

Utah Disputed Issues List – April 30, 2007
Eschelon/Qwest ICA Negotiations Docket Number _____

Issue# ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
INTERVAL CHANGES AND PLACE- MENT				
Issue 1-1 Section 1.7.2 and Exhibits N and O <i>See</i> (a) to (e) below for related issues in 7.4.7, Exhibits C and I and 9.23.9.4.3/ 24.4.4.3 (first sentence) Interval	PROPOSAL #1 1.7.2 If the Commission orders, or Qwest chooses to offer and CLEC desires to accept intervals longer than those set forth in this Agreement, including Exhibit C, the Parties shall amend this Agreement under one (1) of the two (2) options set forth in Section 1.7.1 (an interval Advice Adoption Letter or interval interim Advice Adoption Letter terminating with approval of negotiated Amendment) pertaining to the new interval (rather than new product) (or as otherwise ordered	A central theme underlying this and several other disputed issues is whether the disputed term must be contained in the contract, or whether it is sufficient to include references to sources outside of the contract, such as Qwest’s PCAT or its SIG or its website, where certain provisions may be found but require no contract amendment to be changed. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i> , ¶32) It is crucial that the Commission	SAME FOR BOTH PROPOSALS: 1.7.2 Notwithstanding any other provision in this Agreement, the attached Exhibit C will be modified pursuant to the Change Management Process (“CMP”) without requiring the execution of an amendment.	Qwest does not agree.

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

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

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

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

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Changes (1 of 2 options for 1.7.2)	<p>by the Commission). The forms of such letters are attached hereto as Exhibits N -O).</p> <p><u>1.7.2.1 Notwithstanding any other provision in this Agreement, the intervals in Exhibit C may be shortened pursuant to the Change Management Process (CMP) without requiring the execution or filing of any amendment to this Agreement.</u></p>	<p>recognize that references to non-contractual sources provide: 1) No binding commitment on the part of Qwest; 2) No certainty for CLECs; and 3) No mechanism for Commission filing and opt-in. In other words, they defeat the purposes of entering into a contract for a term that must be amended and approved to reflect agreed upon changes. The devil is in the details, and providing needed specificity in the contract now will promote administrative efficiency and avoid later disputes. Unless a term is in the contract, that term can be changed by Qwest, over Eschelon’s objection and without Commission permission. Qwest’s resistance to including terms in the contract signals that Qwest will, indeed, change those terms if and when it sees fit, regardless of the affect on Eschelon’s business. Therefore, if the Commission concludes that a term should not be unilaterally changed and should be available for opt-in, it must order that term to be included in the contract.</p> <p>Intervals are particularly significant because they impact timing of</p>		

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		<p>delivering service to customers. Changes in intervals critically impact the way a company does business, particularly when the interval is lengthened. Lengthening of intervals forces a carrier to provide worse service to its customers (who must wait longer for service) while also incurring costs and spending resources on adjusting internal systems and processes to adjust to the longer interval. (For a shorter interval, service improves and, if necessary, a longer interval may still be requested until internal adjustments are made.) The only interval changes required by the CMP document to go through CMP are changes specifically to intervals “in Qwest’s SIG.” [<i>CMP Document</i>, §5.4.3 (SIG interval reductions) & §5.4.5 (SIG interval increases).] If an interval in the ICA conflicts with an interval in the SIG, the CMP Document provides that the ICA controls. (<i>CMP Document</i> §1.0.)</p> <p>For these reasons, the ICA should contain applicable intervals and require amendment and Commission approval when</p>		

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		<p>intervals are lengthened. Eschelon’s first proposal requires ICA amendment when intervals are lengthened and allows use of CMP when shortened. Amending for intervals is not burdensome because Eschelon’s language uses established streamlined procedures to amend. Eschelon’s proposed Section 1.7.2 and Exhibits N and O largely mirror Section 1.7.1 and Exhibits L and M, which contain such streamlined procedures, except that the new language relates to intervals rather than products.</p> <p>Eschelon’s language is necessary to ensure that the Commission considers and approves a longer interval before it goes into effect. The Commission must determine that the longer interval still meets the FCC’s tests in ¶ 44 of the <i>NY 271 Order</i> for the provision of UNEs on terms that are just, reasonable, and nondiscriminatory - - in “substantially the same time and manner” for an element with a retail analogue and offering a “meaningful opportunity to compete” when no retail analogue. The FCC stated specifically that the</p>		

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		<p>latter test is no less rigorous than the first. (<i>Id.</i> ¶ 55) When Qwest previously tried to move from a 5-day to a 9-day loop interval by simultaneously lengthening the interval for its retail customers, for example, Minnesota rejected Qwest’s parity argument and found that the 5-day loop interval allowed competitors a meaningful opportunity to compete. (<i>MN ALJ 271 Order</i>) The Commission approved the ALJ’s finding that Qwest cannot make intervals “unreasonable by lengthening the intervals for provision of retail service.” (<i>Id.</i> ¶ 125) Eschelon objects to lengthening such intervals. Qwest should not be allowed to overturn the Commission’s finding by lengthening such an interval in CMP over objection and without amendment or approval.</p>		
<p>Issue 1-1 Section 1.7.2 (2 of 2 options)</p>	<p>PROPOSAL #2 1.7.2 If the Commission orders, or Qwest chooses to offer and CLEC desires to accept intervals different from those set forth in this Agreement, including Exhibit C, the</p>	<p>Given the importance of intervals, the Commission may desire that all interval changes require Commission approved amendments. If so, Eschelon provides a second language option, which requires ICA amendment</p>	<p>SAME FOR BOTH PROPOSALS: 1.7.2 Notwithstanding any other provision in this Agreement, the attached Exhibit C will be modified pursuant to the Change</p>	<p>Qwest does not agree.</p>

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	<p>Parties shall amend this Agreement under one (1) of the two (2) options set forth in Section 1.7.1 (an interval Advice Adoption Letter or interval interim Advice Adoption Letter terminating with approval of negotiated Amendment) pertaining to the new interval (rather than new product) (or as otherwise ordered by the Commission). The forms of such letters are attached hereto as Exhibits N -O).</p>	<p>whether an interval is lengthened or shortened. This option also uses, for intervals, the established streamlined procedures that have been applicable in the past to new products (<i>see</i> Section 1.7.1) to reduce any burden associated with such amendments. <i>See</i> Eschelon’s position statement for Issue 1-1 above.</p>	<p><u>Management Process (“CMP”) without requiring the execution of an amendment.</u></p>	
<p>Issue 1-1 (a) Section 7.4.7 Intervals for the provision of Interconnection trunks</p>	<p>7.4.7 Intervals for the provision of Interconnection trunks will conform to the performance objectives set forth in Section 20. <u>Intervals are set forth in Exhibit C.</u> Any changes to the Interconnection trunk intervals will be made <u>as described in Section 1.7.2 through the Change Management Process (CMP) applicable to the PCAT, pursuant to the procedures set forth in Exhibit G.</u> Operational processes within Qwest work centers are discussed as part of the CMP. Qwest agrees that CLEC shall not be held to the requirements of the PCAT.</p>	<p>The Interconnection trunk intervals proposed by Eschelon in Exhibit C are identical to the intervals that Qwest provides for Interconnection trunks today. Eschelon’s proposal requires no change by Qwest. In contrast, a change in Interconnection trunk intervals would significantly affect Eschelon’s business and may affect its meaningful opportunity to compete. If Qwest seeks such a change, Qwest may obtain a change in Interconnection trunk intervals under Eschelon’s proposal by amending the ICA (using the streamlined process per 1.7.2 or through Dispute resolution per</p>	<p>7.4.7 Intervals for the provision of Interconnection trunks will conform to the performance objectives set forth in Section 20. Intervals are set forth in Exhibit C. Any changes to the Interconnection trunk intervals will be made <u>as described in Section 1.7.2 through the Change Management Process (CMP) applicable to the PCAT, pursuant to the procedures set forth in Exhibit G.</u> Operational processes within Qwest work centers are discussed as part of the CMP. Qwest agrees that CLEC shall not be held to the requirements of the PCAT.</p>	<p>Qwest does not agree.</p>

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		Section 5), subject to Commission approval. <i>See</i> Eschelon’s position statement for Issue 1-1 above.		
Issue 1-1 (b) Exhibit C Group 2.0 UDIT Rearrange- ments	Rearrangements Eschelon proposes deletion of Qwest proposed footnote in Exhibit C: For UDIT rearrangements see Qwest’s wholesale website for the Service Interval guide (NOTE) –See Exhibit C for intervals)	The UDIT rearrangement intervals proposed by Eschelon in Exhibit C are identical to the intervals that Qwest provides for UDIT rearrangements today. Eschelon’s proposal requires no change by Qwest. Under Eschelon’s proposal, Qwest may obtain changes to those intervals by amendment and with Commission involvement, but not unilaterally. <i>See</i> Eschelon’s position statement for Issue 1-1 above.	Rearrangements Qwest proposed footnote in Exhibit C: For UDIT rearrangements see Qwest’s wholesale website for the Service Interval guide	Qwest does not agree.
Issue 1-1 (c) Exhibit C Group 9.0 (LIS Trunking)	(NOTE) : Eschelon proposes to include the LIS Trunking intervals in Exhibit C – see Exhibit C	See discussion of Section 7.4.7 above (subpart to Section 1.7.2).	(NOTE) : Qwest proposes deletion of entire Section 9.0 of Exhibit C (LIS Trunking Service Intervals) – see Exhibit C	Qwest does not agree.
Issue 1-1 (d) Exhibit I, Section 3 ICB Provisioning	3.1.1 For the following products and services, for which the interval is ICB, Qwest shall provide the ICB due date interval to CLEC as follows: 3.1.1.1 No later than seventy-two	Section 3.1 of Exhibit I (“Individual Case Basis”) states that Qwest will provide an ICB interval within 20 business days, unless the ICA contains a “specific provision” for when the ICB interval will be provided. Currently, Qwest	3.2 For ICB intervals for those standard products and services that require negotiated project time lines for installation, such as 2/4 wire analog loop for more than twenty-five (25) loops, Qwest shall make every attempt to provide an FOC to	Qwest does not agree.

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Intervals	<p><u>(72) hours after the application date for:</u></p> <ul style="list-style-type: none"> <u>a) 25 or more 2/4 wire analog loops;</u> <u>b) 25 or more 2-wire non-loaded loops;</u> <u>c) 25 or more 4-wire non-loaded loops;</u> <u>d) 25 or more xDSL-I capable loops;</u> <u>e) 9 or more conditioned loops for 2/4 wire non-loaded, ADSL compatible, xDSL-I, ISDN; and</u> <u>f) 25 or more lines Quick Loop and Quick Loop with LNP.</u> <p><u>3.1.1.2 No later than one-hundred and ninety two (192) hours after the application date for:</u></p> <ul style="list-style-type: none"> <u>a) 25 or more DS0 UDITs;</u> <u>b) 25 or more DS0 EEL/Loop Mux;</u> <u>c) 4 or more DS3 UDITs; and</u> <u>d) 4 or more DS3 EEL/Loop Mux</u> 	<p>provides an ICB interval for certain products in the Firm Order Confirmation (FOC). The FOC arrives in much less than 20 business days. The intervals in Eschelon’s proposed language for ICB provisioning intervals are identical to the intervals in which Qwest provides FOCs for these products today. Eschelon’s proposal requires no change by Qwest. A “specific provision” for when Qwest will provide the ICB interval is needed in the ICA, pursuant to Section 3.1 of Exhibit I, to ensure that Qwest provides these ICB intervals in the FOC and not after the much longer default 20 day period that was not intended for this situation. Section 9.2.4.3.1.2 of the ICA provides in agreed upon language that, for certain loop products, Qwest will return an FOC to CLEC within 72 hours from order receipt. It states that: “Such FOC will provide CLEC with a firm Due Date commitment . . . “ There is no exception for ICB due dates. Eschelon’s proposed language connects the dots between Section 9.2.4.3.1.2 of the ICA and Section 3.1 of Exhibit I to include a</p>	<p><u>CLEC pursuant to the guidelines contained in the Service Interval Guide.</u></p>	

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		<p>“specific provision” that Qwest will provide the ICB intervals within the FOC time period and not the much longer default 20 business day time period. <i>See</i> Eschelon’s position statement for Issue 1-1 above.</p>		
<p>Issue 1.1 (e) Section 9.23.9.4.3 (First Sentence only) Intervals for Loop Mux Combinations (LMC)</p>	<p>9.23.9.4.3 [24.4.4.3] Standard Service intervals for LMC(s) Loops are set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale</p>	<p><i>See</i> Eschelon’s position statement for Issue 1-1 above. For the reasons stated above, intervals belong in the ICA. SGAT Section 9.23.5.3 likewise refers to Exhibit C of the ICA; not the SIG on Qwest’s website. Regarding the remainder of the language (after the first sentence) in Section 9.23.9.4.3, <i>see</i> Issue 9-61(a) 9-61(b) below.</p>	<p>9.23.9.4.3 [24.4.4.3] <u>Standard</u> <u>Service intervals for LMC(s) Loops are set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale</u></p>	<p>Qwest does not agree.</p>
<p>Section 1.7.3 and subparts <i>See</i> Issue 9-53 below</p>				
<p>Issue 1-2 Intentionally Left Blank</p>				
<p>CHANGE IN LAW</p>				
<p>Issues 2-3 & 2-4</p>	<p>PROPOSAL #1: 2.2 The provisions in this Agreement are intended to be in compliance with and based on the</p>	<p>Issue 2-3 (Application of Rates) and Issue 2-4 (Effective Date of Legally Binding Changes) relate to Section 2.2 and, for proposal number two,</p>	<p>SAME FOR BOTH: 2.2 The provisions in this Agreement are intended to be in compliance with and based on the</p>	<p>Qwest does not agree.</p>

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<p>Section 2.2 and Section 22.4.1.2</p> <p>Application of Rates in Exhibit A (Issue 2-3) and Effective Date of Legally Binding Changes (Issue 2-4)</p> <p>(1 of 2 Options)</p>	<p>existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party</p>	<p>also Section 22.4.1.2 of the ICA. For Eschelon’s first proposal for Section 2.2, Eschelon proposes the following sentence from Section 2.2 of the SGAT remain unchanged: “Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered.” It respects the authority of the relevant body to determine when issuing an order changing rates when that ruling will take effect. Eschelon has also offered to add the following sentence: “The rates in Exhibit A and when they apply are addressed in Section 22.” Section 22 is entitled “Pricing” and lays out the general principles applicable to pricing. Section 22.0 (“Pricing”) already deals with the application of rates in Exhibit A and does so in more detail than Qwest’s proposed single sentence here. Most of Section 22.0 is agreed upon and closed. The issues that remain open will be decided in this arbitration with respect to Section 22.0 and need not also be litigated</p>	<p>existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party</p>	

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	<p>seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute resolution provision of this Agreement. It is expressly understood that this Agreement will be amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement, except where CLEC notifies Qwest in writing that an amendment is not required. The rates in Exhibit A and when they apply are addressed in Section 22. Rates in Exhibit A include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. When a regulatory body or court issues an order causing a change in law and that</p>	<p>with respect to this Section 2.2. Qwest’s sentence conflicts with closed provisions in Section 22.0. For example, Section 22.4.1.2 states: “Such Commission-approved rates shall be effective as of the date required by a legally binding order of the Commission.” Section 22.4.1.2 does not attempt to pre-judge whether the rates will be applied on a prospective basis and leaves that issue to the discretion of the Commission to decide at the appropriate time. Qwest’s new proposal in Section 2.2, in contrast, attempts to create an unnecessary presumption or default. The ambiguity created by Qwest’s proposal is likely to lead to additional litigation. Eschelon proposes to either remain silent on this issue in Section 2.2 (by deleting Qwest’s proposed insertions) or, as an option, to include Eschelon’s proposed sentence that simply refers the reader to Section 22.0, where the issue is dealt with more completely. (Regarding express language regarding true-ups and Qwest’s proposal regarding notice, see Eschelon’s Proposal #2.)</p>	<p>seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute resolution provision of this Agreement. It is expressly understood that this Agreement will be amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement, except where CLEC notifies Qwest in writing that an amendment is not required. The rates in Exhibit A and when they apply are addressed in Section 22. Rates in Exhibit A will reflect include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission. When a regulatory body or court issues an order causing a change in law and that</p>	

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	<p>order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting aAny amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. In the event neither Party provides notice within thirty (30) Days, the effective date of the legally binding change shall be the effective date of the amendment unless the Parties agree to a different date. While any negotiation or Dispute resolution is pending for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this Section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.</p>		<p><u>order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting a</u>Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. <u>In the event neither Party provides notice within thirty (30) Days, the effective date of the legally binding change shall be the effective date of the amendment unless the Parties agree to a different date.</u> While any negotiation or Dispute resolution is pending for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this Section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.</p>	

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<p>Issues 2-3 & 2-4</p> <p>Section 2.2 and Section 22.4.1.2</p> <p>Application of Rates in Exhibit A (Issue 2-3) and Effective Date of Legally Binding Changes (Issue 2-4)</p> <p>(2 of 2 Options)</p>	<p>PROPOSAL #2:</p> <p>2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the</p>	<p>Qwest proposes, when an order that changes the law “does not include a specific <i>implementation date</i>,” the <i>effective</i> date of such a change will depend on whether one party gives the other notice of the change. Note that Qwest’s language does <i>not</i> say, when an order does not include a specific implementation date, the <i>implementation</i> date will depend on a party giving notice. Qwest’s proposed language creates a new presumption that, when this Commission or another regulatory body issues an order expressly stating that its ruling becomes “effective immediately,” Qwest and other parties do <i>not</i> have to implement the order immediately -- even if no party has requested a separate implementation date or a stay of the order -- unless the Commission on its own also expressly identifies a separate, specific implementation date. Eschelon’s first proposal for Issue 2-4 is simply to strike Qwest’s additions to Section 2.2 and use the SGAT sentence. Eschelon’s alternative proposal for Issue 2-4 is to add three provisions to Section 2.2 (shown in underlining) to clean</p>	<p>SAME FOR BOTH:</p> <p>2.2 The provisions in this Agreement are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). Nothing in this Agreement shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Agreement shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Agreement shall be amended to reflect such legally binding modification or change of the</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	<p>Existing Rules. <u>Each Party has an obligation to ensure that the Agreement is amended accordingly.</u> Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute resolution provision of this Agreement. It is expressly understood that this Agreement will be amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement, except where CLEC notifies Qwest in writing that an amendment is not required. <u>The rates in Exhibit A and when they apply are further addressed in Section 22. Generally, with respect to rates, this Section 2.2 addresses changes to rates that have been previously approved by the</u></p>	<p>up the distinction that Qwest appears to desire between an “implementation” date and an “effective” date, as well as to add a sentence to Section 22.4.1.2. The first provision of Eschelon’s alternate proposal confirms that each party has an obligation to ensure the agreement is amended. Eschelon added this sentence in response to Qwest’s allegations that, despite use of the word “shall” in the previous sentence, a party to the ICA could avoid or delay amending it when the law changes. The second provision adds clarification as to the relationship between Section 2.2 and Section 22 (Pricing). Eschelon added this sentence in response to observations made by the witness for the Minnesota DOC in the Minnesota proceeding regarding the utility of distinguishing between changes to prices that had been previously approved by the Commission and changes to prices not previously approved. The third provision recognizes that the effective date and implementation may (or may not) be different and establishes that the burden is on the companies (<i>i.e.</i>,</p>	<p>Existing Rules. Each Party has an obligation to ensure that the Agreement is amended accordingly. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute resolution provision of this Agreement. It is expressly understood that this Agreement will be amended as set forth in this Section 2.2, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Agreement, except where CLEC notifies Qwest in writing that an amendment is not required. The rates in Exhibit A and when they apply are further addressed in Section 22. Generally, with respect to rates, this Section 2.2 addresses changes to rates that have been previously approved by the</p>	

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	<p><u>Commission, and Section 22 (Pricing) also addresses rates that have not been previously approved by the Commission (Unapproved Rates). Rates in Exhibit A will reflect include legally binding decisions of the Commission. Each Party reserves its rights with respect to the effective date of a legally binding modification or change of the Existing Rules and, if different, other dates for implementation or application of an order, if any. If a Party desires a particular deadline or time period for application or implementation of any aspect of a proposed order, the Party may request under the Commission’s regularly established rules that the Commission establish a specific implementation date, stay the order, or provide other such relief as applicable. If, however, the Commission enters an order that is silent on the issue, the order and shall be implemented and applied on a prospective basis from the date that the order is effective either by operation of law or as otherwise stated in the order (such as “effective immediately” or a specific date), unless subsequently</u></p>	<p>not the Commission) to identify when they are different and, if a different date is desired, to request a date different from the effective date for implementation of a ruling. To address Qwest’s stated concerns that a presumption is needed in cases when the order is silent on the issue, Eschelon’s proposal provides, when the order is silent, the implementation date and effective date are the same, unless the Commission orders otherwise or, if allowed by the order, the parties to the ICA agree otherwise. Eschelon’s second, alternative proposal for language in Section 22.4, entitled “Interim Rates.” Although agreed upon language in Section 22.4.1.2 already provides that interim rates “shall be effective as of the date required by a legally binding order of the Commission” (which could be a true-up date or a prospective date), Eschelon’s proposal expressly states the companies reserve their rights with respect to a true-up. If an order is silent as to a true-up, Qwest gets the default provision it seeks (except for new products, which are addressed in Section 1.7.1.2),</p>	<p>Commission, and Section 22 (Pricing) also addresses rates that have not been previously approved by the Commission (Unapproved Rates). Rates in Exhibit A will reflect include legally binding decisions of the Commission. Each Party reserves its rights with respect to the effective date of a legally binding modification or change of the Existing Rules and, if different, other dates for implementation or application of an order, if any. If a Party desires a particular deadline or time period for application or implementation of any aspect of a proposed order, the Party may request under the Commission’s regularly established rules that the Commission establish a specific implementation date, stay the order, or provide other such relief as applicable. If, however, the Commission enters an order that is silent on the issue, the order and shall be implemented and applied on a prospective basis from the date that the order is effective either by operation of law or as otherwise stated in the order (such as “effective immediately” or a specific date), unless subsequently</p>	

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	<p>otherwise ordered by the Commission <u>or, if allowed by the order, agreed upon by the Parties.</u> When a regulatory body or court issues an order causing a change in law and that order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered.⁵ While any negotiation or Dispute resolution is pending for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this Section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is</p>	<p>indicating rates will be applied and implemented on a prospective basis.</p>	<p>otherwise ordered by the Commission <u>or, if allowed by the order, agreed upon by the Parties.</u> <u>When a regulatory body or court issues an order causing a change in law and that order does not include a specific implementation date, a Party may provide notice to the other Party within thirty (30) Days of the effective date of that order and any resulting amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered.</u> While any negotiation or Dispute resolution is pending for an amendment pursuant to this Section 2.2 the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Agreement. For purposes of this Section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline</p>	

⁵ As discussed with Proposal #1, the following sentence is from the SGAT: “Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered.” Eschelon offers Proposal #2 either with or without this sentence. As it ends with “unless otherwise ordered,” it allows for a different date to be set.

