyond that, Your Honor. It goes back to, in a sense,
15 who -- if there was an ambiguity here, it sort of
16 strains belief here given the fact that Qwest knew
17 prior to this opt-in request and prior to the McLeod
18 amendment that both Eschelon and McLeod had been paying
19 the same underlying UNE platform rate.

20 So now, Eschelon comes along and says, I want
21 to still pay the same UNE platform rate as McLeod, and
22 the only issue might be for how long is Eschelon
23 entitled to that, and that could have been solved quite
24 simply by Qwest giving them the rate as of the opt-in
25 date, telling them, Oh, this rate expires as of the

0046

1 McLeod expiration date of December 31st, 2003, end of
2 story.

3 CHAIRWOMAN SHOWALTER: Perhaps that would
4 have been a way to resolve it. Is that way Qwest's
5 obligation to act in that way, to simply proceed on a
6 version of what might be a legitimate opt-in, or is the
7 obligation the other way on the requesting party to be
8 clear on its intent in the first place?

9 MS. ENDEJAN: You have to look at the
10 policies here, and the policies are that Qwest should
11 be honoring the opt-in request, and if there is an
12 ambiguity there, and I think if you read the
13 correspondence and you even read the declaration, Qwest
14 wasn't just trying to clarify an ambiguity. Qwest was
15 trying to negotiate new and different terms. Qwest was
16 trying to extract something from Eschelon; in other
17 words, a different volume commitment, and get Eschelon
18 to perhaps agree to shorten the term of its
19 interconnection agreement from 2005 to 2003, and it's
20 those tagalongs that tend to cloud the issue here.

21 Particularly when I keep going back to the
22 fact that Qwest should have known that Eschelon would
23 want and would be entitled to the same underlying
24 platform rate, which makes it a little hard for us to
25 accept the argument that, Well, we weren't really clear

0047

1 for how long you wanted this rate when there should
2 have been no doubt as to the clarity with which the
3 request for that rate for the underlying element was,
4 given the history between the parties.

5 CHAIRWOMAN SHOWALTER: Can I just ask a
6 question on this October 29th letter? The action
7 request is that Eschelon asks that Page 9 of Eschelon's
8 interconnection agreement, dated November 15th, 2000,
9 be amended. Now, is November 15th, 2000, the date of
10 Eschelon's interconnection agreement that needs to be
11 amended?

12 MS. ENDEJAN: That would be the UNE-star
13 agreement that had the \$24 rate. That was an amendment
14 to the initial interconnection agreement. So in other
15 words, the Qwest/Eschelon interconnection agreement was
16 initially signed February 24th of 2000, and then in
17 November 15th of 2000, it was amended to allow Eschelon
18 to avail itself of the same \$24 what is called UNE-star
19 rate that Qwest and McLeod had agreed to on October 1st
20 of 2000 so --

21 CHAIRWOMAN SHOWALTER: What about the 35-cent
22 provisions? When did they come in?

23 MS. ENDEJAN: That came in in a separate
24 agreement on July 31st, 2001. That is what we call the
25 AIN -- I don't know what it stands for, Advanced

0048

1 Integrated Network something, I think -- feature
2 amendment that added the 35-cent adder.

3 CHAIRWOMAN SHOWALTER: Is that a separate
4 agreement?

5 MS. ENDEJAN: That was a separate agreement,
6 yes.

7 CHAIRWOMAN SHOWALTER: Not an amendment to
8 the agreement?

9 MS. ENDEJAN: It's probably labeled -- I
10 don't mean to confuse you, but I believe it's probably
11 labeled an amendment.

12 CHAIRWOMAN SHOWALTER: Ms. Anderl, do you
13 have a reference?

14 MS. ANDERL: It's behind Tab 6, and it is an
15 amendment.

16 CHAIRWOMAN SHOWALTER: The reason I raise
17 this point is that it's not clear to me from the letter
18 whether Eschelon is trying to amend an agreement or
19 change an agreement dated November 15th of 2000 or a
20 later one. What is the meaning of amending an
21 agreement that's already been amended?

22 MS. ENDEJAN: I believe that the November
23 15th, 2000, agreement set out the initial \$24 rate, so
24 what Eschelon was conveying here was what we want is
25 that underlying \$24 rate as the UNE-star.

0049

1 CHAIRWOMAN SHOWALTER: All right, but then
2 what happens to the later rate that includes the \$24.35
3 rate? What happens to it? Isn't it there still?

4 MS. ENDEJAN: What did actually happen is
5 that the parties agreed that the rate, as of August or
6 September of 2003, was going to be the platform rate of
7 \$21.16 plus the 35 cents. I believe the ALJ discusses
8 this about how it's clear if you look at it that the
9 \$24 is, you know, that there are two components to this
10 rate, the underlying platform rate and the 35-cent
11 adder, and it's disingenuous to suggest to the contrary
12 that this is a blended rate as Qwest would characterize
13 it.