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	<p>pending, and any deadline for requesting a stay designated by statute or regulation, has passed.</p> <p>22.4.1.2 If the Interim Rates are reviewed and changed by the Commission, the Parties shall incorporate the rates established by the Commission into this Agreement pursuant to Section 2.2 of this Agreement. Such Commission-approved rates shall be effective as of the date required by a legally binding order of the Commission. <u>Each Party reserves its rights with respect to whether Interim Rates are subject to true-up. If, however, the Commission issues an order with respect to rates that is silent on the issue of a true-up, the rates shall be implemented and applied on a prospective basis from the effective date of the legally binding Commission decision as described in Section 2.2. Rates in Exhibit A include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission.</u></p>		<p>for requesting a stay designated by statute or regulation, has passed.</p> <p>22.4.1.2 If the Interim Rates are reviewed and changed by the Commission, the Parties shall incorporate the rates established by the Commission into this Agreement pursuant to Section 2.2 of this Agreement. Such Commission-approved rates shall be effective as of the date required by a legally binding order of the Commission. <u>Each Party reserves its rights with respect to whether Interim Rates are subject to true-up. If, however, the Commission issues an order with respect to rates that is silent on the issue of a true-up, the rates shall be implemented and applied on a prospective basis from the effective date of the legally binding Commission decision as described in Section 2.2. Rates in Exhibit A include legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission.</u></p>	

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Section 4 Definition of “Commission Approved Wire Center List” See Issue 9- 37 below				
Section 4 Definition of “Wire Center Docket” See Issue 9- 37 below				
DESIGN CHANGES				
Issue 4-5 Section 9.2.3.8 See (a) to (c) below for related sections: 9.2.3.9 and Exhibit A at 9.20.13	Eschelon package proposal – (Eschelon proposes this language, only if Interim Rate is negotiated, or set by Commission in arbitration; if not, Eschelon proposes deletion) . 9.2.3.8 Design Change rates for Unbundled Loops (unless the need for such change is caused by Qwest, in which case this rate does not apply).	Neither the Qwest-Eschelon ICA that is currently in effect between the parties nor the SGAT has any language authorizing Design Change charges for loops. The SGAT authorizes Qwest to charge Design Change charges for dedicated transport but not loops. (Compare SGAT Section 9.6.4.1.4(c) with SGAT Section 9.2.4.) Qwest’s Design Change cost study refers to ASRs and other indicia of transport but not loops. Consistent with these facts, Qwest	Qwest proposes the same language but does not agree to package proposal. 9.2.3.8 Design Change rates for Unbundled Loops (unless the need for such change is caused by Qwest, in which case this rate does not apply).	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
"Design Change"		<p>during the term of the current approved ICA did not charge an additional charge for design changes for unbundled loops. This suggests both that Qwest understood the approved rate to apply to transport and that the current approved loop rate covers these costs and no additional charge is needed (or Qwest surely would have asked the Commission to approve it and charged for it earlier). Qwest obtained 271 approval based upon a review of its rates when it did not impose any additional charge for design changes for loops.</p> <p>On Sept. 1, 2005, however, Qwest sent an unexpected letter to CLECs stating Qwest intended to commence billing CLECs non-recurring charges for Design Changes for unbundled loops, beginning on Oct. 1. As neither the SGAT nor the current ICA has any language authorizing Design Change charges for loops, Eschelon disputes these charges with respect to the existing ICA. Since then, in the Minnesota arbitration, Qwest testified that Eschelon "is correct</p>		

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		<p>that neither Qwest’s SGAT nor the parties’ current ICA includes a design change charge for loops.” (Qwest Ms. Stewart Rebuttal (9/22/06), p. 6, lines 27-28.) Qwest, however, continues to bill these charges pursuant to its unilateral billing letter.</p> <p>After sending its 9/1/05 letter, Qwest’s practice now is to bill more in some states for changes in loop design than the rates the Commission approved for a new installation (<i>i.e.</i>, for a new install and not just a later change in design). This demonstrates that Commission oversight is required and, if any rate is allowed, a more reasonable interim rate should be set for changes to a loop design than for entire new installs (including all loop design and installation of the loop). [Qwest has indicated that it also reserves the right to pursue charging a tariffed rate for design changes (claiming that, while “loops” are UNEs, “design changes” to loops are not UNEs.) As to this latter Qwest position, <i>see</i> Issue 9-31.]</p>		

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		<p>In Qwest’s 9/1/05 letter, Qwest included its own definition of Design Changes (which it continues to apply). Qwest’s change affected multiple CLECs, but Qwest did not use CMP to implement it. The billing notification was a “non-CMP” notification. When Eschelon inquired about this change, Qwest CMP personnel responded that “this item is outside the scope of CMP.” The definition of Design Change was still an open issue when the Minnesota Qwest-Eschelon ICA arbitration was filed in May. Despite its CMP response to Eschelon about this issue being outside the scope of CMP, Qwest nonetheless said in its initial Minnesota position statement that the Design Change issue belongs in CMP. After Eschelon pointed out this inconsistency, Qwest agreed upon a definition of Design Change that is different from the definition in its billing letter, and Qwest did not use CMP to do so. Design Changes are just one example when Qwest uses CMP as a shield or a sword, as is convenient at the moment.</p>		

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		<p>Before Qwest is allowed to charge in circumstances when, before its unilateral 9/1/05 letter, it did not, the Commission should address whether a separate, additional charge should apply to design changes for loops. The Commission may decide this issue in either this arbitration or a cost case. If the Commission prefers a cost case, the Commission needs to decide how to handle the issue in the interim under the ICA.</p> <p>Eschelon proposes either (1) because Qwest has not even requested a new rate from the Commission, the status quo before Qwest’s 9/1/05 letter (<i>i.e.</i>, no additional charge for design changes for loops) be maintained (with the order clearly indicating Qwest must provide design changes in Section 9.1.2 but the language referring to design change charges in Sections 9.2.3.8 and 9.2.4.4.2 being stricken and “no charge” inserted in Exhibit A); or (2) a reasonable interim rate be adopted until the Commission decides upon a rate, if any. (<i>See</i> Issue 4-5(c).) Eschelon’s interim rate proposal is particularly reasonable in light of</p>		

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		<p>the fact that historically no additional charge at all was applied for design changes to loops and Qwest did not seek Commission approval before attempting to charge one.</p> <p>Section 9.2.4 relates to <i>ordering</i> for unbundled loops, as opposed to Section 9.2.3, which relates to rate elements. <i>If</i> the Commission is going to adopt language allowing Qwest to obtain a separate, additional Commission-approved rate for design change charges for loops, the Commission should adopt language in 9.2.3 (rate elements) that reflects that it is a rate element, consistent with the conventions of the ICA. If Qwest then obtains an interim or approved rate in Exhibit A, that rate will apply per the ICA terms.</p>		
Issue 4-5 (a) 9.2.3.9 CFA Change	<p>Eschelon package proposal – (Eschelon proposes this language, only if Interim Rate is negotiated, or set by Commission, in arbitration; if not, Eschelon proposes deletion) .</p> <p>9.2.3.9 CFA Change – 2/4 Wire</p>	<p>Qwest proposes to charge the same expensive rate for Design Changes, including for all Connecting Facility Assignment (“CFA”) changes, regardless of circumstance. In contrast, Eschelon has identified in this language certain changes to which the same charge should not apply. These</p>	<p>Qwest does not agree to package proposal.</p> <p>9.2.3.9 Rates for CFA changes are</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p><u>Loop Cutovers. Connecting Facility Assignment (CFA) changes for Coordinated Installation Options for 2-Wire and 4-Wire analog (voice grade) Loops (excluding the Batch Hot Cut Process) on the day of the cut, during test and turn up. When this charge applies, the Design Change rate for Unbundled Loops does not apply.</u></p>	<p>CFA changes occur for analog loop hot cuts on the day of cut during test and turn up (excluding batch hot cuts). If a CFA cannot be used and a new CFA is assigned during a cutover, the costs are not as high as in other situations because both parties' personnel are already participating in the loop cutover. In such situations, the Qwest central office ("CO") technician is already available and working on the cutover. It requires less additional work, and there is little if any extra time involved, to change pairs in such situations, as compared to circumstances requiring Design Changes when the CO technician must be separately dispatched, for example. Pair changes to install or repair service are part of a long-standing standard industry practice. Historically, Qwest has not charged separately for such pair (CFA) changes.</p> <p><i>If any charge is allowed in this context, it should be minimal. (Eschelon's inclusion of this language does not require approval of any final rate at this time, as Exhibit A could indicate "no</i></p>	<p><u>set forth in Exhibit A (unless the need for such change is caused by Qwest, in which case this rate does not apply).</u></p>	

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		charge” or include an Interim Rate set by the Commission – see Issue 4-5(c).) The ICA should specifically state that, in these circumstances, the separate Design Change rate does not apply, to avoid ambiguity and potential double recovery. (If later, in a cost case for example, no separate charge was adopted, Exhibit A would merely reflect the higher rate that is the same as for other design changes, and no change in the language of the ICA would be needed.)		
Issue 4-5 (b) Intentionally Left Blank				
Issue 4-5 (c) Exhibit A Section 9.20.13 Design Change Charge	9.20.13 Design Change 9.20.13.1 Design Change (Transport) \$35.89 C 9.20.13.2 (Loop) \$30.00 1 9.20 13.3 CFA - 2/4 Wire Loop cutovers \$ 5.00 1	Eschelon proposes to pay the same charges as other CLECs also paid before 9/1/05, when Qwest unilaterally changed its billing practices to impose a new, unapproved rate in situations for which there previously was no additional charge. (See Issue 4-5.) In addition, to resolve this issue, Eschelon proposes in the alternative to pay interim rates that other CLECs did not have to pay under the pre-9/1/05 structure that Qwest has attempted to change without	9.20.13 Design Change \$35.89 C 9.20.13.1 Design Change (Transport) \$35.89 A 9.20.13.2 (Loop) \$30.00 + 9.20 13.3 CFA 2/4 Wire Loop cutovers \$ 5.00 1	Qwest does not agree.

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		<p>Commission involvement as to its new proposed rate.</p> <p>The Design Change charge ordered by this Commission applies only to transport rate elements. (See Issue 4-5.) Eschelon’s addition to the title (which it has numbered as 9.20.13.1) clarifies this rate application.</p> <p>Regarding design changes for loops (9.20.13.2), if the Commission approves a cost-based rate, Eschelon agrees to pay that rate. In the interim, Eschelon proposes a rate of \$30.00, which is appropriately less than the Commission approved rate for transport of \$72.79 because of the differences between loops and transport. Given that the approved rate for basic installation of the entire loop is \$53.86 an interim rate of \$30.00 for design changes to that loop is very reasonable.</p> <p>Eschelon’s proposed interim rate of \$5.00 for CFA changes reflects the significantly reduced amount of work involved in CFA changes, for which historically there has</p>		

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		<p>reasonably been no additional charge. <i>See</i> Issue 4-5(b).</p> <p>Regarding Qwest’s expressed intention to reserve the right to forego the Commission approved transport rate for Qwest’s federal tariff rate (and then charge the transport rate in all of these circumstances), <i>see</i> Issue 9-31 (Section 9.1.2).</p>		
DISCONTIN- UATION OF ORDER PROCESS- ING				

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Issue 5-6 Section 5.4.2 Discontinua- tion of Order Processing (1 of 2 options)	PROPOSAL #1: 5.4.2 <u>With the Commission's approval</u> , One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. The Billing Party will notify the other Party in writing and the Commission on a confidential basis at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed	Section 5.4.2 allows Qwest to discontinue processing all orders "for the relevant services" if CLEC does not make "full payment" of undisputed amounts. It is important to understand the breadth of this provision. The provision is not limited to particular orders but could, for example, lead to the disruption of all customer loop orders, even when most of the payment had been made (but not in "full"). The refusal to process all orders for relevant services is a very serious step that could vitally affect the ongoing viability of the party who can not get its orders processed. It could also have a significant negative effect on current and potential end user customers. For example, Utah customers who are initiating or converting service may find themselves without service on the planned date of service. Commission oversight on these matters is particularly important so that there is an independent arbiter of the facts and to ensure that the information relied upon to make these decisions is accurate.	SAME FOR BOTH PROPOSALS : 5.4.2 With the Commission's approval , One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. The Billing Party will notify the other Party in writing and the Commission on a confidential basis at least ten (10) business days prior to discontinuing the processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. Additionally, the Billing Party may require a deposit (or	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	<p>Party, pursuant to Section 5.4.5. The Billing Party shall resume order processing without unreasonable delay upon receipt of full payment of all charges, and payment of a deposit, if any, for the relevant services not disputed in good faith under this Agreement. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>	<p>Eschelon and Qwest have had serious disagreements about billing information which means that Qwest could invoke these remedies based on information with which Eschelon disagrees. Although Eschelon could seek dispute resolution under the agreement, because this provision allows Qwest to discontinue processing Eschelon’s orders on only ten days’ notice, it would be difficult, if not impossible, for Eschelon to file a complaint, get on the Commission’s schedule, and get a ruling, all within ten business days.</p> <p>Qwest has other remedies, such as late payment fees and Dispute resolution, available to it. Before a party implements a step as serious and disruptive as discontinuance of order processing for relevant services, the Commission should be involved on behalf of the public interest. Therefore, Eschelon’s first and preferred proposal is to require Commission approval before a party may discontinue order processing under these circumstances.</p>	<p>additional deposit) from the billed Party, pursuant to Section 5.4.5. The Billing Party shall resume order processing without unreasonable delay upon receipt of full payment of all charges, and payment of a deposit, if any, for the relevant services not disputed in good faith under this Agreement. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>	

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Issue 5-6 Section 5.4.2 Discontinua- tion of Order Processing (2 of 2 options)	PROPOSAL #2: 5.4.2 One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. . . . <u>If the billed Party asks the Commission to prevent discontinuance of order processing and/or rejection of orders (e.g., because delay in submitting dispute or making payment was reasonably justified due to inaccurate or incomplete Billing), the Billing Party will continue order processing while the proceedings are pending, unless the Commission orders otherwise.</u> . . .	Because the disruption of customer orders is such a serious step, Commission involvement is required. If the Commission declines to require approval in every case in which a party seeks to discontinue processing of all orders for relevant service due to non- or partial payment, the Commission should ensure that it will have an opportunity to act on the public’s behalf before the services of end user customers are disrupted in those cases when a party seeks Commission relief. The language in Eschelon’s second option allows the Commission this opportunity by providing that, if Commission intervention is sought, the Billing Party will continue order processing while the proceedings are pending, unless the Commission orders otherwise.	SAME FOR BOTH PROPOSALS : 5.4.2 One Party may discontinue processing orders for relevant services for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within thirty (30) Days following the Payment Due Date. . . . If the billed Party asks the Commission to prevent discontinuance of order processing and/or rejection of orders (e.g., because delay in submitting dispute or making payment was reasonably justified due to inaccurate or incomplete Billing), the Billing Party will continue order processing while the proceedings are pending, unless the Commission orders otherwise. . . .	Qwest does not agree.
Issue 5-7 Section 5.4.3 & see (a) below related section	5.4.3 <u>With the Commission’s approval pursuant to Section 5.13.1,</u> The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed	This section concerns the circumstances under which Qwest may disconnect Eschelon’s service, including service to its end user customers, for non-payment. Here the need for Commission oversight	5.4.3 With the Commission’s approval pursuant to Section 5.13.1, <u>The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less</u>	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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<p>5.13.1 Commission approval for disconnects</p>	<p>amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Days following the Payment Due Date. For Resale products pursuant to Section 6, the billed Party will pay the applicable tariffed non-recurring charge less the wholesale discount set forth in Exhibit A, required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, if any, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice, if disconnection has</p>	<p>is even greater than in the preceding section, concerning the discontinuance of order processing. Not only would such a drastic measure likely very seriously, if not fatally, harm Eschelon's business, it would be extremely disruptive, to say the least, for Eschelon's customers, who would lose their telephone service as a result. Before Qwest takes such a step, it should have the obligation to first seek to the permission of the Commission, in order to be sure that the interests of the public are adequately protected.</p> <p>Eschelon's proposed language for this section contains a cross-reference to Section 5.13.1, to clarify that, if Qwest seeks to disconnect service, it must first obtain the Commission's permission. In light of the interests at stake, this language is reasonable.</p> <p>Utah customers should not have less protections than in other states. In Minnesota, where the Commission requires approval for disconnection, Qwest agreed to this language and thus the issue did not</p>	<p>any disputed amount as provided for in Section 21.8 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Days following the Payment Due Date. For Resale products pursuant to Section 6, the billed Party will pay the applicable tariffed non-recurring charge less the wholesale discount set forth in Exhibit A, required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party in at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, if any, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party without further notice, if disconnection has</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p><u>been approved by the Commission.</u> For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party may request a deposit (or recalculate the deposit) as specified in Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>	<p>need to be arbitrated. Qwest will have a process, therefore, for providing notice to a commission before disconnection that it could also use in Utah.</p>	<p><u>been approved by the Commission.</u> For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party may request a deposit (or recalculate the deposit) as specified in Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including injunctive relief and specific performance.</p>	
<p>Issue 5-7(a) Section 5.13.1 Commission approval</p>	<p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after</p>	<p>Eschelon has proposed language to be included in this Section that would assure that the Commission is kept adequately informed of alleged defaults under the ICA. This will allow the Commission to monitor disputes, and become</p>	<p>5.13.1 If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) Days after</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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prior to disconnection	written notice thereof, the other Party <u>must notify the Commission in writing and</u> may seek relief in accordance with the Dispute resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect. <u>Neither Party shall disconnect service to the other Party without first obtaining Commission approval.</u> To the extent that either Party disputes, pursuant to Section 21.8, any amount due hereunder, the Party’s withholding of such disputed amounts pursuant to Section 21.8 shall not constitute a default under this Section 5.13 during the pendency of such dispute.	involved in them to the extent necessary and appropriate, for the protection of the public interest. Eschelon’s proposal also includes a provision requiring that Qwest seek and obtain the Commission’s approval before disconnecting Eschelon’s service. The rationale for this provision is discussed above, in connection with Section 5.4.3 (Issue 5-7).	written notice thereof, the other Party <u>must notify the Commission in writing and</u> may seek relief in accordance with the Dispute resolution provision of this Agreement. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect. Neither Party shall disconnect service to the other Party without first obtaining Commission approval. To the extent that either Party disputes, pursuant to Section 21.8, any amount due hereunder, the Party’s withholding of such disputed amounts pursuant to Section 21.8 shall not constitute a default under this Section 5.13 during the pendency of such dispute.	
DEPOSITS				
Issue 5-8 Section 5.4.5	<u>5.4.5 Disputed portion (issue 1):</u> “Repeatedly Delinquent” means payment of any undisputed non-de minimus amount received more	Eschelon has proposed language that would trigger the deposit requirement only when there is a failure to pay an undisputed “non-	<u>5.4.5 Disputed portion (issue 1):</u> “Repeatedly Delinquent” means payment of any undisputed non-de minimus amount received more	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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<p>De Minimus Amount</p> <p>(1 of 3 issues in 1st Eschelon proposal for 5.4.5)</p>	<p>than thirty (30) Days after the Payment Due Date . . .</p> <p><u>Entire provision:</u> 5.4.5 Each Party will determine the other Party's credit status based on previous payment history as described below or, if the Parties are doing business with each other for the first time, based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence or the Party is Repeatedly Delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly Delinquent" means payment of any undisputed non-de minimus amount received more</p>	<p>de minimus" amount. Qwest opposes the "de minimus" limitation. The amount of a deposit under this provision is substantial – two months' worth of charges. It is unreasonable that this requirement should be triggered when, as a result of an error for example, a payment is off by a few dollars. A deposit should be required when the test is truly met and there is a legitimate concern about a company's ability to pay future charges. Such a concern does not arise when the amount that is not paid is de minimus.</p>	<p>than thirty (30) Days after the Payment Due Date . . .</p> <p><u>Entire provision:</u> 5.4.5 Each Party will determine the other Party's credit status based on previous payment history as described below or, if the Parties are doing business with each other for the first time, based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence or the Party is Repeatedly Delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. "Repeatedly Delinquent" means payment of any undisputed non-de minimus amount received more</p>	

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	<p>than thirty (30) Days after the Payment Due Date, <u>for three (3) consecutive months, or more times during a twelve (12) month period</u> on the same Billing account number. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is Repeatedly Delinquent as described above for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met, <u>unless the billed Party challenges the amount of the deposit or deposit requirement (e.g., because delay in submitting disputes or making</u></p>		<p>than thirty (30) Days after the Payment Due Date, for three (3) consecutive months, or more times during a twelve (12) month period on the same Billing account number. The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is Repeatedly Delinquent as described above for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met, unless the billed Party challenges the amount of the deposit or deposit requirement (e.g., because delay in submitting disputes or making</p>	

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	<p><u>payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.</u></p>		<p><u>payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.</u></p>	
<p>Issue 5-9 Section 5.4.5 Definition of Repeatedly Delinquent (2 of 3 issues in 1st Eschelon proposal for 5.4.5) (1 of 2 options)</p>	<p>PROPOSAL #1 (issue 2): 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, <u>for three (3) consecutive months, or more times during a twelve (12) month period</u> on the same Billing account number. . . .</p>	<p>The parties have agreed that a deposit may be required where payment is “Repeatedly Delinquent.” They disagree about how this standard should be defined. Qwest proposes that a payment be considered ‘Repeatedly Delinquent’ when payment of “any” undisputed amount is received more than thirty days after the due date three or more times within a twelve-month period. This standard allows Qwest to require a deposit under some circumstances when there is no genuine question about a party’s ability to pay. Under Qwest’s proposal, for example, if a CLEC were to pay a portion of the amount due late in months one and two, make timely payments in the full amount for nine consecutive months, and then pay a portion of</p>	<p>SAME FOR ALL: 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, <u>for three (3) consecutive months or more times during a twelve (12) month period</u> on the same Billing account number. . . .</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>the amount due late in month twelve, Qwest could demand a large security deposit. Such a scenario does not provide any evidence of the financial stress that gives rise to a legitimate need for payment “security.” In contrast, a standard that more accurately captures such circumstances would be if payment is received more than thirty days after the due date for three consecutive months. Qwest already uses this “three consecutive month” standard in other contracts. For example, in a recent filing in Oregon, McLeod quoted the definition of “Repeatedly Delinquent” in §26.4.4 of its ICA with Qwest as meaning “being thirty (30) days or more delinquent for three (3) consecutive months.” (<i>McLeod Brief.</i>) ATI, which was recently acquired by Eschelon, has the three consecutive month standard in its current ICA with Qwest in Washington as well. (<i>ATI ICA</i>, §26.4.4.) In Idaho, Qwest agreed to the three consecutive month standard with a company called Wavesent, even though Wavesent filed an arbitration petition on other issues. (<i>Wavesent</i></p>		

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		<p><i>Petition.</i>) Qwest has also had agreements with other carriers (such as wireless and paging companies) with the three consecutive month standard. In the Minnesota Qwest-Eschelon arbitration, , the Commission adopted the ALJs’ finding (¶55): “If incentive for timely payment is the concern, there are other remedies in the agreement that address this issue (<i>e.g.</i>, penalties for late payment). The term at issue is a demand to make a security deposit, which is a serious step that could jeopardize Eschelon’s cash flow, depending on the amount of the deposit required. A remedy this dramatic should be reserved for more serious financial issues than late payment three times over the course of one year. Eschelon’s proposal, to define the term as payment of overdue amounts for three consecutive months, would adequately protect both parties when there is a legitimate concern about future payment. Eschelon’s language should be adopted.”</p> <p>The three consecutive month standard better meets the objective of the deposit provision. Qwest’s</p>		

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		proposed language, in contrast, would allow Qwest to demand a deposit even when late payment is an isolated occurrence.		
Issue 5-9 Section 5.4.5 Definition of Repeatedly Delinquent (2 of 3 issues 1 st Eschelon proposal for 5.4.5) (2 of 2 options)	PROPOSAL #2 (issue 2): 5.4.5 . . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, three (3) or more times during a <u>six (6) month</u> period on the same Billing account number. . .	Eschelon’s second option for the definition of ‘Repeatedly Delinquent’ is the same as Qwest’s definition, except that Eschelon proposes six months instead of twelve. The undesirable scenario described under option one above would not occur with this definition, because the CLEC with nine consecutive months of timely payment in full would not fall within the definition. At the same time, Qwest would be protected in circumstances when late payment might reasonably be viewed as creating a legitimate concern about ability to pay that would justify a deposit.	SAME FOR ALL: 5.4.5. . . “Repeatedly Delinquent” means payment of any undisputed . . . amount received more than thirty (30) Days after the Payment Due Date, three (3) or more times during a <u>twelve (12) month</u> period on the same Billing account number. . .	Qwest does not agree.
Issue 5-10 Intentionally Left Blank				
Issue 5-11 Section 5.4.5 Disputes	5.4.5Required deposits are due and payable within thirty (30) Days after demand and conditions being met, <u>unless the billed Party challenges the amount of the</u>	The parties have agreed on language that provides that a required deposit will be due within thirty days of demand. Eschelon has proposed an exception for	5.4.5Required deposits are due and payable within thirty (30) Days after demand and conditions being met, unless the billed Party <u>challenges the amount of the</u>	Qwest does not agree.

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Before Commission (3 of 3 issues in 1 st Eschelon proposal for 5.4.5)	<u>deposit or deposit requirement (e.g., because delay in submitting disputes or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.</u>	situations when the party on whom the demand is made challenges with the Commission either whether a deposit is required on the amount of the deposit. In such an instance, the deposit would be due as ordered by the Commission. This exception gives effect to the parties' right to bring disputes to the Commission for resolution. (See Section 5.18.1.)	deposit or deposit requirement (e.g., because delay in submitting disputes or making payment was reasonably justified due to inaccurate or incomplete Billing) pursuant to Section 5.18. If such a Dispute is brought before the Commission, deposits are due and payable as of the date ordered by the Commission.	
Issue 5-12 Section 5.4.5 Deposit Requirement (Eschelon Proposal #3) ALTER-NATIVE For other two versions of 5.4.5 (This entire paragraph, if adopted, would	PROPOSAL #3: 5.4.5 Each Party will determine the other Party's credit status based on previous payment history as described below, or <u>If the Parties are doing business with each other for the first time, each Party will determine the other Party's credit status</u> based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence or the Party is Repeatedly Delinquent in making its payments, or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing	Eschelon proposes a third option that, unlike the other two, does not hinge on the definition of Repeatedly Delinquent. Instead, this option provides an opportunity for the Commission to review a party's payment history and determine whether "all relevant circumstances warrant a deposit." This option provides the Commission with flexibility to determine contested deposit requirements on a case-by-case basis if and when such cases arise.	SAME FOR ALL: 5.4.5 <u>Each Party will determine the other Party's credit status based on previous payment history as described below, or if</u> If the Parties are doing business with each other for the first time, each Party will determine the other Party's credit status based on credit reports such as Dun and Bradstreet. If a Party that is doing business with the other Party for the first time has not established satisfactory credit with the other Party according to the previous sentence <u>or the Party is Repeatedly Delinquent in making the payments,</u> or the Party is being reconnected after a disconnection of service or discontinuance of the processing of orders by the Billing	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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replace all other Eschelon proposals for all of Section 5.4.5.)	<p>Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. The Billing Party may also require a deposit for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21 of this Agreement, for the relevant services provided under this Agreement within ninety (90) Days following the Payment Due Date, if the Commission determines that all relevant circumstances warrant a deposit. “Repeatedly delinquent” means any payment received thirty (30) Days or more after the Payment Due Date, three (3) or more times during a twelve (12) month period on the same Billing account number. Accounts with amounts disputed under the dispute provisions of this agreement shall not be included as Repeatedly Delinquent based on amounts in dispute alone. The deposit may not exceed the estimated total monthly charges for an average two (2)</p>		<p>Party due to a previous non-payment situation, the Billing Party may require a deposit to be held as security for the payment of charges before the orders from the billed Party will be provisioned and completed or before reconnection of service. The Billing Party may also require a deposit for the failure of the other Party to make full payment, less any disputed amount as provided for in Section 21 of this Agreement, for the relevant services provided under this Agreement within ninety (90) Days following the Payment Due Date, if the Commission determines that all relevant circumstances warrant a deposit. “Repeatedly delinquent” means any payment received thirty (30) Days or more after the Payment Due Date, three (3) or more times during a twelve (12) month period on the same Billing account number. Accounts with amounts disputed under the dispute provisions of this agreement shall not be included as Repeatedly Delinquent based on amounts in dispute alone. The deposit may not exceed the estimated total monthly charges for an average two (2)</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing and/or the date CLEC is repeatedly delinquent as described above for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met.</p>		<p>month period within the 1st three (3) months from the date of the triggering event which would be either the date of the request for reconnection of services or resumption of order processing <u>and/or the date CLEC is repeatedly delinquent as described above</u> for all services. The deposit may be a surety bond if allowed by the applicable Commission regulations, a letter of credit with terms and conditions acceptable to the Billing Party, an – interest bearing escrow account, or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within thirty (30) Days after demand and conditions being met.</p>	
REVIEW OF CREDIT STANDING				
<p>Issue 5-13 Section 5.4.7 Review of credit standing</p>	<p>PROPOSAL #1: 5.4.7 <u>Intentionally Left Blank.</u></p>	<p>Qwest has proposed a provision that would allow a Billing Party to review the other party’s credit standing and increase the amount of the deposit. Because this provision contains no criteria or standards defining when this provision may</p>	<p>SAME FOR BOTH PROPOSALS: 5.4.7 <u>The Billing Party may review the other Party's credit standing and increase the amount of deposit required but in no event will the</u></p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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(1 of 2 options)		<p>be invoked, it would effectively nullify the limitations set out in Section 5.4.5 on a party's ability to demand a deposit. Qwest's proposal does not describe the "credit history" that would be subject to review, the conditions that might justify such a review, or the circumstances that would warrant a modification. There is no limitation on ability to increase a deposit amount when the Billed Party is current in its payments. Such an unlimited ability to demand an increase in the amount of a deposit would be an open invitation to arbitrary action.</p> <p>This Section is also inconsistent with Section 5.4.5 in another way. Section 5.4.7, as proposed by Qwest, states that the amount of the deposit, when increased, may not exceed the maximum amount provided for under Section 5.4.5. Under Section 5.4.5, "The deposit may not exceed the estimated total monthly charges for an average two (2) month period within the first three (3) months, from the date of the triggering event which would be either the date of the request for reconnection of services or</p>	<p>maximum amount exceed the amount stated in Section 5.4.5.</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>resumption of order processing and/or the date CLEC is Repeatedly Delinquent as described above for all services.” (Emphasis added.) Section 5.4.7 does not involve reconnection, resumption of order processing, or the CLEC being repeatedly delinquent, so the deposit cap in 5.4.5 makes no sense within the context of Qwest’s 5.4.7 Accordingly, for a deposit increase under Section 5.4.7, there would be no “triggering event” that could be used to select three months for purposes of computing an average. Because of its inconsistency with the general deposit requirement set out in Section 5.4.5, Eschelon recommends that Section 5.4.7 be deleted and left blank. The provision is unnecessary in any event. The only legitimate need to modify a deposit that has been identified is recalculation of the deposit based upon financial standing, and that is already covered in Section 5.4.6.</p>		
Issue 5-13 Section 5.4.7	<p>PROPOSAL #2: 5.4.7 If a Party has received a deposit pursuant to Section 5.4.5 but the amount of the deposit is less</p>	<p>Eschelon’s other option for this language is to modify it to require that any increase in the amount of the deposit be approved by the</p>	<p>SAME FOR BOTH PROPOSALS: 5.4.7 If a Party has received a deposit pursuant to Section 5.4.5</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Review of credit standing (2 of 2 options)	<u>than the maximum deposit amount permitted by Section 5.4.5.</u> The Billing Party may review the other Party's credit standing and increase the amount of deposit required, <u>if approved by the Commission</u> , but in no event will the maximum amount exceed the amount stated in Section 5.4.5. <u>Section 5.4 is not intended to change the scope of any regulatory agency's or bankruptcy court's authority with regard to Qwest or CLECs.</u>	Commission. The requirement of Commission scrutiny would alleviate some of the potential for abuse that is inherent in this provision.	but the amount of the deposit is less than the maximum deposit amount permitted by Section 5.4.5. The Billing Party may review the other Party's credit standing and increase the amount of deposit required, if approved by the Commission , but in no event will the maximum amount exceed the amount stated in Section 5.4.5. Section 5.4 is not intended to change the scope of any regulatory agency's or bankruptcy court's authority with regard to Qwest or CLECs.	
Issue 5-14 Intentionally Left Blank				
Issue 5-15 Intentionally Left Blank				
COPY OF NONDIS- CLOSURE AGREE- MENT				
Issue 5-16 Section 5.16.9.1 Non-	5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that	Forecasting information is highly competitively sensitive and the parties have reasonably agreed that this information should not be disclosed to Qwest employees who are in a position to use it to	5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC individual forecasts and forecasting information disclosed by Qwest, to legal personnel, if a legal issue arises about that	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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disclosure Agreement	forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a non-disclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Qwest shall provide CLEC with a signed copy of each non-disclosure agreement executed by Qwest personnel within ten (10) Days of execution. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.	Eschelon's competitive disadvantage. Accordingly, Section 5.16.9.1 of the agreement identifies Qwest employees who may, and who may not, have access to confidential information regarding Eschelon's forecasts. The parties agree that Qwest employees to whom Eschelon's forecasts and forecasting information are disclosed will be required to execute a nondisclosure agreement covering the information. They disagree as to whether Qwest must provide Eschelon with a signed copy of each non-disclosure agreement within ten days of execution. Eschelon's proposal to receive copies of executed non-disclosure agreements reflects the common practice in other contexts under which the parties exchange signature pages of confidentiality protective agreements so that a party will be aware of who is receiving its confidential information and will be in a position to raise objections if necessary. If Qwest does not provide Eschelon with copies of executed nondisclosure agreements,	forecast, as well as to CLEC's wholesale account managers, wholesale LIS and Collocation product managers, network and growth planning personnel responsible for preparing or responding to such forecasts or forecasting information. In no case shall retail marketing, sales or strategic planning have access to this forecasting information. The Parties will inform all of the aforementioned personnel, with access to such Confidential Information, of its confidential nature and will require personnel to execute a non-disclosure agreement which states that, upon threat of termination, the aforementioned personnel may not reveal or discuss such information with those not authorized to receive it except as specifically authorized by law. Qwest shall provide CLEC with a signed copy of each non-disclosure agreement executed by Qwest personnel within ten (10) Days of execution. Violations of these requirements shall subject the personnel to disciplinary action up to and including termination of employment.	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>Eschelon will have insufficient information to object if sensitive information is provided to a Qwest employee not authorized by the ICA to receive it. Eschelon thus will have no way to confirm that its confidential information is being adequately protected. Qwest has already agreed that employees will sign the agreement. Eschelon’s proposal to receive copies of executed non-disclosure agreements reflects the common practice in other contexts under which the parties exchange signature pages of confidentiality protective agreements so that a party will be aware of who is receiving its confidential information and will be in a position to raise objections if necessary. Eschelon’s proposal to require Qwest to provide a copy of that existing executed agreement imposes little, if any, burden on Qwest.</p>		
Issue 6-17 Intentionally Left Blank				
Section 7.3.5.2 See Section				

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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12.2.1.2 (Issue 12-67(f))				
Section 7.4.7 - See Section 1.7.2 above (Issue 1-1)				
TRANSIT RECORD CHARGE AND BILL VALIDATION				
Issue 7-18 Section 7.6.3.1 Application of Transit Record Charge	7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic the billed party may request sample 11-01-XX records for specified offices. These records will be provided by the transit provider in EMI mechanized format to the billed party at no charge, because the records will not be used to bill a Carrier. The billed party will limit requests for sample 11-01-XX data to a maximum of once every six months, provided that Billing is accurate.	Section 7.6 governs transit records and applies when Qwest or CLEC acts as a transit provider. It allows transit providers to exchange records to allow them to bill other carriers for transit traffic. Section 7.6.3 provides that there may be a charge for doing so. Eschelon is not a transit provider, and it does not use these records for billing carriers. The ongoing exchange of records anticipated by this language and upon which a charge may be based does not apply, therefore, to Eschelon's periodic need for samples of these records. Why does Eschelon occasionally need to review sample records?	7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic the billed party may request sample 11-01-XX records for specified offices. These record will be provided by the transit provider in EMI mechanized format to the billed party at no charge, because the records will not be used to bill a Carrier. The billed party will limit requests for sample 11-01-XX data to a maximum of once every six months, provided that Billing is accurate.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>Qwest bills Eschelon for transit traffic, and Eschelon periodically needs to verify those bills. Section 21.8.4.3 contains language (similar to that in Section 5.4.4 of the SGAT) stating that the parties will “promptly provide all documentation regarding the amount disputed that is reasonably requested by the other Party.” It is reasonable for Eschelon to request sample records on occasion to verify Qwest’s bills. This is a cost of doing business for Qwest, which benefits from the payments that Eschelon makes to Qwest for the transit traffic. Because Section 7.6.3 contains no exception for the types of requests made pursuant to Section 21.8.4.3, Eschelon proposes to add a provision that explicitly states that there is no charge for sample records used to verify Qwest’s bills to CLEC. This provision will help eliminate ambiguity and avoid potential disputes about the application of the charge in Section 7.6.3, which was not intended for this situation. Eschelon has reasonably proposed that it will limit its request for sample records to a maximum of</p>		

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>once every six months, provided that billing is accurate, to address any concern that a carrier opting into the ICA may try to use the exception to obtain records for another purpose.</p> <p>Qwest has objected that this information is better obtained from Eschelon’s switch. Although Eschelon’s switch does record certain information at its switch, those records would only tell Eschelon who was called and that the call was handed off to Qwest. Eschelon can only infer from our records whether Qwest is acting as a transit provider. Discrepancies between Eschelon’s records and the bills Eschelon receives from Qwest are one reason Eschelon might request records from Qwest for bill verification.</p>		
<p>Issue 7-19 Section 7.6.4 Transit Record Bill Validation Detail</p>	<p><u>7.6.4 Qwest will provide the non-transit provider, upon request, bill validation detail including but not limited to: originating and terminating CLLI code, originating and terminating Operating Company Number, originating and terminating state jurisdiction.</u></p>	<p>As discussed with respect to Section 7.6.3.1 above, Qwest bills Eschelon for transit traffic. Eschelon’s proposed Section 7.6.4 states that Qwest, as the transit provider, will provide Eschelon with backup detail so Eschelon may verify that these charges are valid.</p>	<p><u>7.6.4 Qwest will provide the non-transit provider, upon request, bill validation detail including but not limited to: originating and terminating CLLI code, originating and terminating Operating Company Number, originating and terminating state jurisdiction.</u></p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	number of minutes being billed, rate elements being billed, and rates applied to each minute.	CLECs need backup detail to verify charges. Qwest should not be allowed to deny CLECs this opportunity to verify whether its charges are legitimate. The verification task is burdensome. A CLEC that takes it on must be given the information needed to do so. Eschelon has listed the information needed to verify these bills. If Qwest's charges are valid, it must have this information to have charged Eschelon accurately.	number of minutes being billed, rate elements being billed, and rates applied to each minute.	
Issue 8-20 & (a) Intentionally Left Blank				
Issue 8-21 and subparts Intentionally Left Blank				
Issue 8-27 – 8-30 Intentionally Left Blank				
Sections 9.1.1.1.1 & 9.1.1.1.1.1 – See Issue 9- 58(e) (Section				

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9.23.4.4.3.1) below				
Sections 9.1.1.1.1 & 9.1.1.1.1.2 – See Issue 9- 58(d) (Section 9.23.4.5.1) below				
NON- DISCRIMIN ATORY ACCESS TO UNES				
Issue 9-31 Section 9.1.2 Non- discriminatory access to UNEs (1 of 2 Options)	PROPOSAL #1: 9.1.2 Qwest shall provide non- discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non- discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element. <u>Access to Activities</u> available for Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, e.g., design changes,	Qwest has indicated that it believes it may charge tariff rates for activities that have been to date handled as access to UNES provided at TELRIC rates. Despite all of the work that was done in the 271 proceedings relating to nondiscriminatory access to UNES, now that Qwest has its interLATA authority, Qwest even claimed that design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders design changes (as well as other activities) are “not UNES” and Qwest will	SAME FOR BOTH: 9.1.2 Qwest shall provide non- discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non- discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element. A ccess to <u>Activities</u> available for Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, e.g., design changes,	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) <u>at the applicable rates</u>. Qwest shall perform for CLEC those Routine Network Modifications that Qwest performs for its own End User Customers. The requirement for Qwest to modify its network on a nondiscriminatory basis is not limited to copper loops and applies to all unbundled transmission facilities, including Dark Fiber transport when available pursuant to Section 9.7. Where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in “substantially the same time and manner” to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the Network</p>	<p>pursue charging its tariff rate for these activities. If the Commission does not explicitly address this issue, the companies could have expended the resources to go through the entire arbitration without a ruling on this issue, leaving Qwest to claim that the results have a very different meaning that Eschelon had understood. Eschelon’s language in Section 9.1.2 will clarify this issue and provide certainty and administrative efficiency. The parties should know the meaning of the language and rates approved through this Section 252 arbitration. If Qwest later obtains a contrary ruling on this issue in another setting, Qwest may pursue an amendment to the ICA pursuant to the change in law provisions of the agreement.</p> <p>Qwest’s position is contrary to the law. Qwest must provide not only the UNE but also meaningful access to the UNE. In its <i>First Report and Order</i> at ¶268, the FCC found that the requirement to provide “access to UNEs” must be read broadly, concluding that the</p>	<p>maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) <u>at the applicable rates</u>. Qwest shall perform for CLEC those Routine Network Modifications that Qwest performs for its own End User Customers. The requirement for Qwest to modify its network on a nondiscriminatory basis is not limited to copper loops and applies to all unbundled transmission facilities, including Dark Fiber transport when available pursuant to Section 9.7. Where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in “substantially the same time and manner” to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the Network</p>	

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Issue#/¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	<p>Element, except when the provisions herein indicate that a Network Element will be shared. Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality requirements.</p>	<p>Act requires that UNEs “be provisioned in a way that would make them useful” and “[t]he ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.” The FCC’s rules regarding access to unbundled elements prescribe that an ILEC must provide a carrier purchasing UNEs not only the physical facility, but also all the capabilities of providing service, such as add/move/change, provisioning and maintenance and repair. Section 51.307(c) provides: “An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element’s features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.” In addition, Section 51.313(c) provides: “An incumbent LEC must provide a carrier</p>	<p>Element, except when the provisions herein indicate that a Network Element will be shared. Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality requirements.</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems.” Eschelon’s proposed language reflects these obligations and needs to be added to the ICA to avoid disputes in light of Qwest’s expressed intention to unilaterally require payment of tariff rates, even when the Commission has approved TELRIC rates.</p>		
<p>Issue 9-31 Section 9.1.2 Non-discriminatory access to UNEs (2 of 2 Options)</p>	<p>PROPOSAL #2: 9.1.2 <u>Access to Activities available for</u> Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, <i>e.g.</i>, design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) <u>at the applicable rates and will be provided at TELRIC rates</u>....</p>	<p>Because Section 9.1.2 deals only with access to unbundled elements, TELRIC rates apply. Therefore, if any reference to rates is made in this section, it should specify TELRIC rates. If Qwest later challenges use of TELRIC rates and succeeds in obtaining a ruling allowing it to charge tariff rates in one or more of these cases, the ICA has change of law provisions for use in such situations.</p>	<p>SAME FOR BOTH: Access to Activities available for Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, <i>e.g.</i>, design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) <u>at the applicable rates and will be provided at TELRIC rates</u>. . . .</p>	<p>Qwest does not agree.</p>
<p>Issue 9-32 and subparts Intentionally Left Blank</p>				
<p>NETWORK MAINTENANCE</p>				

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
NANCE AND MODERNIZA- TION				
Issue 9-33 Section 9.1.9 Network Maintenance and Modernization Activities – Affect on End User Customers (1 of 2 issues in Sections 9.1.9) (1 of 2 Options)	<p>PROPOSAL #1 (Issue 1)</p> <p><u>9.1.9 Disputed portion (Issue 1):</u> 9.1.9 Such changes may result in minor changes to transmission parameters <u>but the changes to transmission parameters will not adversely affect service to any CLEC End User Customers (other than a reasonably anticipated temporary service interruption, if any, needed to perform the work). (In addition, in the event of emergency, see Section 9.1.9.1).</u>⁶</p> <p><u>9.1.9 Entire provision – Proposal #1:</u></p> <p>9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters <u>but the</u></p>	<p>Network maintenance and modernization language approved by this Commission in the same section of other Qwest-CLEC ICAs, as well as allowed to go into effect in the SGAT, states: “Such changes may result in <i>minor</i> changes to transmission parameters” (emphasis added). With Eschelon’s language included, the section allows Qwest to maintain and modernize its network, <i>so long as the maintenance or modernization does not disrupt or disable a CLEC’s heretofore reliable, working circuit in the name of modernization.</i> Eschelon’s proposed clarification does not arise from an idle concern, as this dispute shows. Qwest is taking the position that a network modification, and resulting change in the transmission parameters of a UNE, may be considered “minor” even if the change results in a loss of service. The customer whose previously working service is</p>	<p>SAME FOR BOTH:</p> <p><u>9.1.9 Disputed portion (Issue 1):</u> 9.1.9 Such changes may result in minor changes to transmission parameters <u>but the changes to transmission parameters will not adversely affect service to any CLEC End User Customers (other than a reasonably anticipated temporary service interruption, if any, needed to perform the work). (In addition, in the event of emergency, see Section 9.1.9.1).</u></p> <p><u>9.1.9 Entire provision:</u></p> <p>9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters <u>but the</u></p>	<p>Qwest does not agree.</p>

⁶ Eschelon also continues to offer in the alternative: “but will not adversely affect service to any End User Customers. (In the event of emergency, however, see Section 9.1.9.1).”