14 So what we are dealing with here is a
15 bottom-line situation where we believe, obviously, that
16 the agreement or that the opt-in request of October
17 29th, 2002, is sufficiently clear to specify that the
18 terms and conditions that Eschelon wants to opt in to
19 are at the top of Page 2 of the McLeod amendment.
20 That's all that it's trying to do.

21 So given that fact, given the history between
22 the parties, and I can't speak for what the actual oral
23 conversations that occurred between the parties, but it
24 would seem that to accept Qwest's view to the contrary
25 would be to provide an incentive to local incumbent

0050

1 carriers to question, say, raise an ambiguity, allow
2 delay, put the burden on the CLEC to have to file a
3 petition for enforcement because that petition for
4 enforcement, contrary to how it perhaps might be
5 characterized --

6 CHAIRWOMAN SHOWALTER: Why isn't it an
7 incentive to the requesting party to be clear, and if
8 the question is raised to bounce back quickly with what
9 you need?

10 MS. ENDEJAN: I think they did, Your Honor.
11 Qwest was told, we believe both in this letter and -- I
12 cannot represent to you what oral conversations
13 occurred so I don't know what happened, but the fact
14 is, it was clear that what Eschelon was doing was
15 saying, We want the same platform rate that McLeod got.
16 You gave it to us before at \$24. McLeod got a lower
17 price for that same thing. We want it. If there was a
18 question about duration date, then Qwest could have
19 said, Okay, you get the rate, but it stops as of the
20 date of the McLeod amendment. That's all you get. You
21 get the term and condition. Why that was any skin off
22 their back to do that is a little bit hard to take
23 given the fact they were willing to do it when both
24 parties were paying the same \$24 rate, and particularly
25 because they are acknowledging that, Yeah, we will give

0051

1 it to you now once we got sued.

2 CHAIRWOMAN SHOWALTER: I would say that
3 Ms. Anderl would say from her point that since it's
4 clear they were willing to do that when in her view it
5 was clear, it shows that it wasn't earlier and that's
6 why they were asking for amendments.

7 MS. ENDEJAN: It took a petition for
8 enforcement, Your Honor, to get them to suddenly have
9 this clarity of vision. They were advised before the
10 petition was filed that they intended to file a
11 petition pursuant to the procedures that this
12 commission has adopted.

13 So bottom line here is with that sort of
14 stick over their head, yes, they were much more willing
15 to somehow or other but not concede this was the opt-in
16 rate, even though oddly enough it is the same rate as
17 McLeod, \$21.16, minus the 35-cent adder. Let me turn
18 briefly, Your Honor --

19 COMMISSIONER OSHIE: Before you leave that
20 Ms. Endejan, I need some clarification on whether there
21 is a difference between the UNE-star platform rates
22 that are really at issue here and the AIN adder, the
23 35-cent adder. Is AIN part of the platform, or is it
24 separate and apart from the platform, at least within
25 the industry, that there is an understanding that we

0052

1 are talking about features within a group that's
2 offered to accompany but not necessarily within the
3 UNE-star?

4 MS. ENDEJAN: Your Honor, all I can tell you
5 is my understanding of how these things works, and my
6 understanding is the 35 cents is what they call an AIN
7 adder that is paid separately and on top of the
8 underlying UNE-platform rate, and that's my
9 understanding of it, and I believe that's the same
10 understanding that the administrative law judge had and
11 has in her recommended order. I don't know if that
12 answers your question, but that's the best I can tell
13 you.

14 COMMISSIONER OSHIE: I noted in Qwest's
15 letter in response, they didn't raise the AIN adder as
16 perhaps one of the reasons why they weren't going to, I
17 use the term "honor" the opt-in request or at least to
18 clarify it. They did make reference to the CLASS
19 features that distinguish, perhaps, the McLeod
20 agreement from the Eschelon agreement, but they did not
21 reference the AIN features that --

22 MS. ENDEJAN: I think that the AIN adder
23 issue is somewhat of a red herring because it diverts
24 from the focus of the real concern here, which is the
25 underlying UNE-P rate, and that's really what this case

0053

1 is all about.

2 So I think that it's a little unclear from
3 Qwest's correspondence, and I agree with you in terms
4 of what they are talking about in terms of what they
5 are saying in, Well, you are getting different features
6 than McLeod, but that doesn't wash when you think about
7 the fact that Qwest charged the same underlying \$24
8 rate to Eschelon and McLeod for the same thing, and
9 then the only difference between what Eschelon pays and
10 what McLeod pays is this 35-cent increment that was
11 negotiated and is subject to a different amendment, so
12 the same building block.