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p><u>changes to transmission parameters will not adversely affect service to any CLEC End User Customers (other than a reasonably anticipated temporary service interruption, if any, needed to perform the work). (In addition, in the event of emergency, see Section 9.1.9.1).</u></p> <p>This Section 9.1.9 does not address retirement of copper Loops or Subloops, which are addressed in Sections 9.2.1.2.2 (and subparts), 9.2.1.2.2.3, 9.2.1.2.3 (and subparts), and 9.2.2.3.3. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC. Qwest shall provide CLEC advance notice of network changes pursuant to applicable FCC rules, including changes that will affect (i) CLEC’s performance or ability to provide service (ii) network Interoperability or (iii) the manner in which Customer Premises equipment is attached to the public network. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new</p>	<p>permanently disabled would hardly describe this as modernization with a minor impact, however.</p> <p>Eschelon’s intent is not to hold Qwest to a strict or extreme standard under which service will never be adversely affected inadvertently. This is clear from both the next sentence (i.e., the parenthetical) and the subsection (9.1.9.1). In the parenthetical, Eschelon refers to both emergency situations (see 9.1.9.1) and retirement of copper loops (see 9.2.1.2.3) to narrow the scope of the reference to “any” end users in the previous sentence. In either of the cases, service to end users will be adversely affected. The reference to “emergencies” establishes that the service should not have been affected but, because something has gone wrong (i.e., the change did not turn out to be “minor”), procedures will be in place to restore the service. In contrast, for retirement of copper loops, impact to service is anticipated (i.e., not an “emergency”) so this subject is dealt with in a separate section of the ICA designed to address this</p>	<p>changes to transmission parameters will not adversely affect service to any CLEC End User Customers (other than a reasonably anticipated temporary service interruption, if any, needed to perform the work). (In addition, in the event of emergency, see Section 9.1.9.1).</p> <p>This Section 9.1.9 does not address retirement of copper Loops or Subloops, which are addressed in Sections 9.2.1.2.2 (and subparts), 9.2.1.2.2.3, 9.2.1.2.3 (and subparts), and 9.2.2.3.3. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC. Qwest shall provide CLEC advance notice of network changes pursuant to applicable FCC rules, including changes that will affect (i) CLEC’s performance or ability to provide service (ii) network Interoperability or (iii) the manner in which Customer Premises equipment is attached to the public network. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new</p>	

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	area code implementation. FCC rules are contained in CFR Part 51 and 52. Such notices will contain the location(s) at which the changes will occur <u>including, if the changes are specific to a CLEC End User Customer, the circuit identification and CLEC End User Customer address information,</u> and any other information required by applicable FCC rules. Qwest provides such disclosures on an Internet web site.	different scenario, which is not “minor.”	area code implementation. FCC rules are contained in CFR Part 51 and 52. Such notices will contain the location(s) at which the changes will occur including, if the changes are specific to a CLEC End User Customer, the circuit identification and CLEC End User Customer address information, and any other information required by applicable FCC rules. Qwest provides such disclosures on an Internet web site.	
Issue 9-33 Section 9.1.9 Network Maintenance and Modernization Activities – Affect on End User Customers (1 of 2 issues in Sections 9.1.9)	PROPOSAL #2 (Issue 1) <u>..... If such changes result in the CLEC’s End User Customer experiencing unacceptable⁷ changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes.</u> <u>9.1.9 – Entire Provision – Proposal #2:</u>	This language was proposed by the Minnesota Department of Commerce and adopted by the Minnesota Commission. Eschelon has offered this language as an alternative for all six states.	SAME FOR BOTH: If such changes result in the CLEC’s End User Customer experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes. <u>9.1.9 – Entire Provision – Proposal #2:</u>	Qwest does not agree.

⁷ To the extent that Qwest criticizes the DOC language adopted in Minnesota because it is unclear to whom it must be unacceptable, Eschelon has no objection to adding “to CLEC” after “unacceptable.”

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(2 of 2 Options)	<p>9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. <u>If such changes result in the CLEC's End User Customer experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes</u> This Section 9.1.9 does not address retirement of copper Loops or Subloops, which are addressed in Sections 9.2.1.2.2 (and subparts), 9.2.1.2.2.3, 9.2.1.2.3 (and subparts), and 9.2.2.3.3. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC. Qwest shall provide CLEC advance notice of network changes pursuant to applicable FCC rules, including</p>		<p>9.1.9 In order to maintain and modernize the network properly, Qwest may make necessary modifications and changes to the UNEs in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. If such changes result in the CLEC's End User Customer experiencing unacceptable changes in the transmission of voice or data, Qwest will assist the CLEC in determining the source and will take the necessary corrective action to restore the transmission quality to an acceptable level if it was caused by the network changes. This Section 9.1.9 does not address retirement of copper Loops or Subloops, which are addressed in Sections 9.2.1.2.2 (and subparts), 9.2.1.2.2.3, 9.2.1.2.3 (and subparts), and 9.2.2.3.3. Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC. Qwest shall provide CLEC advance notice of network changes pursuant to applicable FCC rules, including</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>changes that will affect (i) CLEC’s performance or ability to provide service (ii) network Interoperability or (iii) the manner in which Customer Premises equipment is attached to the public network. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Such notices will contain the location(s) at which the changes will occur <u>including, if the changes are specific to an End User Customer,⁸ circuit identification, if readily available,</u> and any other information required by applicable FCC rules. Qwest provides such disclosures on an Internet web site.</p>		<p>changes that will affect (i) CLEC’s performance or ability to provide service (ii) network Interoperability or (iii) the manner in which Customer Premises equipment is attached to the public network. Changes that affect network Interoperability include changes to local dialing from seven (7) to ten (10) digit, area code splits, and new area code implementation. FCC rules are contained in CFR Part 51 and 52. Such notices will contain the location(s) at which the changes will occur including, if the changes are specific to an End User Customer, circuit identification, if readily available, and any other information required by applicable FCC rules. Qwest provides such disclosures on an Internet web site.</p>	
Issue 9-33(a) Intentionally Left Blank				

⁸ Note: Eschelon will accept “End User Customer” or “CLEC End User Customer” here.

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Issue# ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Issue 9-34 Section 9.1.9 Network Maintenance and Modernization Activities – Location at Which Changes Occur (2 of 2 issues) (1 of 2 Options)	PROPOSAL #1 (Issue 2): Such notices will contain the location(s) at which the changes will occur <u>including, if the changes are specific to a CLEC End User Customer, the circuit identification and CLEC End User Customer address information</u> , and any other information required by applicable FCC rules.	The second issue in Section 9.1.9 relates to the FCC’s requirement that ILECs provide CLECs advance notice of network changes pursuant to applicable FCC rules. In 47 C.F.R. § 51.327, the FCC provides a list of items that such a public notice of network changes must include. The rule states that the list is a minimum and is not all-inclusive. Part (a)(4) of § 51.327 states that the list must include "the location at which the changes will occur." The term "location" must be considered in the context of 47 C.F.R. § 51.325(a), which states that the public notice must include notice regarding any network change that "will affect a competing service provider's performance or ability to provide service." Eschelon’s proposal is consistent with these rules, taken together. It provides that, <i>if the network changes are customer-specific</i> , Qwest will provide the <i>information necessary to provide the location of the customers</i> for whom the CLEC's performance <i>will be affected</i> . That necessary information is circuit identification and customer addresses: the former is theSuch notices will contain the location(s) at which the changes will occur including, if the changes are specific to a CLEC End User Customer, the circuit identification and CLEC End User Customer address information , and any other information required by applicable FCC rules.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		generally accepted locator within the network and the latter is the locator within the CLEC's list of customers. Without this information, the notice will not fulfill the intended purpose. The less information that Qwest provides in its notices, the more information is needed from its repair department when an emergency arises. If Qwest's notice allowed CLEC to identify specifically customers that may be impacted by the network activity, CLEC would be less likely to need to contact Qwest's repair department for that information. The notices, however, are inadequate for this purpose.		
Issue 9-34 Section 9.1.9 Network Maintenance and Modernization Activities –	PROPOSAL #2 Issue 2:Such notices will contain the location(s) at which the changes will occur <u>including, if the changes are specific to an End User Customer,⁹ circuit identification, if readily available,</u> and any other information required by applicable FCC rules.	This language was proposed by the Minnesota Department of Commerce and adopted by the Minnesota Commission. Eschelon has offered this language as an alternative for all six states.	SAME FOR BOTH:Such notices will contain the location(s) at which the changes will occur <u>including, if the changes are specific to an End User Customer, circuit identification, if readily available,</u> and any other information required by applicable FCC rules.	Qwest does not agree.

⁹ Note: Eschelon will accept “End User Customer” or “CLEC End User Customer” here.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Location at Which Changes Occur (2 of 2 issues) (2 of 2 Options)				
Issues 9-35 & 9-36 Intentionally Left Blank				
Section 9.1.12.1 – See Issue 12-67 (Section 12.2.1.2) below				
Issue 9-37 Sections 9.1.13.3 See subparts to Issue 9-37 (a) related issues in 9.1.14.4 & 9.1.14.4.3 Note: See also 1 st sentence of	9.1.13.3 Whether a High Capacity Loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to Confidential Information and requests for additions to the Commission-	The primary difference between the companies’ proposals is that Eschelon’s language requires the Wire Center List to be approved by the Commission, but Qwest’s language allows Qwest to unilaterally dictate which wire centers are on the list. In the <i>TRRO</i> , the FCC determined impairment for unbundled access to high capacity loops and transport on a wire center basis, using the number of business lines and fiber-based collocators as the criteria for determining whether	9.1.13.3 As part of the reasonably diligent inquiry described in Section 9.1.13, CLEC shall ensure that a requested unbundled DS1 or DS3 Loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 9.2.1.3, 9.2.1.3.2, 9.2.1.4 and 9.2.1.4.2 that a requested unbundled DS1, DS3 or Dark Fiber transport circuit is not between Wire Centers identified on the list of Wire	Qwest does not agree.

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<p>9.1.14.4 (in Issue 9-37(a))</p> <p>Definition of “Commission-Approved Wire Center List” and “Wire Center Docket”</p> <p>Wire Center List</p>	<p>Approved Wire Center List. For non-impaired facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 9.1.14.4. CLEC will transition such UNEs impacted by the Commission-Approved Wire Center List as described in Section 9.1.14.</p> <p>“Commission-Approved Wire Center List” means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies Wire Center Tier Designation(s).</p>	<p>competition would be impaired without access to high capacity loops and transport in a particular wire center. TRRO ¶ 146, 155, 166, 174, 178, 182, and 195.</p> <p>Eschelon has proposed contract language to give effect to the FCC’s wire center impairment rules.</p> <p>Eschelon opposes Qwest’s language, which would violate Eschelon’s obligation to conduct a reasonable diligent inquiry by requiring Eschelon to rely upon the unverified assertions of its major vendor/competitor instead of conducting the type of inquiry being conducted in the wire center proceeding. Qwest’s language raises the very same concerns that led the Commission to commence its wire center impairment investigation. CLECs should not have to “take on faith” on Qwest’s identification of unimpaired wire centers.</p>	<p>Centers that meet the applicable non-impairment threshold specified in Section 9.6.2.2.1, 9.6.2.2.2, 9.6.2.3.1, 9.6.2.3.2. and 9.7.1.2.1.</p>	

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	<p><u>“Wire Center Docket” means Commission Docket No. 06-049-40 entitled “In the Matter of the Investigation into Qwest Wire Center Data,” and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.</u></p>			
<p>Issue 9-37 (a) Section 9.1.14.4 & 9.1.14.4.3 and subparts Wire Center List - Additional Non- Impaired Wire Centers (1 of 2 issues in Section 9.1.14.4 1 For 2nd issue, see Section</p>	<p><u>9.1.14.4 – Disputed portions:9.1.14.4 Additional Non- Impaired Wire Centers. When Qwest files a request(s) with the Commission to add additional Wire Center(s) to the Commission- Approved Wire Center List, Qwest will follow the procedures for making such requests adopted by the Commission in the Wire Center Docket.and Qwest the Commission adds the Wire Center(s) to the Commission-approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on any addition(s) to the Commission-approved Wire</u></p>	<p>As indicated in Issue 9-37(a), Eschelon’s proposals together require a Commission-Approved Wire Center List. Therefore, if Qwest seeks to add to that list, Qwest must follow the procedures established by the Commission to update the Commission-Approved Wire Center List. If the Commission approves an addition to the Commission- Approved Wire Center List, CLECs will need time to notify and train their personnel to prevent ordering from the additional Wire Center. Eschelon has proposed thirty days after the wire center is added to the list as a reasonable time to make any preparations. (This issue does</p>	<p><u>9.1.14.4 – Disputed portions:9.1.14.4 Additional Non- Impaired Wire Centers. When Qwest files a request(s) with the Commission to add additional Wire Center(s) to the Commission- Approved Wire Center List, Qwest will follow the procedures for making such requests adopted by the Commission in the Wire Center Docket. and- Qwest the Commission adds the Wire Center(s) to the Commission-approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on any addition(s) to the Commission-approved Wire</u></p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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9.1.14.4.3 below)	<p>Center List</p> <p>..... Qwest shall provide notice to CLEC. Thirty (30) Days after notification from Qwest Commission-approval of additions to that list.</p> <p>9.1.14.4 – Entire provision: 9.1.14.4 Additional Non-Impaired Wire Centers. When Qwest files a request(s) with the Commission to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests adopted by the Commission in the Wire Center Docket. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in this Agreement and Qwest the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on any addition(s) to the Commission-Approved Wire Center List. Qwest shall provide notice to</p>	<p>not relate to back billing. The dates for which back billing occur are identified separately.) Qwest proposes thirty days after notification from Qwest that it is adding a wire center to the list. Qwest may be incorrect and the Commission may not approve its proposed addition to the list, however, and then CLEC would have been wrongfully prevented from ordering in that wire center in the meantime.</p> <p>The methodology used to determine whether a wire center is on the list has been a subject of dispute. Certainty is needed in the ICA as to how these determinations will be made. The FCC said in the TRRO that it expects companies to negotiate mechanisms to implement its order through the section 252 process. (See, e.g., TRRO ¶142, note 399.) Including these provisions in the ICA will help avoid disputes. If the methodology and the data to be provided (see Isuse 9-39) are known and available upon Qwest's requesting an addition to the wire center list, each company's personnel may analyze the data using the same criteria,</p>	<p>Center List</p> <p>..... Qwest shall provide notice to CLEC. Thirty (30) Days after notification from Qwest Commission-approval of additions to that list,</p> <p>9.1.14.4 – Entire provision: 9.1.14.4 Additional Non-Impaired Wire Centers. When Qwest files a request(s) with the Commission to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests adopted by the Commission in the Wire Center Docket. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in this Agreement and Qwest the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on any addition(s) to the Commission-Approved Wire Center List. Qwest shall provide notice to</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>CLEC. Thirty (30) Days after notification from QwestCommission approval of additions to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service.¹⁰ Qwest and CLEC will work together to identify those circuits impacted by such change.</p> <p><u>9.1.14.4.3 Methodology: The Parties agree to use the following methodology for non-impairment or tier designations:</u></p> <p><u>9.1.14.4.3.1 Business lines – Business lines shall be counted as follows:</u></p>	<p>which will encourage agreement as to additions to the list and help avoid CLEC having to file objections or seek more formal proceedings before the Commission to obtain data or resolve disputes regarding methodology. The methodology proposed by Eschelon is consistent with the Commission’s order in the Wire Center docket.</p>	<p>CLEC. Thirty (30) Days after notification from QwestCommission approval of additions to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. CLEC will have ninety (90) Days to transition exiting DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change.</p> <p>9.1.14.4.3 Methodology: The Parties agree to use the following methodology for non-impairment or tier designations:</p> <p>9.1.14.4.3.1 Business lines – Business lines shall be counted as follows:</p>	

¹⁰ See Issue 9-41 Regarding Length of Transition Period.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p><u>9.1.14.4.3.1.1 Qwest retail business lines shall be determined using the most recently filed unadjusted ARMIS data reported to the FCC. For purposes of future non-impairment designations, Qwest shall follow FCC ARMIS instructions and will record and count retail business lines in precisely the same manner as business access line data is tracked and recorded in the Wire Center level data Qwest uses to develop its statewide ARMIS 43-08 reports filed annually with the FCC, without making any inter-Wire Center adjustments to this data and without including the same lines in more than one of the categories listed in Sections 9.1.14.4.3.1.2 – 9.1.14.4.3.1.4.</u></p> <p><u>9.1.14.4.3.1.2 UNE Loops connected to a Wire Center where High Capacity Loops and high capacity EELs are provided to CLECs shall be counted at full capacity (i.e., DS1s will be counted as 24 business lines and DS3s will be counted as 672 business lines).</u></p>		<p>9.1.14.4.3.1.1 Qwest retail business lines shall be determined using the most recently filed unadjusted ARMIS data reported to the FCC. For purposes of future non-impairment designations, Qwest shall follow FCC ARMIS instructions and will record and count retail business lines in precisely the same manner as business access line data is tracked and recorded in the Wire Center level data Qwest uses to develop its statewide ARMIS 43-08 reports filed annually with the FCC, without making any inter-Wire Center adjustments to this data and without including the same lines in more than one of the categories listed in Sections 9.1.14.4.3.1.2 – 9.1.14.4.3.1.4.</p> <p>9.1.14.4.3.1.2 UNE Loops connected to a Wire Center where High Capacity Loops and high capacity EELs are provided to CLECs shall be counted at full capacity (i.e., DS1s will be counted as 24 business lines and DS3s will be counted as 672 business lines).</p>	

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	<p>9.1.14.4.3.1.3 Only Business UNE-P lines will be counted for the Commission-Approved Wire Center List. Business UNE-P lines shall be derived by subtracting the count of listings associated with residential UNE-P from the total number of UNE-P lines.</p> <p>9.1.14.4.3.1.4 Qwest Platform Plus (“QPP”), Qwest Local Services Platform (“QLSP”), and other similar platform product offerings shall be calculated using actual business line counts for these services.</p> <p>9.1.14.4.3.2 Collocation –</p> <p>9.1.14.4.3.2.1 The terms Fiber-Fased Collocator and Collocation shall have the meanings set forth in Section 4 of this Agreement.</p> <p>9.1.14.4.3.2.2 Before classifying a carrier as a Fiber-Based Collocator in a Qwest request pursuant to Section 9.1.14.4 for Commission approval of a non-impaired designation, Qwest will:</p> <p>9.1.14.4.3.2.2.1 Confirm that the</p>		<p>9.1.14.4.3.1.3 Only Business UNE-P lines will be counted for the Commission-Approved Wire Center List. Business UNE-P lines shall be derived by subtracting the count of listings associated with residential UNE-P from the total number of UNE-P lines.</p> <p>9.1.14.4.3.1.4 Qwest Platform Plus (“QPP”), Qwest Local Services Platform (“QLSP”), and other similar platform product offerings shall be calculated using actual business line counts for these services.</p> <p>9.1.14.4.3.2 Collocation –</p> <p>9.1.14.4.3.2.1 The terms Fiber-Fased Collocator and Collocation shall have the meanings set forth in Section 4 of this Agreement.</p> <p>9.1.14.4.3.2.2 Before classifying a carrier as a Fiber-Based Collocator in a Qwest request pursuant to Section 9.1.14.4 for Commission approval of a non-impaired designation, Qwest will:</p> <p>9.1.14.4.3.2.2.1 Confirm that the</p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>carrier meets the criteria contained in the definition of Fiber-Based Collocator in Section 4.0 of this Agreement;</p> <p>9.1.14.4.3.2.2.2 Conduct a field visit to verify and document the above criteria in Section 9.1.14.4.3.2.2.1; and</p> <p>9.1.14.4.3.2.2.3 Validate the criteria against the most recent order and/or billing data.</p>		<p>carrier meets the criteria contained in the definition of Fiber Based Collocator in Section 4.0 of this Agreement;</p> <p>9.1.14.4.3.2.2.2 Conduct a field visit to verify and document the above criteria in Section 9.1.14.4.3.2.2.1; and</p> <p>9.1.14.4.3.2.2.3 Validate the criteria against the most recent order and/or billing data.</p>	
<p>Issue 9-37 (b)</p> <p>Section 9.1.13.4.1.2</p> <p>Wire Center List – Change in UNE Status</p>	<p>9.1.13.4.1.2 If Qwest seeks to challenge any such UNEs, it will also provide CLEC with data to support its claim.</p>	<p>As reflected in Section 9.1.13.4.1, if Qwest seeks to challenge access to UNEs ordered by CLEC, the Parties agree that Qwest must do so after processing the order, through Dispute resolution (Section 5.18 of the ICA). Eschelon has proposed an additional sentence, in a subpart, that simply states that Qwest will provide Eschelon with the data to support its claim. This approach will help avoid disputes. Once Eschelon reviews the data, the companies may be able to agree or at least narrow their disputes. Qwest would eventually need to</p>	<p>9.1.13.4.1.2 Intentionally left blank.</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		provide the data to prove its claim. Doing so earlier is more efficient and cost effective and offers administrative efficiencies for the Commission, which will not have to hear the dispute if it is resolved.		
Issue 9-38 Section 9.1.13.4 & 9.1.13.4.2 Processing of High Capacity Loop and Transport Requests	9.1.13.4 Upon receiving a request for access to a High Capacity Loop or high capacity transport UNE pursuant to Section 9.1.13, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the information in the self-certification letter through remarks in the service request, or through other means) for any such facility on non-impairment grounds, unless the Parties agree otherwise in an amendment to this Agreement.	Agreed upon language in Section 9.1.13 describes the requirements for ordering high capacity loops and transport. Section 9.1.13.4 provides that upon receiving “such” a request, Qwest must immediately process the request, as required in the <i>TRRO</i> , ¶ 234. Use of “such” incorporates the agreed upon terms of Section 9.1.13 without having to repeat them. Qwest restates those terms in a manner different from the agreed upon language and thus introduces an apparent ambiguity in the contract. While it may seem obvious that “immediate” processing of a request requires processing the order and not rejecting it, Qwest previously initiated a Change Request through its Change Management Process to implement a systems change to block CLEC orders, even when CLECs have self-certified, if Qwest unilaterally determines a wire	9.1.13.4 Upon receiving a request for access to a high capacity Dedicated Transport or High Capacity Loop UNE or High Capacity EEL that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, Qwest must immediately process the request.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		center is non-impaired. [See Qwest CR #SCR083005-01 (currently in deferred status).] Consistent with the FCC's unequivocal requirement that Qwest immediately process such requests, Qwest also cannot delay or forego its response by requiring the CLEC to affirm information that it has already provided in the self-certification letter (such as in remarks that must be manually typed on each service order, which adds work and time to the ordering process). If at any point the parties agree to allow, or the Commission allows, Qwest to block certain orders, the language provides that the agreement may be amended accordingly. See Sections 2.2 and 5.30.		
Issue 9-39 Sections 9.1.13.4.1.2.1; 9.1.14.4.2 and subparts Review of Wire Center list	9.1.13.4.1.2.1 Regarding data related to additions to the initial Commission-Approved Wire Center List, see Section 9.1.14.4.2. 9.1.14.4.2 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center	The FCC said in the TRRO that it expects companies to negotiate mechanisms to implement its order through the section 252 process. (See, e.g., TRRO ¶142, note 399.) Obtaining appropriate data early will help resolve disputes and reduce objections that would otherwise be filed with the Commission. Including the list of data in the ICA will provide	Intentionally Left Blank.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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(Regarding other terms for Additional Non-Impaired Wire Centers, see 9-37(a))	<p>List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).</p> <p>9.1.14.4.2.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the following information:</p> <p>9.14.4.2.1.1 The name of each Fiber-Based collocator.</p> <p>9.1.14.4.2.1.2 The applicable Qwest Ready for Service date.</p> <p>9.1.14.4.2.1.3 The results of any field verification that Qwest undertook to verify the fiber-based collocation, including the field technicians' notes which includes: (1) the wire center and state; (2) collocator name; (3) collocation type; (4) fiber type; (5) validation of</p>	<p>certainty and facilitate analysis of Qwest's claims and resolution of disputes. The list of data which Eschelon proposes Qwest should provide is consistent with the Commission's order in the Wire Center docket.</p>		

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	<p>fiber termination at the fiber-based collocation; (6) validation that fiber exits a Wire Center; (7) visual power verification (confirming that working power is being provided to the collocation cage); (8) power verification at BDFB, if possible; (9) additional comments from field personnel.</p> <p>9.1.14.4.2.1.4 A copy of the letter sent by Qwest to collocator(s) requesting validation of status as a fiber-based collocator and ownership/responsibility.</p> <p>9.1.14.4.2.1.5 Copies of any responses to the letter noted in Section 9.1.14.4.2.1.4, including an indication of whether the collocator has affirmatively identified (or disputed) itself as a Fiber-Based Collocator; and</p> <p>9.1.14.4.2.1.6 All written correspondence between Qwest and the collocator(s) regarding the validation of the Fiber-Based Collocation.</p> <p>9.1.14.4.2.2 If Qwest relies upon Switched Business Line Count data</p>			

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p><u>for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the following information:</u></p> <p><u>9.1.14.4.2.2.1 The latest available ARMIS 43-08 line counts, using the methodology described in Section 2.0.F.4 of this Agreement and used to create official ARMIS data on file with the FCC</u></p> <p><u>9.1.14.4.2.2.2 Total wholesale UNE loops shown at the aggregated level for the wire center(s) at issue, and by capacity (voice grade, DS1, DS3). This information will also be provided on a disaggregated basis for all CLECs with the CLEC names masked. A CLEC will be provided the necessary identifying information in order to verify CLEC's own line count data. Qwest calculations to derive 64-kbps equivalents for high capacity (e.g., DS1 and DS3) loops will also be provided.</u></p> <p><u>9.1.14.4.2.2.3 CLEC line counts based upon QPP or Qwest Local Services Platform (or similar platform product) will be provided on a disaggregated basis for all CLECs with CLEC names masked.</u></p>			

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	A CLEC will be provided the necessary identifying information in order to verify CLEC's own line count data.			
Issue 9-40 Sections 9.1.13.5.2, 9.1.14.6; 9.1.15.2.1 NRCs for Conversions	9.1.13.5.2 For each such facility converted from a UNE to an alternative service arrangement, Qwest may assess a non-recurring charge, if any, in the amount established by the Commission in the Wire Center Docket. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7. 9.1.14.6 For each such facility converted from a UNE to an alternative service arrangement, Qwest may assess a non-recurring charge, if any, in the amount established by the Commission in the Wire Center Docket. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7. 9.1.15.2.1 For each such facility converted from a UNE to an alternative service arrangement,	This amount of the NRC is pending in the Wire Center Docket and Eschelon's language reflects that the NRC adopted by the Commission will apply. Qwest proposes to charge "all applicable" NRCs without identifying them or indicating that they will be TELRIC based. No other non-recurring charges apply, with the possible exception of OSS charges, if any. OSS charges are separately dealt with in closed language in Section 12.7 (which is cross referenced in Eschelon's proposal).	9.1.13.5.2 CLEC is also responsible for all applicable non-recurring charges associated with the appropriate alternative service arrangements. 9.1.14.6 CLEC is also responsible for all applicable non-recurring charges associated with the applicable alternative 9.1.15.2.1 CLEC is responsible for all applicable nonrecurring charges associated with the applicable alternative service arrangements.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>Qwest may assess a non-recurring charge, if any, in the amount established by the Commission in the Wire Center Docket. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.</p>			
<p>Issues 9-41 & 9-42</p> <p>Sections 9.1.14.4 (portion), 9.1.14.4.1, 9.1.14.4.2</p> <p>Length of time period (Issue 9-41) and Rate during time period (Issue 9-42)</p>	<p>9.1.14.4 CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service.</p> <p>9.1.14.4.1 CLEC is subject to back billing for the difference between the UNE and Tariff recurring rates beginning on the ninety-first (91st) Day for the existing DS1 and DS3 UNEs, and on Day one hundred eighty-one (181) for the existing Dark Fiber transport, as well as all applicable nonrecurring charges associated with such conversions.</p> <p>9.1.14.4.1 Transition Periods for additions to the Commission-</p>	<p>Placement of the language regarding length and time of the transition period for additions to the wire center list is in issue. Qwest places the length of the transition period within a larger paragraph dealing with other issues and then proposes a sub-paragraph for the rate (and then the sub-paragraph also refers to the length of the time period). Eschelon's proposal is more clear and efficient. Eschelon moves both issues to one section, with one sub-paragraph for each of the two time periods (90 days and 180 days). The length of the period and the rate during that period are dealt with together, so the terms are clear as to what applies when.</p> <p>The length and rate of the time</p>	<p>9.1.14.4 CLEC will have ninety (90) Days to transition existing DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service.</p> <p>9.1.14.4.1 CLEC is subject to back billing for the difference between the UNE and Tariff recurring rates beginning on the ninety-first (91st) Day for the existing DS1 and DS3 UNEs, and on Day one hundred eighty-one (181) for the existing Dark Fiber transport, as well as all applicable nonrecurring charges associated with such conversions.</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>Approved Wire Center List.</p> <p>9.1.14.4.1.1 For a ninety (90) Day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.</p> <p>9.1.14.4.1.2 For a one-hundred and eighty (180) Day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for</p>	<p>periods proposed by Eschelon are consistent with the Commission’s order in the Wire Center docket.</p>		

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.			
Section 9.1.14.6 – See Issue 9-40 (Section 9.1.13.5.2) – above				
Section 9.1.15.2.1 - See Issue 9-40 (Section 9.1.13.5.2) above				
Issue 9-43 Section 9.1.15.2.3 Conversions - Circuit ID	9.1.15.2.3 The circuit identification (“circuit ID”) will not change. After the conversion, the Qwest alternative service arrangement will have the same circuit ID as formerly assigned to the high capacity UNE.	Eschelon proposes that the conversions described in Section 9.1.15 will be in the manner of a pricing change. See Section 9.1.15.3 below. If the conversions are handled as pricing changes, the circuit ID will not change. If for any reason the conversions are not handled as pricing changes, the circuit ID still does not need to change. For example, when special access circuits were converted to	9.1.15.2.3 The circuit identification (“circuit ID”) will not change. After the conversion, the Qwest alternative service arrangement will have the same circuit ID as formerly assigned to the high capacity UNE.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>UNEs, the circuit ID did not change. Changing the circuit IDs is a choice by Qwest that will make life harder for CLECs when an easier option is available. Before a conversion, the CLEC's customer has working telephone service that has a circuit ID number assigned to it. Both the CLEC's systems and the Qwest systems reflect that circuit ID. They use the circuit ID to identify the service for billing and repair matters. As part of the conversion, Qwest proposes to change the existing circuit ID number and instead assign a new/different circuit ID to the circuit, even though the facility is being reused so no change to the facility is occurring. The same customer will have the same service before and after the conversion, assuming nothing goes wrong. Changing the circuit ID significantly increases the risk of customer disruption. Qwest processes circuit ID changes using "disconnect" and "new" service orders. A simple typing error in an order could send the order to Qwest facilities assignment with a "disconnect" on the order, and the</p>		

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		customer will go out of service. Problems will also occur later when repairs are needed or the end user customer later requests changes to its service if records are not correctly updated to show the new circuit IDs. No Qwest retail customer will experience these TRO/TRRO conversions and be exposed to these risks.		
Issue 9-44 Section 9.1.15.3; See subparts to Issue 9-44 (a) and Issue 9- 44 (b) for related issues in 9.1.15.3.1 & 9.1.15.3.1.1 Manner of Conversion	9.1.15.3 If Qwest converts a facility to an analogous or alternative service arrangement pursuant to Section 9.1.15, the conversion will be in the manner of a price change on the existing records and not a physical conversion. Qwest will re-price the facility by application of a new rate.	A conversion happens when a circuit that was formerly available as a UNE must be converted to a non-UNE alternative arrangement, as the result of a finding of “non-impairment.” Such a “conversion” involves only changing the rate charged for the facility and, in the vast majority of circumstances, the CLEC and its End User Customer will use the same facility that was used prior to the conversion. These conversions are required solely for purposes of implementing a regulatory construct and have nothing to do with improving or otherwise managing the Customer’s service – in essence, the conversion is intended to re-label what was	9.1.15.3 If Qwest converts a facility to an analogous or alternative service arrangement pursuant to Section 9.1.15, the conversion will be in the manner of a price change on the existing records and not a physical conversion. Qwest will re-price the facility by application of a new rate.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>before a UNE, something different.</p> <p>Agreed upon language in Section 9.1.15 states that, if CLEC has not converted a UNE at the end of a transition period, Qwest “will convert” it to month-to-month service arrangements under its tariff. Without Eschelon’s language in Section 9.1.15.3, however, the ICA does not describe what “convert” means or the terms and conditions under which this conversion will take place. Eschelon’s proposal is designed to avoid end user customer harm. After all, these are customers who are currently in service and have not requested any change in service. The FCC has recognized both that conversions have a real potential to impact end user customer quality of service and that such impact should be avoided. (TRO ¶¶586-87.) Only end user customers of CLECs will be exposed to this risk. No Qwest retail customer will suffer the same fate. If Qwest is allowed to choose a manner of conversion that exposes only CLEC customers to service interruption as a result of conversions, Qwest will gain a</p>		

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

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		<p>as a result of conversion activity, Eschelon may not even be able to open a ticket with Qwest because Qwest requires a correct circuit ID to open a ticket. When a ticket is opened, the repair will be delayed and require additional resources to resolve. All of this can be avoided. If Eschelon’s re-pricing proposal is adopted, the circuit IDs will not change, and the risk of such problems arising will be eliminated.</p>		
<p>Issue 9-44 (a) Section 9.1.15.3.1 Manner of Conversion – Use of adder or surcharge</p>	<p>9.1.15.3.1 Qwest may perform the re-pricing through use of an “adder” or “surcharge” used for Billing the difference between the previous UNE rate and the new rate for the analogous or alternative service arrangement, much as Qwest currently does to take advantage of the annual price increases in its commercial Qwest Platform Plus product.</p>	<p>Re-pricing is a technically feasible manner of performing the conversions referenced in Section 9.1.15. Qwest has already demonstrated this with its implementation of the Qwest Platform Plus (QPP) agreements. Under those agreements, QPP circuits are subject to annual rate increases. Qwest does not physically convert the circuits to convert to the new rates. Instead, Qwest re-prices the circuits by using an “adder” or “surcharge” for billing the difference between the previous rate and the new rate. On the bill, the old rate appears, as well as the adder. The new rate is the total of the old rate and the adder.</p>	<p>9.1.15.3.1 Qwest may perform the re-pricing through use of an “adder” or “surcharge” used for Billing the difference between the previous UNE rate and the new rate for the analogous or alternative service arrangement, much as Qwest currently does to take advantage of the annual price increases in its commercial Qwest Platform Plus product.</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>In Section 9.1.15.3.1, Eschelon makes clear that Qwest may use this same approach for the conversions described in Section 9.1.15. Inclusion of this language avoids any concern that the bills could be characterized as inaccurate because the rate itself does not appear in the bill but must be derived by adding two figures.</p>		
<p>Issue 9-44 (b) Section 9.1.15.3.1.1 Manner of Conversion - Use of USOC</p>	<p>9.1.15.3.1.1 Qwest may add a new Universal Service Ordering Code (“USOC”) for this purpose and assign the “adder” or “surcharge” rate to that USOC.</p>	<p>For QPP, Qwest has accomplished rate changes by means of adding new Universal Service Ordering Codes ("USOC") that introduce additives to the underlying UNE rate that CLECs pay for the circuit. Section 9.1.15.3.1.1 makes clear that Qwest may also add new USOCs for this purpose if needed. The rate changes involved with QPP are significantly more complex than the rate change involved in changing from UNE rates to private line rates. QPP rates differ depending upon whether the end-user customer is a residential or a business customer and upon whether the CLEC has met certain volume quotas. It should be easier to use USOCs in this case.</p>	<p>9.1.15.3.1.1 Qwest may add a new Universal Service Ordering Code (“USOC”) for this purpose and assign the “adder” or “surcharge” rate to that USOC.</p>	<p>Qwest does not agree.</p>
<p>Issue 9-44 (c)</p>	<p>9.1.15.3.1.2 For any facility</p>	<p>After a conversion, CLEC is paying</p>	<p>9.1.15.3.1.2 For any facility</p>	<p>Qwest does not agree.</p>

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Section 9.1.15.3.1.1 Manner of Conversion - Same USOC	<u>converted to an analogous or alternative service arrangement pursuant to Section 9.1.15.3, Qwest will either use the same USOC or the USOC will be deemed to be the same as the USOC for the analogous or alternative service arrangement for pricing purposes, such as for the purpose of calculating volumes and discounts for a regional commitment plan.</u>	the higher price for special access or another alternative service arrangement. The USOC is not a means in itself and should not be used to change substantive results. The product being ordered is the same (<i>i.e.</i> , the alternative service arrangement) regardless of the USOC assigned. When alternative arrangements are subject to regional commitment plans, for example, Qwest should not be able to limit the discount terms based on a manner of pricing that allows Qwest to collect those higher charges. This is particularly true when that manner of pricing allows Qwest, as well as CLECs to avoid additional work of conversions and the associated increase in risk of adverse impact to End User Customers.	converted to an analogous or alternative service arrangement pursuant to Section 9.1.15.3, Qwest will either use the same USOC or the USOC will be deemed to be the same as the USOC for the analogous or alternative service arrangement for pricing purposes, such as for the purpose of calculating volumes and discounts for a regional commitment plan.	
Issues 9-45 – 9-48 Intentionally Left Blank				
Sections 9.2.2.3 and 9.2.2.3.3 – <i>See Issue</i> 9-33				

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<i>above</i>				
Section 9.2.3.8 - See Issue 4-5				
Section 9.2.3.9 - See Issue 4-5 (a)				
Issue 9-49 Intentionally Left Blank				
Issues 9-50 Intentionally Left Blank				
Issue 9-51 Section 9.7.5.2.1.a Application of UDF-IOF termination (fixed) rate element 1 of 2 Options	<p>PROPOSAL #1 9.7.5.2.1a)UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Qwest Wire Center. Two UDF-IOF terminations apply <u>(one for each of the two end points in the termination path)</u> per <u>pair, cross-connect provided on the facility</u>. Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.</p> <p>PROPOSAL #2 9.7.5.2.1a)UDF-IOF Termination</p>	<p>Eschelon has proposed two alternatives. The first alternative mirrors the language from Qwest’s SGAT, so it is difficult to understand why this alternative is not acceptable to Qwest. Qwest, however, has proposed the addition of a phrase, providing that the rate applies “per cross-connect provided on the facility.” The rate for this element will not change and it is unclear how Qwest believes that the addition of this phrase impacts the application of the rate. In order to address what Eschelon believes Qwest may be getting at with this phrase, Eschelon’s second proposal</p>	<p>SAME FOR BOTH: 9.7.5.2.1a)UDF-IOF Termination (Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Qwest Wire Center. Two UDF-IOF terminations apply (one for each of the two end points in the termination path) per <u>pair, cross connect provided on the facility</u>. Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.</p>	<p>Qwest does not agree.</p>

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	(Fixed) Rate Element. This rate element is a recurring rate element and provides a termination at the interoffice FDP within the Qwest Wire Center. Two UDF-IOF terminations apply per pair cross-connect provided on the facility . Termination charges apply for each intermediate office terminating at an FDP or like cross-connect point.	includes language that clarifies that the rate applies to each of the end points of the facility.		
Issue 9-52 Intentionally Left Blank				
PHASE OUT -- UCCRE				
Issue 9-53 Section 9.9 and subpart; 1.7.3 and subparts Phase out; UCCRE (1 of 4 Options)	PROPOSAL #1: 9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE) 9.9.1 If Qwest provides or offers to provide UCCRE to any other CLEC during the term of this Agreement, Qwest will notify CLEC and offer CLEC an amendment to this Agreement that allows CLEC, at its option, to request UCCRE on nondiscriminatory terms and conditions.	Eschelon’s language requires Qwest to provide, as a UNE, a network element referred to as an Unbundled Customer Controlled Rearrangement Element (“UCCRE”). This element enables Eschelon to control the configuration of UNEs or ancillary services on a Near Real Time basis through a digital cross connect device. <i>See</i> Section 9.9.1.1. Qwest argues that, because the FCC omitted a reference to “digital cross-connect systems” when it re-	SAME FOR ALL: Intentionally Left Blank	Qwest does not agree.

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		<p>wrote the unbundling rule, 47 C.F.R. § 51.319 (“Rule 319”), this means that it is not obligated to provide UCCRE as a UNE. Qwest is wrong for two reasons: (1) Qwest misinterprets the FCC’s unbundling rule; and (2) aside from the FCC’s identification of the network elements that must be unbundled pursuant to Section 251, the prohibition on discrimination requires that Qwest provide Eschelon with UCCRE as a UNE, as it does other CLECs.</p> <p>First, Rule 319 sets forth the FCC’s unbundling rules. 47 C.F.R. § 51.319(d)(2)(iv), prior to its revision pursuant to the TRO, provided that “The incumbent shall . . . permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC’s digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers.” This rule was substantially re-written in 2003 (and re-written again pursuant to the TRRO) to set forth a process by</p>		

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		<p>which state commissions would conduct an impairment analysis to determine what elements must be unbundled. As a result of the re-write, § 51.319(d)(2)(iv) was omitted from the rule. Qwest interprets this to mean that the FCC found the incumbents are not required to offer access to digital cross connect systems and, therefore, Qwest is not required to offer UCCRE, which is accessed using a digital cross connect system. There is no evidence however that, in amending Rule 319, the FCC intended to relieve incumbents from the obligation to offer access using cross-connects. To the contrary, after Rule 319 was re-written, 47 C.F.R. § 51.305(a)(2)(iv) continued to require incumbents to provide CLECs with interconnection at “central office cross-connect points.” The reasonable interpretation is that, in amending Rule 319, the FCC was focused on establishing a process for conducting the necessary impairment analysis, not that the FCC had, itself, concluded that unbundled access to cross-connects</p>		

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		<p>would no longer be required. To support this interpretation, Qwest cites to no discussion in the order of the FCC’s relieving incumbents from the obligation to offer access using cross-connects. When the FCC has eliminated such obligations, it has done so expressly.</p> <p>Second, aside from any amendment by the FCC to its unbundling rules, it remains that UCCRE is a UNE that Qwest makes available pursuant to its SGAT as well as pursuant to interconnection agreements that it has with other carriers. Qwest is required to provide CLECs with nondiscriminatory access to unbundled network elements. 47 U.S.C. § 251(c)(3). Because it provides UCCRE to other carriers, it must also provide it to Eschelon. <i>See also Second Report and Order ¶¶ 18, 20 23.</i> Qwest, however, will not offer those terms to Eschelon. Qwest claims that it has ceased to offer this product and yet it is available today to other CLECs. Therefore, this example deals with the circumstances under which</p>		

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		<p>Qwest can cease to offer to CLECs products and services that it has previously offered (and currently is offering to other carriers) and that have been approved by the Commission. Eschelon’s first proposal is a compromise on Eschelon’s part because, instead of including the terms of UCCRE that appear today in the SGAT and other carriers’ ICAs, Eschelon offers language that articulates a nondiscriminatory obligation for Qwest to offer UCCRE to Eschelon if it offers UCCRE to another CLEC during the term of the ICA. Alternatively, Eschelon’s other proposals include more general phase out terms (Section 1.7.3), in response to the Minnesota Department of Commerce’s proposal in Minnesota (which was adopted by the Commission) to deal in the ICA with how to phase out products and services when this situation arises. Each phase out proposal offers a benefit to Qwest, because it is an alternative to amending each and every ICA, if Qwest desires to do so.</p>		
Issue 9-53	PROPOSAL #2:	Proposal #2 is a package proposal		Qwest does not agree.