13 McLeod paid the same price that Eschelon paid
14 in 2000, and then in 2001, McLeod got a reduction in
15 the price of the building block, and Eschelon asked for
16 the same price, and we got sent down this bunny trail
17 and leading to this case. I would point out that with
18 respect to the statute of limitations argument --

19 CHAIRWOMAN SHOWALTER: I've got a question
20 before that, which is can you turn to your petition.

21 MS. ENDEJAN: I have it in front of me.

22 CHAIRWOMAN SHOWALTER: Page 7. I've been
23 skimming the petition, but in particular, Paragraph 23
24 says the rates are not tied to the termination date.
25 The termination dates of the original agreements were

0054

1 different by two years, yet the rates were identical.
2 The termination agreement for McLeod did not change,
3 but the price was reduced; thus, the rate is
4 independent of the termination date.

5 What I was looking for is anywhere in this
6 petition where you made it clear you were only seeking
7 a lower rate through the McLeod term, so I saw that
8 paragraph, and then I looked towards the prayer for
9 relief, and it says on Page 10 that you are asking us
10 to find that you're entitled to the lower rate as of
11 September 20th.

12 I don't find anywhere where Eschelon was
13 expressly limiting itself in this debate to the McLeod
14 end date until later, I guess, on the amendment that
15 the Commission ultimately approved. You are making the
16 argument here that it was very, very obvious that
17 that's what you originally asked, and Qwest could have
18 just done that, but you seem to not be pinning yourself
19 down in this petition anyway.

20 MS. ENDEJAN: Your Honor, I would have to
21 take a few minutes to study the petition to adequately
22 address that issue, but I think it goes back to the
23 initial opt-in request date and how you would interpret
24 what is being asked for here given the context in which
25 the parties have operated, and what the petition is

0055

1 doing is asking for enforcement of its opt-in request.

2 So you have to look at the opt-in request in
3 conjunction with the petition, and the opt-in request
4 says to indicate within the term of the Eschelon
5 amendment that the McLeod amendment rates applied as
6 noted on Page 2 of the McLeod amendment. That says to
7 me, as noted on Page 2 of the McLeod amendment, clearly
8 says that they apply only until December 31st, 2002,
9 period. That's how you can read it, and had Qwest,
10 which Qwest did not do, state, Are you saying that you
11 agree that these rates only apply through December
12 31st, 2002, as it appears on Page 2 of the McLeod
13 amendment?

14 That never happened. It says they got a
15 series of letters, phone calls, documents, and said,
16 Well, we are willing to negotiate with you on this, and
17 that's not what opt-in is all about.

18 CHAIRWOMAN SHOWALTER: Any other questions?
19 I think we are out of time. If you each want to take a
20 little more, but I want to be fair.

21 MS. ENDEJAN: I just did want to point out in
22 conclusion that the Minnesota Commission said that they
23 did not examine the issue of statute of limitations or
24 whatever. They just felt that Eschelon was entitled to
25 a refund stating, This retroactive relief will correct

0056

1 Qwest's improper denial of Eschelon's proper request
2 for the rate given to McLeod. Without such relief to
3 Eschelon, incumbent local exchange carriers such as
4 Qwest would have an incentive to delay granting an
5 opt-in request, and with that, I would request you
6 adopt the ALJ's recommended decision.

7 MS. ANDERL: Your Honor, I have one other
8 nonsubstantive item if I could bring that up. As you
9 know, our comments on the initial order were due on a
10 fairly tight time frame, and since we filed them and as
11 I reviewed them today, I found a couple of
12 typographical errors that might cause some confusion as
13 you read them, if you decide to reread any of those
14 comments before you enter your final order. If I could
15 correct those now, or perhaps that would be the most
16 convenient thing. I would be happy to submit corrected
17 pages as well.

18 CHAIRWOMAN SHOWALTER: Why don't you just
19 read them.

20 MS. ANDERL: The first typo is in Paragraph 6
21 of my comments. They were filed just a week ago on the
22 15th of January. The typo there in Paragraph 6 in the
23 first sentence, I cite to 80.36.220 and 240. That's
24 80.04.

25 CHAIRWOMAN SHOWALTER: In both cases?

0057

1 MS. ANDERL: Yes, in both cases. Then the
2 more important one is on Paragraph 11, and this, Your
3 Honor, is an issue that you were just asking
4 Ms. Endejan about, and I say there that first, Eschelon
5 does not cite to the then effective interconnection
6 agreement amendment and the pricing contained in the
7 February 24th, 2002 amendment. There I mean to refer
8 to the July 31st, 2002.

9 CHAIRWOMAN SHOWALTER: So February 24 should
10 be changed to July 31st?

11 MS. ANDERL: Yes. In the next sentence where
12 it says February 2002 -- actually, I think it's '01, so
13 February 24th, '02 should be changed to July 31st, 2001
14 in the first sentence, and then in the second sentence,
15 you should strike February 2002 and insert July 2001,
16 and I think that syncs up all the dates in the
17 document.

18 CHAIRWOMAN SHOWALTER: Thank you very much.
19 We are off the record.

20 (Hearing concluded at 2:18 p.m.)

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25