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<p>Section 9.9 and subpart; 1.7.3 and subparts</p> <p>Phase out; Subloops - (2 of 4 Options)</p>	<p><u>1.7.3 Phase out process. If Qwest desires to phase-out the provision of an element, service or functionality included in this Agreement, it must first obtain an order from the Commission approving its process for withdrawing the element, service or functionality. Obtaining such an order will not be necessary if Qwest (1) promptly phases-out an element, service or functionality from the agreements of all CLECs in [insert applicable state] within a three-month time period when the FCC has ordered that the element, service or functionality does not have to be ordered, or (2) follows a phase-out process ordered by the FCC.</u></p> <p>9.9 <u>Unbundled Customer Controlled Rearrangement Element (UCCRE)</u></p> <p><u>9.9.19.9.1 Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) to CLEC in a non-discriminatory manner according to the terms and conditions of Section 9.9 and</u></p>	<p>that Eschelon is offering in six states. It is the language proposed by the Department of Commerce and adopted by the Commission in Minnesota. The UCCRE issue deals with the circumstances under which Qwest can cease to offer to CLECs products and services that it has previously offered (and currently is offering to other carriers) and that have been approved by the Commission. With its language (reflected in Proposal #2), the Department put forward an alternative that could be available to Qwest under the ICA. Qwest criticized language drafted by Eschelon in response to a Department observation that a phase out process would be useful as too detailed. Qwest suggested that the terms of any phase out process would be better developed in a more generic setting. Therefore, proposal #2 does not attempt to dictate the procedures for the process or even to require its use. The ICA makes clear, however, that withdrawal of a product in the ICA (so that it is no longer available to any CLEC) must be approved by the Commission,</p>	<p><u>1.7.3 Phase out process. If Qwest desires to phase-out the provision of an element, service or functionality included in this agreement, it must first obtain an Order from the Commission approving its process for withdrawing the element, service or functionality. Obtaining such a Order will not be necessary if Qwest (1) promptly phases-out an element, service or functionality from the agreements of all CLECs in [insert applicable state] within a three-month time period when the FCC has ordered that the element, service or functionality does not have to be ordered, or (2) follows a phase-out process ordered by the FCC.</u></p> <p>9.9. <u>Intentionally Left Blank</u></p> <p><u>9.9.1 Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) to CLEC in a non-discriminatory manner according to the terms and conditions of Section 9.9 and subparts of the SGAT, unless Qwest obtains a phase-out order (pursuant to Section 1.7.3) from the</u></p>	

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	subparts of the SGAT, unless Qwest obtains a phase-out order (pursuant to Section 1.7.3) from the Commission within four months from the effective date of this Agreement.	unless Qwest promptly amends agreements to remove it or follows an FCC process. Therefore, under this proposal, Qwest may avoid a Commission phase out process altogether by removing products when it withdraws them promptly and uniformly. If at some point it finds it more efficient to use a single Commission process, it has the option to do so under this language. In the meantime, with respect to UCCRE, the ICA provides that it will be available per the terms of the SGAT.	Commission within four months from the effective date of this Agreement.	
Issue 9-53 Section 9.9 and subpart; 1.7.3 and subparts Phase out; Subloops - (3 of 4 Options)	PROPOSAL #3: 1.7.3 If Qwest desires to phase out or otherwise cease offering on a wholesale basis (without first individually amending every interconnection agreement containing that term and updating the SGAT) an Interconnection service, access to Unbundled Network Elements (UNEs), Ancillary Services or Telecommunications Services available for resale, Qwest must request and obtain Commission approval, after CLEC and other potentially affected carriers are	Qwest has opposed Eschelon’s proposed contract language regarding Unbundled Customer Controlled Rearrangement Element (“UCCRE”) (Issue 9-53), and, until recently closing the language, also opposed Eschelon’s proposal Subject Matter No. 20/Issue 9-50) primarily on the ground that there is no CLEC demand for these products and that Qwest, therefore, is discontinuing offering them on a going forward basis. In connection with its analysis of these two issues, the Department recommended that the ICA include language that	If Qwest desires to phase out or otherwise cease offering on a wholesale basis (without first individually amending every interconnection agreement containing that term and updating the SGAT) an Interconnection service, access to Unbundled Network Elements (UNEs), Ancillary Services or Telecommunications Services available for resale, Qwest must request and obtain Commission approval, after CLEC and other potentially affected carriers are	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p><u>afforded reasonable notice and opportunity to be heard in a generic Commission proceeding. For example, if a product is generally available per the terms of the SGAT and is contained in the ICAs of other CLECs (but not CLEC), before refusing to make that product available to CLEC on the same terms on the basis that Qwest intends to cease offering the product (such as due to lack of demand), Qwest must either (1) amend the ICAs of those other CLECs and update the SGAT to remove the product; or (2) obtain Commission approval to cease offering the product on a wholesale basis. This provision is intended to help facilitate nondiscrimination by ensuring that Qwest cannot refuse to offer a product on the same terms to CLEC while that product is still contained in the ICAs of other CLECs or in the SGAT.</u></p> <p><u>1.7.3.1 If the basis for Qwest’s request is that Qwest is no longer required to provide the product or service pursuant to a legally binding modification or change of the</u></p>	<p>would enable Qwest to “phase out” elements that are either no longer required or not needed. In response to that recommendation, Eschelon has proposed alternative language that would allow Qwest to phase out elements, subject to Commission review. Specifically, Eschelon offers the newly proposed language as a package alternative to Eschelon’s proposed language for Issue 9-50 (Section 9.3.3.8.3 and 9.3.3.8.3.1) and Issue 9-53 (Section 9.9 and subparts). Eschelon proposed placing the language in Section 1.7, because this section already deals with ICA amendments. As Section 1.7.1, in a sense, deals with the “phasing in” of new products, Section 1.7.3 seemed like a logical place to place language relating to the “phasing out” of products.</p>	<p>afforded reasonable notice and opportunity to be heard in a generic Commission proceeding. For example, if a product is generally available per the terms of the SGAT and is contained in the ICAs of other CLECs (but not CLEC), before refusing to make that product available to CLEC on the same terms on the basis that Qwest intends to cease offering the product (such as due to lack of demand), Qwest must either (1) amend the ICAs of those other CLECs and update the SGAT to remove the product; or (2) obtain Commission approval to cease offering the product on a wholesale basis. This provision is intended to help facilitate nondiscrimination by ensuring that Qwest cannot refuse to offer a product on the same terms to CLEC while that product is still contained in the ICAs of other CLECs or in the SGAT.</p> <ul style="list-style-type: none"> ● _____ ● _____ ● _____ 1.7.3.1 If the basis for Qwest’s request is that Qwest is no longer required to provide the product or service pursuant to a 	

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	<p><u>Existing Rules, in the cases of conflict, the pertinent legal ruling and the terms of Section 2.2 of this Agreement govern notwithstanding anything in this Section 1.7.3.</u></p> <p><u>1.7.3.2 This Section 1.7.3 is not intended to change the scope of any regulatory agency's authority with regard to Qwest or CLECs.</u></p> <p><u>1.7.3.3 This Section 1.7.3 relates to the cessation of a product or service offering on a wholesale basis as described in Section 1.7.3 (referred to as a “phase out” or as “cease offering”). Nothing in this Section 1.7.3 prevents another CLEC and Qwest from mutually agreeing to remove a product from an individual ICA to which CLEC is not a party.</u></p> <p><u>1.7.3.4 Before Qwest submits a request to phase out or cease offering a product or service (as those terms are used in this Section 1.7.3) pursuant to this Section 1.7.3, and while a request pursuant to this Section 1.7.3 is pending before the Commission, Qwest must continue to offer the product or service.</u></p>		<p>legally binding modification or change of the Existing Rules, in the cases of conflict, the pertinent legal ruling and the terms of Section 2.2 of this Agreement govern notwithstanding anything in this Section 1.7.3.</p> <ul style="list-style-type: none"> • • 1.7.3.2 This Section 1.7.3 is not intended to change the scope of any regulatory agency's authority with regard to Qwest or CLECs. • • 1.7.3.3 This Section 1.7.3 relates to the cessation of a product or service offering on a wholesale basis as described in Section 1.7.3 (referred to as a “phase out” or as “cease offering”). Nothing in this Section 1.7.3 prevents another CLEC and Qwest from mutually agreeing to remove a product from an individual ICA to which CLEC is not a party. <p>1.7.3.4 Before Qwest submits a request to phase out or cease offering a product or service (as those terms are used in this Section 1.7.3) pursuant to this Section 1.7.3, and while a request pursuant to this</p>	

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	<p><u>unless the Commission orders otherwise.</u></p> <p><u>1.7.3.4.1 If the Commission orders that Qwest need not offer the product or service while the proceeding is pending, the Commission may place such restrictions on that order as allowed by its rules and authority, including a condition that if Qwest later offers the product or service to any CLEC, it must then inform CLECs of the availability of the product or service and offer it to other CLECs on the same terms and conditions. If those terms and conditions are in this Agreement (but were not in effect due to the Commission order that Qwest need not offer the product or service while the proceeding is pending), once Qwest offers those terms to any other CLEC, Qwest must offer those terms to CLEC pursuant to those terms in this Agreement without amendment as well.</u></p> <p><u>1.7.3.5 If the Commission approves the phase out or other cessation of a product or service offering that is contained in this Agreement, the</u></p>		<p><u>Section 1.7.3 is pending before the Commission, Qwest must continue to offer the product or service, unless the Commission orders otherwise.</u></p> <p><u>1.7.3.4.1 If the Commission orders that Qwest need not offer the product or service while the proceeding is pending, the Commission may place such restrictions on that order as allowed by its rules and authority, including a condition that if Qwest later offers the product or service to any CLEC, it must then inform CLECs of the availability of the product or service and offer it to other CLECs on the same terms and conditions. If those terms and conditions are in this Agreement (but were not in effect due to the Commission order that Qwest need not offer the product or service while the proceeding is pending), once Qwest offers those terms to any other CLEC, Qwest must offer those terms to CLEC pursuant to those terms in this Agreement without amendment as well.</u></p> <p><u>1.7.3.5 If the Commission approves</u></p>	

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	<p><u>product or service will no longer be available per the terms of the Commission’s order without the need for an amendment to this Agreement, unless the Commission orders otherwise or the Parties agree to amend this Agreement. Qwest will amend its SGAT consistent with the Commission’s ruling, unless the Commission orders otherwise.</u></p> <p><u>9.9 Unbundled Customer Controlled Rearrangement Element (UCCRE)</u></p> <p><u>9.9.1 Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) to CLEC in a non-discriminatory manner according to the terms and conditions of Section 9.9 and subparts of the SGAT, unless Qwest obtains an order from the Commission that it need not offer UCCRE to CLECs, such as an order pursuant to Section 1.7.3 of this Agreement.</u></p>		<p>the phase out or other cessation of a product or service offering that is contained in this Agreement, the product or service will no longer be available per the terms of the Commission’s order without the need for an amendment to this Agreement, unless the Commission orders otherwise or the Parties agree to amend this Agreement. Qwest will amend its SGAT consistent with the Commission’s ruling, unless the Commission orders otherwise.</p> <p>9.9.1 Intentionally Left Blank Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) to CLEC in a non-discriminatory manner according to the terms and conditions of Section 9.9 and subparts of the SGAT, unless Qwest obtains an order from the Commission that it need not offer UCCRE to CLECs, such as an order pursuant to Section 1.7.3 of this Agreement.</p>	

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Issue 9-53 Section 9.9 and subparts (UCCRE); 1.7.3 and subparts Phase out; Subloops - (4 of 4 Options)	<p>PROPOSAL #4:</p> <p><u>1.7.3 If Qwest desires to phase out or otherwise cease offering a product, service, element, or functionality on a wholesale basis that it has previously made available pursuant to Section 251 of the Act, Qwest must first obtain an order from the Commission adopting a process for doing so. Once that process in place, Qwest may use that process as ordered by the Commission.</u></p> <p><u>1.7.3.1 Unless and until a process is approved by the Commission as described in Section 1.7.3, Qwest must continue to offer such products, services, elements, or functionalities on a nondiscriminatory basis, such that Qwest may not refuse to make an offering available to CLEC on the same terms as it is available to other CLECs through their ICAs or the SGAT on the grounds that Qwest, although it has not yet amended those agreements, indicates that it intends to cease offering that product (such as due to lack of demand). If the Commission does</u></p>	<p>See Issue 9-53 (proposal #3).</p>	<p>1.7.3 If Qwest desires to phase out or otherwise cease offering a product, service, element, or functionality on a wholesale basis that it has previously made available pursuant to Section 251 of the Act, Qwest must first obtain an order from the Commission adopting a process for doing so. Once that process in place, Qwest may use that process as ordered by the Commission.</p> <p>1.7.3.1 Unless and until a process is approved by the Commission as described in Section 1.7.3, Qwest must continue to offer such products, services, elements, or functionalities on a nondiscriminatory basis, such that Qwest may not refuse to make an offering available to CLEC on the same terms as it is available to other CLECs through their ICAs or the SGAT on the grounds that Qwest, although it has not yet amended those agreements, indicates that it intends to cease offering that product (such as due to lack of demand). If the Commission does</p>	<p>Qwest does not agree.</p>

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	<p><u>not adopt a process as described in Section 1.7.3 or Qwest chooses not to use that process, Qwest may cease a wholesale offering by promptly amending all ICAs containing that offering to remove it.</u></p> <p><u>Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) in a non-discriminatory manner according to the following terms and conditions.</u></p> <p><u>9.9.1 Description</u> <u>9.9.1.1 Unbundled Customer Controlled Rearrangement Element (UCCRE) provides the means by which CLEC controls the configuration of Unbundled Network Elements (UNEs) or ancillary services on a near real time basis through a digital cross connect device. UCCRE utilizes the Digital Cross-Connect System (DCS). UCCRE is available in Qwest Wire Centers that contain a DCS and such DCS is UCCRE compatible.</u></p> <p><u>9.9.2 Terms and Conditions</u> <u>9.9.2.1 DCS ports are DS1, DS3 and Virtual Ports (Virtual Ports are</u></p>		<p><u>not adopt a process as described in Section 1.7.3 or Qwest chooses not to use that process, Qwest may cease a wholesale offering by promptly amending all ICAs containing that offering to remove it.</u></p> <p><u>Intentionally Left Blank Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) in a non-discriminatory manner according to the following terms and conditions.</u></p> <p><u>9.9.1—Description</u> <u>9.9.1.1 Unbundled Customer Controlled Rearrangement Element (UCCRE) provides the means by which CLEC controls the configuration of Unbundled Network Elements (UNEs) or ancillary services on a near real time basis through a digital cross connect device. UCCRE utilizes the Digital Cross-Connect System (DCS). UCCRE is available in Qwest Wire Centers that contain a DCS and such DCS is UCCRE compatible.</u></p> <p><u>9.9.2—Terms and Conditions</u> <u>9.9.2.1 DCS ports are DS1, DS3 and Virtual Ports (Virtual Ports are</u></p>	

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	<p><u>for connecting one end user to another). The DCS Port is connected to the Demarcation Point using tie cables via the appropriate DSX cross connect panel. The DSX panel serves both as a "Design-To" point and a network interface at the DCS. CLEC is responsible for designing to the "Design-To" point. CLEC may connect the UCCRE ports to its elements or CLEC designated equipment. If CLEC desires DS0 Port functionality, CLEC will order a DS1 UCCRE Port and provide its own multiplexer (or DS1 UDIIT multiplexers) and connect them together. This combination will form the equivalent of 24 DS0-level ports.</u></p> <p><u>9.9.2.2 The reconfiguration of the service is accomplished at the DS0 signal level. Reconfiguration of these services can be accomplished through two methods: Dial Up or Attendant Access.</u></p> <p><u>9.9.2.2.1 Dial Up Access. Qwest will provide access to mutually agreed upon UCCRE points in those offices where UCCRE is available. Qwest will provide and engineer this service in the same</u></p>		<p>for connecting one end user to another). The DCS Port is connected to the Demarcation Point using tie cables via the appropriate DSX cross connect panel. The DSX panel serves both as a "Design-To" point and a network interface at the DCS. CLEC is responsible for designing to the "Design-To" point. CLEC may connect the UCCRE ports to its elements or CLEC designated equipment. If CLEC desires DS0 Port functionality, CLEC will order a DS1 UCCRE Port and provide its own multiplexer (or DS1 UDIIT multiplexers) and connect them together. This combination will form the equivalent of 24 DS0-level ports.</p> <p>9.9.2.2 The reconfiguration of the service is accomplished at the DS0 signal level. Reconfiguration of these services can be accomplished through two methods: Dial Up or Attendant Access.</p> <p>9.9.2.2.1 Dial Up Access. Qwest will provide access to mutually agreed upon UCCRE points in those offices where UCCRE is available. Qwest will provide and engineer this service in the same</p>	

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	<p><u>manner that it is currently provided to Qwest’s End User Customers.</u> <u>9.9.2.2.2 Attendant Access. When CLEC requests Qwest to make changes on its behalf, an attendant access charge will apply per transaction.</u> 9.9.3 Rate Elements <u>9.9.3.1 Recurring rate elements include:</u> <u>9.9.3.1.1 DS1 Port;</u> <u>9.9.3.1.2 DS3 Port;</u> <u>9.9.3.1.3 Dial Up Access; and</u> <u>9.9.3.1.4 Attendant Access.</u> <u>9.9.3.2 Nonrecurring rate elements include:</u> <u>9.9.3.2.1 DS1 Port;</u> <u>9.9.3.2.2 DS3 Port; and</u> <u>9.9.3.2.3 Virtual Ports.</u> 9.9.4 Ordering Process <u>9.9.4.1 Ordering processes and installation intervals are specified in Exhibit C of this Agreement and are the same as specified in the UNEs - UDIT Section. UCCRE is ordered via the ASR process.</u> <u>9.9.4.2 UCCRE is ordered with the Basic Installation option. Qwest will begin the work activity on the negotiated Due Date and notify CLEC when the work activity is complete. Test results performed</u></p>		<p>manner that it is currently provided to Qwest’s End User Customers. 9.9.2.2.2 Attendant Access. When CLEC requests Qwest to make changes on its behalf, an attendant access charge will apply per transaction. 9.9.3 Rate Elements 9.9.3.1 Recurring rate elements include: 9.9.3.1.1 DS1 Port; 9.9.3.1.2 DS3 Port; 9.9.3.1.3 Dial Up Access; and 9.9.3.1.4 Attendant Access. 9.9.3.2 Nonrecurring rate elements include: 9.9.3.2.1 DS1 Port; 9.9.3.2.2 DS3 Port; and 9.9.3.2.3 Virtual Ports. 9.9.4 Ordering Process 9.9.4.1 Ordering processes and installation intervals are specified in Exhibit C of this Agreement and are the same as specified in the UNEs - UDIT Section. UCCRE is ordered via the ASR process. 9.9.4.2 UCCRE is ordered with the Basic Installation option. Qwest will begin the work activity on the negotiated Due Date and notify CLEC when the work activity is complete. Test results performed</p>	

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	by Qwest are not provided to CLEC.		by Qwest are not provided to CLEC.	
Issues 9-54 & 9-54 (a) Intentionally Left Blank				
LOOP – TRANSPORT COMBINATIONS				
Issue 9-55 Sections 9.23.4, 9.23.4.4; 9.23.4.4.1; 9.23.4.5; 9.23.4.6; 9.23.4.5.4 See subparts to Issue 9-58 for related issues in 9.23.4.5.1 Combinations of Loops and Transport –	9.23.4 Loop-Transport Combinations: Enhanced Extended Links (EELs), Commingled EELs, and High Capacity EELs PROPOSAL #1: Loop-Transport Combination – For purposes of this Agreement, “Loop-Transport Combination” is a Loop in combination, or Commingled, with a Dedicated Transport facility or service (with or without multiplexing capabilities), together with any facilities, equipment, or functions necessary to combine those facilities. At least as of the Effective Date of this Agreement	The crux of the issue presented by these disputed sections is how Loop-Transport Combinations will be treated under the ICA, particularly if they involve commingling. When Qwest’s proposals are closely scrutinized, it becomes clear that Qwest is attempting to position commingling so that, if any part of such a Combination is not a UNE, then the non-UNE’s terms can dictate how the UNE is ordered, provisioned, and repaired. The ordering example provided with respect to Section 9.23.4.4.3.1 below and the repair example discussed under Section 9.23.4.7 below illustrate this point.	9.23.4 Loop-Transport Combinations: Enhanced Extended Links (EELs), Commingled EELs, and High Capacity EELs SAME FOR BOTH: When a UNE circuit is commingled with a non-UNE circuit, the rates, terms and conditions of the ICA will apply to the UNE circuit (including the Commission jurisdiction) and the non-UNE circuit will be governed by the rates, terms and conditions of the appropriate Tariff.	Qwest does not agree.

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Terms	<p>“Loop-Transport Combination” is not the name of a particular Qwest product. “Loop-Transport Combination” includes Enhanced Extended Links (“EELs”), Commingled EELs, and High Capacity EELs. If no component of the Loop-transport Combination is a UNE, however, the Loop-Transport Combination is not addressed in this Agreement. The UNE components of any Loop-Transport Combinations are governed by this Agreement and the other component(s) of any Loop-Transport Combinations are governed by the terms of an alternative service arrangement, as further described in Section 24.1.2.1.</p> <p>PROPOSAL #2:</p> <p>Loop-Transport Combination – For purposes of this Agreement, “Loop-Transport Combination” is a Loop in combination, or Commingled, with a Dedicated Transport facility or service (with or without multiplexing capabilities), together with any facilities, equipment, or functions necessary to combine</p>	<p>The Commission should retain its jurisdiction over the UNE component of Loop-Transport Combinations (including the UNE in a Commingled EEL) and ensure that terms that affect the UNE are included in the filed and approved ICA.</p> <p>In Section 9.23.4, Eschelon has proposed a definition of “Loop-Transport Combination” which mirrors the way that the FCC has used that term, to define any combination of loop and transport. <i>See</i> TRO ¶¶ 25 & 575 (both using “loop-transport combinations”); <i>see also</i> TRO ¶ 599 [“We apply the service eligibility requirements on a circuit-by-circuit bases, so each DS1 EEL (<i>or combination of</i> DS1 loop with DS3 transport) must satisfy the service eligibility criteria.”] (emphasis added). The use of this defined term is efficient because it provides an umbrella that includes all three of the types of Loop-Transport Combinations that exist currently – EELs, Commingled EELs, and High Capacity EELs – thus avoiding having to repeat all three terms throughout the document. Further,</p>	<p>Commingled EEL – If CLEC obtains at UNE pricing part (but not all) of a Lloop-Ttransport Combination, the arrangement is a Commingled EEL. (Regarding Commingling, see Section 24.)</p> <p>High Capacity EEL – “High Capacity EEL” is a Lloop-Ttransport Combination (either EEL or Commingled EEL) when the Loop or transport is of DS1 or</p>	

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	<p>those facilities. At least as of the Effective Date of this Agreement “Loop-Transport Combination” is not the name of a particular Qwest product. “Loop-Transport Combination” includes Enhanced Extended Links (“EELs”), Commingled EELs, and High Capacity EELs. If no component of the Loop-transport Combination is a UNE, however, the Loop-Transport Combination is not addressed in this Agreement. The UNE component(s) of any Commingled arrangement is governed by the applicable terms of this Agreement. The other component(s) of any Commingled arrangement is governed by the terms of the alternative service arrangement pursuant to which that component is offered (e.g., Qwest’s applicable Tariffs, price lists, catalogs, or commercial agreements).</p> <p>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.)</p> <p>High Capacity EEL – “High</p>	<p>this proposed definition makes clear that only the UNE components of a Loop-Transport Combination are subject to the ICA. It also expressly states that, if no component is a UNE, the combination is not governed by the ICA, to eliminate any suggestion that the terminology is some kind of attempt to govern non-UNEs in the ICA.</p> <p>Consistent with this definition, Eschelon proposes capitalizing the term in indicate it is defined and referring to the UNE components of Loop Transport Combinations in the headings to clarify, as stated in the definition, that this ICA does not govern the non-UNE portion. Because at least one component of the combination is a UNE, however, the terms and conditions belong in Section 9, which is entitled “Unbundled Network Elements.” Although there is also a section on Commingling (Section 24), that section contains general terms and not the type of terms and conditions that the parties otherwise agree belong in the 9.23, such as Service Eligibility Criteria for High Capacity EELs (which include Commingled EELs). Qwest’s</p>	<p>DS3 capacity. High Capacity EELs may also be referred to as “DS1 EEL” or “DS3 EEL,” depending on capacity level.</p> <p>...</p> <p>9.23.4.4 Additional Terms for EELsUNE Components of Loop Transport Combinations</p> <p>...</p> <p>9.23.4.4.1 EELs and Commingled EELs may consist of loops and interoffice transport of the same bandwidth (Point-to-Point). When multiplexing is requested, EELs and Commingled EELs may consist of loops and interoffice transport of different bandwidths (Multiplexed). CLEC may also order combinations of interoffice transport, concentration capability and DS0 loops.</p> <p>9.23.4.5 Ordering Process for EELsUNE Components of Loop Transport Combinations</p> <p>9.23.4.5.4 . . . Qwest may require two (2) service requests when CLEC orders Multiplexed EELsLoop Transport Combinations (which are not Point-to-Point) and EEL loops (as part of a multiplexed</p>	

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	<p>Capacity EEL” is a <u>Loop-Transport Combination</u> (either EEL or Commingled EEL) when the Loop or transport is of DS1 or DS3 capacity. High Capacity EELs may also be referred to as “DS1 EEL” or “DS3 EEL,” depending on capacity level.</p> <p>...</p> <p>9.23.4.4 Additional Terms for <u>EELs UNE Components of Loop Transport Combinations</u></p> <p>...</p> <p>9.23.4.4.1 EELs <u>and Commingled EELs</u> may consist of loops and interoffice transport of the same bandwidth (Point-to-Point). When multiplexing is requested, EELs <u>and Commingled EELs</u> may consist of loops and interoffice transport of different bandwidths (Multiplexed). CLEC may also order combinations of interoffice transport, concentration capability and DS0 loops.</p> <p>9.23.4.5 Ordering Process for <u>EELs UNE Components of Loop Transport Combinations</u></p> <p>9.23.4.5.4 . . .Qwest may require two (2) service requests when</p>	<p>proposal to place only these terms (Service Eligibility Criteria) of Commingled EELs in Section 9 while placing others in Section 24 does not make sense from an organizational or ease-of-use perspective. Commingled EELs have a UNE component and thus are appropriately addressed in Section 9. Section 9 contains ample cross references to Section 24 on Commingling that the user of the ICA will readily be able to locate the Commingling general terms.</p>	<p>EEL). Regarding Commingling see Section 24.</p> <p>9.23.4.6 Rate Elements for <u>EELs UNE Components of Loop-Transport Combinations</u></p>	

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>CLEC orders Multiplexed EELs Loop Transport Combinations (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding Commingling see Section 24.</p> <p>9.23.4.6 Rate Elements for EELs UNE Components of Loop Transport Combinations</p>			
SERVICE ELIGIBILITY CRITERIA - AUDITS				
<p>Issue 9-56 Sections 9.23.4.3.1.1; <i>See</i> subpart to Issue 9-56 (a) for related issues in 9.23.4.3.1.1.1 Service Eligibility Criteria –</p>	<p>9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to ascertain whether those High Capacity EELs comply with the Service Eligibility Criteria set forth in Section 9.23.4.1.2, <u>when Qwest has a concern that CLEC has not met the Service Eligibility Criteria.</u></p>	<p>The parties agree that Qwest shall have the right to conduct an audit to determine Eschelon’s compliance with the Service Eligibility Criteria applicable to High Capacity EELs. Two issues remain to be resolved with respect to such audits. First, is Qwest entitled to conduct an audit “without cause”? Second, should Qwest be required to provide Eschelon with information supporting its audit request?</p> <p>Eschelon’s proposal would allow</p>	<p>9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to ascertain whether those High Capacity EELs comply with the Service Eligibility Criteria set forth in Section 9.23.4.1.2, <u>when Qwest has a concern that CLEC has not met the Service Eligibility Criteria.</u></p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Audits - Concern		<p>Qwest to perform an audit per the ICA terms when it has a concern that Eschelon has not met the Service Eligibility Criteria. Qwest has rejected this very modest limitation on its audit rights, in effect insisting that it should be able to conduct an audit without cause. The FCC held, however, that “audits will not be routine practice, but will <i>only</i> be undertaken when the incumbent LEC has a concern that a requesting carrier has not met the criteria for providing a significant amount of local exchange service.” See TRO at ¶621 (citing <i>Supplemental Order</i> ¶¶28-33) (emphasis added). Before Eschelon is put to the work and expense that an audit necessarily entails, Qwest should be required to have at least some reason to believe that there may be noncompliance that will be uncovered by an audit. Otherwise, the audit process becomes not a reasonable measure for assuring compliance, but rather, the very sort of “routine practice” that the FCC precluded. Eschelon’s proposed language allows Qwest to fully protect its interest in verifying</p>		

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		<p>compliance with the Service Eligibility Criteria while protecting Eschelon from undue burden without cause.</p> <p>Eschelon also proposes that Qwest be required to describe its concern regarding Eschelon’s compliance with the Service Eligibility Criteria and that Qwest be required to identify any non-complying circuits that it has identified. In the TRO, the FCC recognized that the states are in a better position to address implementation of the audit provisions. TRO at ¶ 625. Eschelon’s proposal would require Qwest to provide information that may allow Eschelon to respond to Qwest’s articulated concerns and further early resolution.</p>		
Issue 9-56 (a) Section 9.23.4.3.1.1.1 .1 Service Eligibility Criteria – Audits -	<u>9.23.4.3.1.1.1.1 The written notice shall include the cause upon which Qwest has a concern that CLEC has not met the Service Eligibility Criteria. Upon request, Qwest shall provide to CLEC a list of circuits that Qwest has identified as of that date, if any, for which Qwest alleges non-compliance or which otherwise supports Qwest’s</u>	Eschelon’s notice proposal is not burdensome. Qwest knows the reason for its concern and must merely state it. In addition, the language states only that Qwest will provide, upon request, a list of allegedly non-complying circuits “if any” only if Qwest has identified such circuits “as of that date.” If Qwest has a list of non-complying	9.23.4.3.1.1.1.1 The written notice shall include the cause upon which Qwest has a concern that CLEC has not met the Service Eligibility Criteria. Upon request, Qwest shall provide to CLEC a list of circuits that Qwest has identified as of that date, if any, for which Qwest alleges non-compliance or which otherwise supports Qwest’s	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue# ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Notice	<u>concern.</u>	circuits, there is no reason for it to not provide that information to further root cause analysis and allow CLEC to respond fully. If Qwest does not have such a list, the language places no burden on Qwest to create one.	concern.	
Sections 9.23.4.4 & 9.23.4.4.1 – See Issue 9-55 (Sections 9.23.4, 9.23.4.5.1) above				
Section 9.23.9.4.3 – See Issue 1-1 (Section 1.7.2) above & Issue 9-61 (Section 9.23.9) below				
Issue 9-57 Intentionally Left Blank				
COMMINGLED EELS/ ARRANGEMENTS				
Issue 9-58	9.23.4.5.1 CLEC will submit orders for <u>Loop Transport EELs</u>	<u>Overview (LSR, ID, Bill):</u> In the next several provisions of the ICA,	9.23.4.5.1 CLEC will submit orders for Loop Transport <u>EELs</u>	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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<p>Sections 9.23.4.5.1, 9.23.4.5.1.1; See subparts to Issue 9-58 (a)-(d) and 9-59 for related issues in 9.23.4.5.4, 9.23.4.6.6 (and subparts), 9.23.4.7 and subparts; 9.1.1.1.1 & 9.1.1.1.1.2</p> <p>Ordering, Billing, and Circuit ID for Commingled Arrangements – ORDERING</p> <p>(For alternate proposal, see Section 9-59 below)</p>	<p><u>Combinations</u> using the LSR process. Submission of LSRs is described in Section 12.</p> <p><u>9.23.4.5.1.1 If any component of the Loop-Transport Combination is not a UNE (i.e., not a component to which UNE pricing applies), CLEC will indicate on the LSR that the component is not a UNE (e.g., CLEC is ordering the component as an alternate service such as special access). CLEC will indicate this information in the Remarks section of the LSR, unless the Parties agree otherwise.</u></p> <p>9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point <u>EELs, and Point-to-Point Commingled EELs.</u> . . .</p>	<p>Eschelon proposes use of a single LSR, single circuit ID, and single bill for point-to-point Commingled EELs, just as Qwest provides a single LSR, single circuit ID, and single bill for point-to-point UNE EELs today. A commingled EEL is nothing more than a point-to-point circuit with multiple segments. As such, it is a network facility that Qwest has been provisioning, maintaining and repairing for decades, whether in the form of a special access circuit, an EEL or, now, a commingled EEL. Thus, there is absolutely nothing new about a commingled EEL from a technical, network, provisioning or maintenance standpoint. Therefore, the terms based upon well-established history proposed by Eschelon should be acceptable to Qwest. Instead, desiring to drive as much wholesale commingled EEL traffic to its exorbitantly priced retail tariff products as possible, Qwest proposes fundamental operational changes that ensure both a terrible end user customer experience and the complete inability of any CLEC to actually and successfully use the</p>	<p>Combinations using the LSR process. Submission of LSRs is described in Section 12.</p> <p>9.23.4.5.1.1—If any component of the Loop-Transport Combination is not a UNE (i.e., not a component to which UNE pricing applies); CLEC will indicate on the LSR that the component is not a UNE (e.g., CLEC is ordering the component as an alternate service such as special access). CLEC will indicate this information in the Remarks section of the LSR, unless the Parties agree otherwise.</p> <p>9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point EELs, and Point-to-Point Commingled EELs . . .</p>	

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		<p>commingled EEL product. Since these changes are unnecessary to accomplish Qwest’s stated purposes, and their ultimate impact and effect is transparently anti-competitive, Qwest’s proposed language for these provisions should be rejected.</p> <p><u>Single LSR</u>: Regardless of the additional work, increased expense and multiplication of opportunity for error with two orders, these orders cannot be submitted simultaneously per Qwest’s terms outside of the ICA. Rather, once Eschelon receives the FOC for the UNE segment, Eschelon may then submit an ASR for the non-UNE component. Using a DS1 UNE loop and PLT transport as an example, there are two problems, at least, with this process: (1) there is a time delay since Qwest can take up to 72 hours to return a FOC for a DS1 UNE loop; and (2) receipt of a FOC is no guarantee that the UNE facility will actually be delivered on the due date. It is entirely possible that, after receiving the FOC and placing the ASR for the transport segment of the EEL, the loop order</p>		

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		<p>can go into held status for an indefinite period of time. Despite that, the PLT transport order may complete but the delivery of that facility is irrelevant. There is no complete functioning circuit, even though Eschelon has already incurred significant NRCs as well as commencing the recurring billings for the PLT transport. The customer thus has no service, and there may be no specified time by which it will have service, and all the while Eschelon is paying for PLT transport which is useless.</p>		
<p>Issue 9-58 (a)</p> <p>Sections 9.23.4.5.4</p> <p>Ordering, Billing, and Circuit ID for Commingled Arrangements</p> <p>CIRCUIT ID</p> <p>[2 of 2 issues in Section 9.23.4.5.4;</p>	<p>9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point EELs. <u>and Point-to-Point Commingled EELs. For such Point-to-Point Loop-Transport Combinations, Qwest will assign a single circuit identification (ID) number for such combination.</u> Qwest may require two (2) service requests when CLEC orders Multiplexed <u>EELs Loop-Transport Combinations</u> (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding Commingling see Section 24.</p>	<p><u>Single Circuit ID:</u> Qwest assigns a single circuit ID to a UNE EEL and provides it to the ordering CLEC. For Commingled EELs, Qwest proposes to assign two circuit IDs (one to the UNE and another to the non-UNE). Instead of installing one EEL, therefore, the parties must install two separate circuits at two different times. This leads to multiple problems (including intervals – <i>see</i> Section 9.23.4.4.3.1). For example, the gap in time between delivery of the two circuits will cause a marked increase in blind acceptance. In Qwest’s</p>	<p>9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point EELs. and Point to Point Commingled EELs. For such Point to Point Loop Transport Combinations, Qwest will assign a single circuit identification (ID) number for such combination. Qwest may require two (2) service requests when CLEC orders Multiplexed EELs Loop-Transport Combinations (which are not Point-to-Point) and EEL loops (as part of a multiplexed EEL). Regarding Commingling see Section 24.</p>	<p>Qwest does not agree.</p>

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For 1 st issue (terminology), <i>see</i> (Issue 9-5§ (Section 9.23.4.4.1) [above]	NOTE: For Eschelon’s alternative proposal (if single circuit ID is rejected), <i>see</i> Section 9.23.4.7 in subpart below.	Proposals in the Colorado PAP Review, Qwest said: “Blind acceptance is a term used to describe a CLEC’s request for Qwest to turn up a circuit <i>without</i> testing between Qwest and the CLEC, which testing would ensure that the circuit is operational through the entire portion of the loop that Qwest provides. By contrast, Qwest performs this type of end-to-end testing on all of its retail circuits.” (<i>Qwest CPAP Proposal</i> , p. 48.) This won’t be possible for CLECs under Qwest’s proposals. The UNE loop interval is 5 days. If Qwest wants to meet the PID for the loop, it will deliver the loop within 5 days. Because the PLT transport piece will not be delivered until many days later, however, there is no point in testing that loop. Qwest, however, will start to bill CLEC for the loop. The loop and transport together serve the end user customer and whether that customer’s service is working “end-to-end” cannot be determined until the two are connected. Qwest’s proposal will force CLECs into blind acceptance of the loop, due to the futility of testing a loop		

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		<p>not connected to the customer. Eschelon asks the Commission to adopt its language so that Eschelon will also have the opportunity to perform the type of end-to-end testing on all of its customers' circuits that Qwest said in its PAP proposal it is able to perform on all of its retail circuits.</p> <p>The linchpin of effective EEL facility management is the use of a single circuit ID to cover all segments of the facility. It is this single identifier that permits both Qwest and Eschelon to easily and accurately track facility inventories, order correctly, repair in the most efficient manner possible, and bill in a way that actually permits verification of bill and rate accuracy. The end result, of course, is that both companies manage what is a single facility from the end user customer's perspective in the most efficient manner possible, which ensures the best possible delivery of service to a customer.</p> <p>With so much at stake, any administrative wrinkles that Qwest raises are minor by comparison.</p>		

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		<p>When Qwest needed to change the service code modifier in order to distinguish EELs and Loop-Mux Combinations from each other as well as from private line and private line resale products, Qwest used both a standardized Telcordia solution as well as the development of a Qwest “home grown” modifier for Loop-Mux Combinations. Together, these service code modifiers allowed all of Qwest’s systems to differentiate the four different products without assigning multiple Circuit IDs to a single circuit. In the same way, Qwest could simply develop a unique code modifier for commingled EELs that would account for the increase in price and without the thorny problems associated with Qwest’s ICA proposal.</p>		
<p>Issue 9-58 (b) Sections 9.23.4.6.6 (and subparts), Ordering, Billing, and</p>	<p><u>9.23.4.6.6 For each Point-to-Point Loop-Transport Combination (see Section 9.23.4.5.4), all chargeable rate elements for such combination will appear on the same Billing Account Number (BAN).</u></p> <p>NOTE: For Eschelon’s alternative proposal (if single BAN is rejected),</p>	<p><u>Single Bill:</u> When billing Eschelon for a UNE EEL, Qwest bills the UNE EEL as a single facility on one billing account number (BAN). Bill review and reconciliation will be challenging at best, and unmanageable at worst, if Qwest implements its proposal to bill the two components of the</p>	<p><u>9.23.4.6.6 For Commingling see Section 24.</u></p>	<p>Qwest does not agree.</p>

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Circuit ID for Commingled Arrangements – BILLING	<i>see</i> Section 9.23.4.6.6 below.	Commingled EEL separately. In the absence of a single circuit ID or relating the segments of the commingled EEL on the bills (as proposed by Eschelon in its alternative proposal), Eschelon will not know whether a particular UNE is a part of an EEL. Thus, Eschelon will have to review every line item on its UNE bill to attempt to determine whether that UNE is part of a commingled EEL. Given the volume of Eschelon’s UNE inventory, this kind of undertaking is simply not feasible. Similarly, while Eschelon can track loss and completion reports to ensure accurate billing for disconnected UNEs (no loss and completion reports are provided for tariffed services), without some indication that the segments of a commingled EEL are related, a loop may be disconnected and Eschelon could conceivably continue to pay for the non-UNE segment for no reason at all.		
Issue 9-58 (c) Sections 9.23.4.6.6	Eschelon’s proposed alternate language (if Qwest’s position on 9.23.4.6.6 is accepted in arbitration)	<u>Alternatives (Relating Separate Orders, IDs, Bills):</u> To the extent that the Commission adopts Qwest’s language for these	SAME FOR BOTH PROPOSALS: 9.23.4.6.6 For Commingling, see	Qwest does not agree.

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(and subparts) Ordering, Billing, and Circuit ID for Commingled Arrangements – BILLING (Alternate proposal to 9.23.4.6.6 in Issue 9-58(b))	<p>9.23.4.6.6 For each Point-to-Point Commingled EEL (see Section 9.23.4.5.4), so long as Qwest does not provide all chargeable rate elements for such EEL on the same Billing Account Number (BAN), Qwest will identify and relate the components of the Commingled EEL on the bills and the Customer Service Records. Unless the Parties agree in writing upon a different method(s), Qwest will relate the components of the Commingled EEL by taking at least the following steps:</p> <p>9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each month, the circuit identification (“circuit ID”) for the non-UNE component of the Commingled EEL in the sub-account for the related UNE component of that Commingled EEL;</p> <p>9.23.4.6.6.2 Qwest will assign a separate account type to Commingled EELs so that Commingled EELs appear on an account separate from other services (such as special</p>	<p>provisions, however, the Commission should order that Eschelon’s alternative language for Sections 9.23.4.6.6 (and subparts) and 9.23.4.7 (and subparts) also be included in the ICA. These sections only require that Qwest relate the UNE and non-UNE segments of the commingled EEL. Absent a single circuit ID for the commingled EEL facility, for example, relating the loop and transport segments as laid out in the alternative Sections is the only way that Eschelon can manage the repair and billing for commingled EELs to any customer’s satisfaction. Absent an identified relationship between the UNE and non-UNE segments of the same EEL, no CLEC can feasibly use a commingled EEL. This is not an acceptable implementation of the FCC’s mandate to eliminate restrictions on commingling, and Qwest should not be permitted to so deliberately tilt the field to the advantage of its exorbitantly expensive retail products.</p>	<p>Section 24.</p> <p>9.23.4.6.6 For each Point to Point Commingled EEL (see Section 9.23.4.5.4), so long as Qwest does not provide all chargeable rate elements for such EEL on the same Billing Account Number (BAN), Qwest will identify and relate the components of the Commingled EEL on the bills and the Customer Service Records. Unless the Parties agree in writing upon a different method(s), Qwest will relate the components of the Commingled EEL by taking at least the following steps:</p> <p>9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each month, the circuit identification (“circuit ID”) for the non-UNE component of the Commingled EEL in the sub-account for the related UNE component of that Commingled EEL;</p> <p>9.23.4.6.6.2 Qwest will assign a separate account type to Commingled EELs so that Commingled EELs appear on an account separate from other</p>	

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	<p>access/private line);</p> <p>9.23.4.6.6.3 Each month, Qwest will provide the summary BAN and sub-account number for the UNE component of the Commingled EEL in a field (e.g., the Reference Billing Account Number, or RBAN, field) of the bill for the non-UNE component; and</p> <p>9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on all associated Customer Service Records the circuit ID for the UNE component; the RBAN for the non-UNE component; and the circuit ID for the non-UNE component.</p>		<p>services (such as special access/private line);</p> <p>9.23.4.6.6.3 Each month, Qwest will provide the summary BAN and sub-account number for the UNE component of the Commingled EEL in a field (e.g., the Reference Billing Account Number, or RBAN, field) of the bill for the non-UNE component; and</p> <p>9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on all associated Customer Service Records the circuit ID for the UNE component; the RBAN for the non-UNE component; and the circuit ID for the non-UNE component.</p>	
<p>Issue 9-58 (d)</p> <p>Section 9.1.1.1.1 & 9.1.1.1.2</p> <p>Ordering, Billing, and Circuit ID for Commingled Arrangements</p>	<p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</p> <p>9.1.1.1.1.2 When a UNE or UNE Combination is connected or attached with a non-UNE wholesale service, unless it is not Technically Feasible or the Parties agree</p>	<p>The same types of problems that will occur with commingled EELs if there is not a single LSR, single circuit ID, and single bill will arise with other commingled arrangements as well. Therefore, these sections create a default to have a single LSR, single circuit ID, and single bill, unless the Parties agree otherwise or doing so is not Technically Feasible. In the latter case, the components of the</p>	<p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</p> <p>9.1.1.1.1.2 When a UNE or UNE Combination is connected or attached with a non-UNE wholesale service, unless it is not Technically Feasible or the Parties agree</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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OTHER ARRANGE- MENTS	<u>otherwise, CLEC may order the arrangement on a single service request; if a circuit ID is required, there will be a single circuit ID; and all chargeable rate elements for the Commingled service will appear on the same BAN. If ordering on a single service request, using a single identifier, and including all chargeable rate elements on the same BAN is not Technically Feasible, Qwest will identify and relate the elements of the arrangement on the bill and include in the Customer Service Record for each component a cross reference to the other component, with its billing number, unless the Parties agree otherwise.</u>	commingled arrangement are to be related for these purposes, unless the Parties agree otherwise. Such language will help prevent Qwest from proceeding again in the unilateral manner in which Qwest approached implementing Commingled EELs and its initially password protected terms.	otherwise, CLEC may order the arrangement on a single service request; if a circuit ID is required, there will be a single circuit ID; and all chargeable rate elements for the Commingled service will appear on the same BAN. If ordering on a single service request, using a single identifier, and including all chargeable rate elements on the same BAN is not Technically Feasible, Qwest will identify and relate the elements of the arrangement on the bill and include in the Customer Service Record for each component a cross reference to the other component, with its billing number, unless the Parties agree otherwise.	
Issue 9-58(e) Sections 9.23.4.4.3.1 & 24.3.2; 9.1.1.1.1 & 9.1.1.1.1.1 Interval for Commingled Arrangements	<u>9.23.4.4.3.1 When any component of the Loop-Transport Combination is not a UNE, the service interval for the combination will be the longer interval of the two facilities being Commingled. See Section 24.1.2.1.</u> <u>24.3.2 See Section 9.23.4.4.3.1 regarding intervals for Commingled EELs.</u>	For Commingled arrangements, including Commingled EELs, Eschelon proposes that the interval be the longer interval of the two facilities being commingled. On its face, Qwest’s proposal appears similar. Qwest states that the UNE interval will apply to the UNE and the tariffed interval will apply to the tariffed component. When Qwest’s proposal is closely scrutinized and	9.23.4.4.3.1 When any component of the Loop-Transport Combination is not a UNE, the service interval for the combination will be the longer interval of the two facilities being Commingled. See Section 24.1.2.1. <u>24.3.2 The service interval for Commingled EELs will be as follows. For the UNE component</u>	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</p> <p>9.1.1.1.1.1 When a UNE and another service are Commingled, the service interval for the Commingled arrangement will be the longer interval of the two facilities being Commingled.</p>	<p>facts outside its proposed ICA language are known, however, the proposals are very different. A key difference is that Eschelon’s proposal allows the Commission to retain full jurisdiction over the UNE, whereas Qwest’s proposal allows factors outside the approved ICA to change the operation of the UNE terms, in contradiction to the ICA. For example, Qwest’s language in Section 9.23.4.5.4 appear to allow a CLEC to order a UNE loop and tariffed transport on separate service requests on the same day and then, pursuant to Section 24.3.2, calculate the interval. If that were true, the result would be the same as under Eschelon’s proposed language and the longer interval would be the latest date for installation of the two services. That, in fact, is not how the calculation will work. The reason cannot be found in the language that Qwest has presented to this Commission for approval. The missing term was initially distributed in a secret, password-protected form, with the password available only to CLECs after they signed the Qwest TRO amendment.</p>	<p>of the EEL see Exhibit C. For the tariffed component of the EEL see the applicable Tariff.</p> <p>9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any other Commingled arrangement, the following terms apply, in addition to the general terms described in Section 24:</p> <p>9.1.1.1.1.1 When a UNE and another service are Commingled, the service interval for the Commingled arrangement will be the longer interval of the two facilities being Commingled.</p>	

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		<p>After certain commission staff intervention, Qwest posted the term on its public website but did not process it through CMP or add it to its proposed ICA terms. What is the missing term? Consecutive ordering is required, which lengthens the total time required (<i>i.e.</i>, the latest date for installation of the two services is pushed out). It lengthens the interval of delivery of a working service to the end user customer because the missing term provides that CLEC cannot submit the second order until it receives an FOC on the first order. If the FOC commitment is 72 hours, this pushes out the later due date by three days. There is no way to calculate this time period from Qwest’s proposed ICA language. CLECs need certainty for planning purposes and to set customer expectations. CLECs who signed the TRO amendment before receiving the password to the secret PCAT may have been surprised to discover this. Eschelon was certainly surprised to discover it once the terms were posted on the website. The missing term affects</p>		

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		the UNE ordered under this ICA. As a result of Qwest’s unfiled term requiring consecutive instead of concurrent order submission, for example, the time period for service delivery applicable to the entire Loop-Transport Combination would be longer than ordering the same circuit as a special access facility, thus making the use of the UNE competitively prohibitive.		
Section 9.23.4.5.6 – See Issue 12-67 (Section 12.2.1.2) below				
Section 9.23.4.6.6 – See Issue 9-58 (Section 9.23.4.5.1.1) above				
Issue 9-59 (alternate) Sections 9.23.4.7 and subparts Ordering,	Eschelon proposed alternate language (if Qwest’s position on 9.23.4.5.4 is accepted in arbitration) 9.23.4.7 Maintenance and Repair for UNE Component of <u>Point-to-Point</u> Commingled EELs	Unlike Eschelon, Qwest does not propose repair language for the UNE component of commingled EELs. Qwest proposes deletion of Eschelon’s language. This, combined with the fact that Qwest leaves the UNE repair language unchanged, could suggest that	9.23.4.7 Maintenance and Repair for UNE Component of <u>Point-to-Point</u> Commingled EELs	Qwest does not agree.

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Billing, and Circuit ID for Commingled Arrangements – CIRCUIT ID/ ALTER- NATE (Alternate proposal to 9.23.4.5.4 in Issue 9- 58(a))	9.23.4.7.1 When CLEC reports a trouble through any of the means described in Section 12.4.2.2, <u>so long as Qwest provides more than one circuit ID per Commingled EEL</u> , CLEC may provide <u>all both</u> circuit IDs associated with the Commingled EEL in a single trouble report (<u>i.e., Qwest shall not require CLEC to submit separate and/or consecutive trouble reports for the different circuit IDs associated with the single Commingled EEL</u>). If CLEC is using CEMR to submit the trouble report, for example, <u>the CLEC may will first</u> report one circuit ID (<u>the circuit it believes has the trouble</u>) and include the other circuit ID in the remarks section (<u>unless the Parties agree to a different method</u>). <u>Qwest will communicate a single trouble report tracking number (i.e., the “ticket” number) (described in Section 12.1.3.3.3.1.1) for the Commingled EEL to CLEC at the time the trouble is reported. Should a second repair ticket be required for the circuit in the remarks section, Qwest will contact CLEC, and they will mutually agree who</u>	repairs for the UNE component of the EEL will remain unchanged. Information that Qwest has posted on its website, without obtaining Commission approval or even using CMP, tells a different story. Currently, for UNE EELs, CLEC opens a trouble report and Qwest assigns a trouble ticket number. See Section 12.1.3.3.3.1.1. When CLEC opens the ticket, the clock starts running under the PIDs for mean time to repair. See Exhibit B (MR-5). For Commingled EELs, however, Qwest is unilaterally requiring CLECs to use a different process that adds delay for CLEC customers while building in protection against PID payments for Qwest. Like the consecutive placement of orders discussed in connection with intervals in Section 9.23.4.4.3.1, this is also a consecutive process, with special access first. When a CLEC customer served by a commingled EEL experiences a service affecting problem, Qwest requires the CLEC to first submit an Assist Ticket (AT) on the special access portion of the EEL, even though the trouble may	9.23.4.7.1 When CLEC reports a trouble through any of the means described in Section 12.4.2.2, so long as Qwest provides more than one circuit ID per Commingled EEL , CLEC may provide all both circuit IDs associated with the Commingled EEL in a single trouble report (i.e., Qwest shall not require CLEC to submit separate and/or consecutive trouble reports for the different circuit IDs associated with the single Commingled EEL). If CLEC is using CEMR to submit the trouble report, for example, <u>the CLEC may will first</u> report one circuit ID (<u>the circuit it believes has the trouble</u>) and include the other circuit ID in the remarks section (unless the Parties agree to a different method). Qwest will communicate a single trouble report tracking number (i.e., the “ticket” number) (described in Section 12.1.3.3.3.1.1) for the Commingled EEL to CLEC at the time the trouble is reported. Should a second repair ticket be required for the circuit in the remarks section, Qwest will contact CLEC, and they will mutually agree who	

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	<p>will open the second repair ticket.</p> <p>9.23.4.7.1.1 If any circuit ID is missing from any Customer Service Record associated with the Commingled EEL, Qwest will provide the circuit ID information to CLEC at the time CLEC submits the trouble report.</p> <p>9.23.4.7.1.2 Qwest may charge a single Maintenance of Service or Trouble Isolation Charge (sometimes referred to as “No Trouble Found” charge) only if Qwest dispatches and no trouble is found on both either circuits associated with the Commingled EEL. If CLEC may charge Qwest pursuant to Section 12.4.1.8, CLEC may also charge only a single charge for both circuits associated with the Commingled EEL.</p>	<p>be on the loop portion of the circuit. An AT does not start the clock running under the PIDs for mean time to repair. Only if Qwest does not find trouble on the special access portion of the EEL will Qwest will contact the CLEC and ask the CLEC to open a repair ticket on the loop portion of the EEL. The customer is out of service the entire time and does not know or care whether the trouble is in one circuit or the other. The customer just wants it repaired. This process will certainly delay repair time for the customer’s service when the trouble is in the loop, but that additional delay will not affect Qwest’s PID performance under the ICA (see Exhibits B & K).</p> <p>If CLEC defies Qwest’s requirement to open an AT on the special access portion of the EEL and opens trouble tickets on both circuits (UNE and non-UNE), CLEC increases the likelihood of incurring additional charges. Finding trouble on both circuits of a commingled EEL at the same time is likely rare. Much more likely is that the trouble is on one circuit or</p>	<p>will open the second repair ticket.</p> <p>9.23.4.7.1.1 Intentionally Left Blank</p> <p>9.23.4.7.1.2 Qwest may charge a single Maintenance of Service or Trouble Isolation Charge (sometimes referred to as “No Trouble Found” charge) only if Qwest dispatches and no trouble is found on both either circuits associated with the Commingled EEL. If CLEC may charge Qwest pursuant to Section 12.4.1.8, CLEC may also charge only a single charge for both circuits associated with the Commingled EEL.</p>	

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		the other, but the parties do not know which one. If CLEC simultaneously opens a ticket on both circuits (assuming Qwest accepts them) to avoid delay, Qwest will code one ticket as no trouble found (NTF) in every case in which the trouble is on one of the two circuits. Qwest charges the CLEC maintenance of service charges on tickets that Qwest codes as NTF. CLEC has to do more work to open and track more tickets, while paying Qwest more charges.		
Issue 9-60 Intentionally Left Blank				
Section 9.23.6.2 – <i>See Issue 9- 61 (Section 9.23.9) below</i>				
MULTI- PLEXING (LOOP- MUX COMBINA- TIONS)				
Issue 9-61 Sections	Eschelon's proposed placement = Place Loop-Mux Combinations in Section 9 (UNEs).	<u>Placement:</u> Qwest and AT&T addressed the Loop-Mux Combination in Section 9.23, and	Qwest's proposed placement = Place Loop-Mux Combinations in Section 24 (Commingling).	Qwest does not agree.

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9.23.9 and sub-parts; 24.4 and sub-parts; 9.23.2 ((2 of 2 issues; For 1 st issue, see Section 9.23.2); 9.23.4.4.3; 9.23.6.2 Loop-Mux Combination (LMC) – Placement	<p>9.23.9 and subparts – all (see next row)</p> <p>9.23.2 UNE Combinations Description and General Terms UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) <u>and Loop Mux Combinations</u>. and. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. . . .</p>	<p>Eschelon accepted this placement when using that ICA, in part, as a basis for negotiations. There is no non-UNE component of the Loop-Mux, as it terminates at a collocation.</p> <p>Regarding Section 9.23.2, Qwest proposes to limit Section 9.23 to a single UNE Combination “product”: EELs. As discussed in the next section, however, Loop Mux Combinations are also a UNE Combination and thus should be identified in Section 9.23.2.</p>	<p>24.4.1 and subparts – all (see next row)</p> <p>9.23.2 UNE Combinations Description and General Terms UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) and Loop Mux Combinations. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. . . .</p>	
Issue 9-61 (a) Sections 9.23.9 and sub-parts; 24.4 and sub-parts; 9.23.2 ((2 of 2 issues; For 1 st issue, see Section 9.23.2); 9.23.4.4.3; 9.23.6.2	<p>Eschelon proposed modifications (9.23.9 and subparts): 9.23.9.1.1[24.4.1.1] Loop-Mux combination (LMC) is an unbundled Loop as defined in Section 9.2 of this Agreement (referred to in this Section as an LMC Loop) Commingled combined with a <u>private line (PLT), or with a special access (SA), Tariffed</u> DS1 or DS3 multiplexed facility with no interoffice transport. The <u>PLT/SA</u> multiplexed facility is provided as <u>either</u> an Interconnection Tie Pair</p>	<p>Qwest has offered unbundled multiplexing in three ways: as part of a multiplexed EEL, as part of a Loop-Mux Combination, and as a stand alone UNE. The Commission has set TELRIC rates for unbundled multiplexing and the UNE rates established for loops and transport include the cost of multiplexing where appropriate. Multiplexing is a “feature, function, or capability” associated with both unbundled loops and transport and, pursuant to the FCC’s unbundling rules,</p>	<p>NOTE: See Eschelon Proposed language for cross-references to Section 24. Section 24.4.1 contains Qwest’s corresponding language (without Eschelon’s proposed modifications). The black text in Sections 9.23.9 and 24.4.1 is the same and is agreed upon subject to placement. The parties disagree as to the highlighted (red) language. The red modifications in the Eschelon language column are proposed by Eschelon, and Qwest disagrees. The parties also disagree</p>	<p>Qwest does not agree.</p>

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<p>Loop-Mux Combination (LMC) – LMC Loop versus LMC</p>	<p>(ITP) or Expanded Interconnection Termination (EICT) from the high side of the multiplexer to CLEC’s Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.</p> <p>9.23.9.1.2 [24.4.1.2] LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a PLT/SA-DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC’s Collocation.</p> <p>9.23.9.1.3 [24.4.1.3] Qwest offers the LMC Loop as a Billing conversion or as new Provisioning.</p> <p>9.23.9.2.1 [24.4.2.1] A UNE Extended Enhanced Loop (EEL) may be combined commingled with the PLT/SA-multiplexed facility.</p> <p>9.23.9.2.2 [24.4.2.2] LMC Loops will be provisioned where existing facilities are available or pursuant to the provisions of Section 9.1.2.1 of the Agreement.</p>	<p>Eschelon is entitled to use that feature, function, or capability. <i>See</i> 47 C.F.R. § 51.307(c). In addition, the definition of “Routine Network Modification” (to which the parties have agreed) states that this term means “activities of the type that Qwest undertakes for its own End User Customers” and expressly includes “deploying a new multiplexer or reconfiguring an existing multiplexer.” <i>See also</i> 47 C.F.R. § 51.319(a)(7). In this arbitration, however, Qwest claims that it need not provide multiplexing at the TELRIC rates established by this Commission. Although Eschelon disagrees, Eschelon’s position in this arbitration only requires Qwest to provide multiplexing at UNE rates when the loops and/or transport connected to the multiplexer are UNEs. This would include providing multiplexing at UNE rates in connection with multiplexed EELs (<i>i.e.</i>, a combination of loop and transport where the loop and transport components have different bandwidths and multiplexing is necessary to connect the facilities)</p>	<p>as to placement (see previous issue).</p>	

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	<p>9.23.9.2.3 [24.4.2.3] The PLT/SA DS1 or DS3 multiplexed facility must terminate in a Collocation.</p> <p>9.23.9.2.4 [[24.4.2.4] Intentionally Left Blank The multiplexed facility is subject to all terms and conditions (ordering, provisioning, and billing) of the appropriate Tariff.</p> <p>9.23.9.2.6 [24.4.2.6] Rearrangements may be requested for work to be performed by Qwest on an existing LMC Loop, or on some private line/special access circuits, when coupled with a conversion-as-specified request to convert to LMC Loop.</p> <p><u>9.23.9.3.2 [24.4.3.2] LMC multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. LMC multiplexing is ordered with LMC Loops. The recurring and nonrecurring rates in Exhibit A apply.</u></p> <p><u>[24.4.3.2] LMC Multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. Recurring and non-recurring charges will apply.</u></p>	<p>and also as part of a Loop-Mux Combination when unbundled loops are connected to the multiplexer and the multiplexer is connected to Eschelon’s collocation, with no transport provided.</p> <p>Qwest’s contention that it is not required to provide unbundled multiplexing in connection with Loop-Mux Combinations is apparently based on the <i>Virginia Arbitration Order</i>. Qwest’s reliance on that decision is misplaced, however. First, Qwest’s argument ignores the procedural posture of the <i>Virginia Arbitration Order</i>. The decision was the result of an arbitration by the FCC’s Common Carrier Bureau, acting in the stead of the Virginia state utilities commission, pursuant to 47 U.S.C. § 252(e)(5), where the state commission did no carry out its responsibilities. Accordingly, the decision is no more binding on this Commission than would be the decision of any other state commission.</p> <p>Second, Qwest ignores the very limited scope of the Common Carrier Bureau’s decision on this issue. As the Bureau noted,</p>		

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	<p>9.23.9.3.2.1 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:</p> <p>a) Recurring Multiplexing Charge. The DS3 Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.</p> <p>b) Non-recurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.</p> <p>9.23.9.3.2.2 1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:</p> <p>a) Recurring Multiplexing Charge. The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.</p> <p>b) Non-recurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 28 channels.</p>	<p>WorldCom withdrew its claim that it was entitled to “Loop Concentrator/Multiplexer” as a network element. Virginia Arbitration Order at ¶487. Accordingly, the Bureau did not need to reach the substantive issue presented here. Furthermore, the Bureau specifically emphasized that its decision should not be interpreted as an endorsement of the Verizon position regarding the availability of unbundled multiplexing associated with Loop-Mux Combinations: <i>Id.</i> at ¶ 490 (“We emphasize that our adoption of Verizon’s proposed contract language on this issue <i>should not</i> be interpreted as an endorsement of Verizon’s substantive positions expressed in this proceeding regarding its multiplexing obligations under applicable law.”) (emphasis added.) Thus, the <i>Virginia Arbitration Order</i> cannot, by its plain terms, be read as limiting the ILEC’s obligations to provide unbundled multiplexing.</p>		

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>9.23.9.3.4 [24.4.3.4] Nonrecurring charges for Billing conversions to LMC Loop are set forth in Exhibit A.</p> <p>9.23.9.3.5 [24.4.3.5] A rearrangement nonrecurring charge as described in Exhibit A may be assessed on some requests for work to be performed by Qwest on an existing LMC Loop, or on some private line/special access circuits, when coupled with a conversion-as-specified request to convert to LMC Loop.</p> <p>9.23.9.4.1 [24.4.4.1] Ordering processes for LMC Loop (s) are contained below and in Section 12 of this Agreement. Qwest will document its ordering processes in Qwest's Product Catalog (PCAT). The following is a high-level description of the ordering process:</p> <p>9.23.9.4.1.1 [24.4.4.1] Step 1: Complete product questionnaire for LMC Loop(s) with account team representative.</p> <p>9.23.9.4.1.4 [24.4.4.1] Step 4:</p>			

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	<p>After account team notification, place LMC Loops orders via an LSR.</p> <p>9.23.9.4.3 [24.4.4.3] [Second Sentence – See Issue 1-1(e) for first sentence] <u>For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</u></p> <p>9.23.9.4.4 [24.4.4.4] Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA, EDI or Exact interfaces or through facsimile. For LMC Loops, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Loops, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year’s Day, Memorial Day,</p>			

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.</p> <p>9.23.9.4.5 [24.4.4.5] Out of Hours Project Coordinated Installations: CLEC may request an out of hours Project Coordinated Installation. This permits CLEC to obtain a coordinated installation for LMC Loops with installation work performed by Qwest outside of Qwest's standard installation hours. For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, except holidays. Installations commencing outside of these hours are considered to be out of hours Project Coordinated Installations.</p> <p>9.23.9.6.1 [24.4.6.1] Qwest will maintain facilities and equipment for LMC Loops provided under this Agreement. Qwest will maintain the multiplexed facility pursuant to the Tariff. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by</p>			

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest.			
Issue 9-61 (b) Sections 9.23.9 and sub-parts; 24.4 and sub-parts: 9.23.9.4.3, 9.23.4.4.3, 9.23.6.2; Exhibit C, Section 6.0 Loop-Mux Combination (LMC) – Intervals	<p>9.23.9.4.3 Standard sService intervals for LMC(s) Loops are <u>set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale. For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</u></p> <p>9.23.4.4.3 Installation intervals for EEL <u>UNE Combinations</u> are set forth in Exhibit C but will be no longer than the respective Private Line Transport Service that Qwest will maintain on the following web-site address: http://www.qwest.com/carrier/guides/sig/index.html</p> <p>9.23.6.2 Service intervals for each <u>UNE Combination</u> EEL are set forth in Exhibit C. For UNE</p>	<p>For the reasons discussed at Issues 1-1 and 1-1(e) above regarding the first sentence of this provision, the ICA should contain applicable intervals and require amendment and Commission approval when intervals are modified. Eschelon’s proposed language in total virtually mirrors SGAT Section 9.23.5.3 (which is also the same language as in the Qwest-AT&T ICA approved by this Commission). Qwest has identified no business reason, new circumstance or other basis for varying the language for Eschelon. Qwest’s position statement relates only to “stand-alone loop multiplexing” but the language of Section 9.23.9.4.3 refers to UNE combinations generally.</p> <p>With respect to Sections 9.23.4.4.3 and 9.23.6.2, Qwest proposes to limit the AT&T/SGAT term “UNE Combinations” to only “EELs” based on its argument that Loop-</p>	<p>24.4.4.3 <u>Standard</u> service intervals for LMC(s) Loops are <u>set forth in Exhibit C in the Service Interval Guide (SIG) available at www.qwest.com/wholesale. For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</u></p> <p>9.23.4.4.3 Installation intervals for EEL <u>UNE Combinations</u> are set forth in Exhibit C but will be no longer than the respective Private Line Transport Service that Qwest will maintain on the following web-site address: http://www.qwest.com/carrier/guides/sig/index.html</p> <p>9.23.6.2 Service intervals for each UNE Combination <u>EEL</u> are set forth in Exhibit C. For UNE</p>	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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	<p>Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</p> <p>Exhibit C: Loop Mux Combo (LMC)</p>	<p>Mux is not a UNE Combination. <i>See</i> Section 9.23.9 above (Issues 9-61 and 9-61(a)) for Eschelon's position.</p>	<p>Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.</p> <p>Exhibit C: Loop Mux Combo (LMC)</p>	
<p>Issue 9-61(c)</p> <p>Exhibit A Section 9.23.6.1; 9.23.6.1.1; 9.23.6.1.2; 9.23.6.6; 9.23.6.6.1; 9.23.6.6.2; 9.23.6.6.2.1; 9.23.6.6.2.2</p> <p>LMC Multiplexing</p>	<p>9.23.6.1 Interconnection Tie Pair... <u>\$0.36</u> <u>D</u></p> <p>9.23.6.1.1 <u>\$1.46</u> <u>D</u> 9.23.6.1.2 <u>\$14.69</u> <u>D</u></p> <p>9.23.6.6 LMC Multiplexing 9.23.6.6.1 DS1 to DS0 <u>\$151.43 REC</u> <u>\$105.99 NRC</u> <u>C</u></p> <p>9.23.6.6.2 DS3 to DS1 <u>\$192.25 REC</u> <u>C</u></p> <p>9.23.6.6.2.1 Installation <u>\$76.72</u> 9.23.6.6.2.2 Disconnect <u>\$29.27</u></p>	<p>See discussion above of Section 9.23.9. If Loop-Mux Combinations stay in the ICA as a UNE Combination, the rates remain in Exhibit A. There is no separate dispute as to the rates.</p> <p>Qwest's proposed interim rates do not incorporate prior Commission cost case decisions. Qwest's cost studies do not incorporate the Commission's decisions regarding flow through or activity time estimates. Qwest's proposed rates are typically well in excess of the rates ordered by Commissions in other Qwest states. In many circumstances, Eschelon proposes to use the average of Commission ordered rates in other Qwest states in place of Qwest proposed interim</p>	<p>9.23.6.1 Intentionally Left Blank</p> <p>9.23.6.6- Intentionally Left Blank</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		<p>rates.</p> <p>For LMC Rearrangement (9.23.6.8): Eschelon adjusted Qwest's cost study to make it consistent with the Commission's decisions in the UT 138/139 case. There are no Commission ordered rates for this element to be used as a comparison.</p>		
Issue 9-62 Intentionally Left Blank				
Issue 10-63 Intentionally Left Blank				
ROOT CAUSE ANALYSIS AND ACKNOWLEDGEMENT OF MISTAKES				
Issue 12-64 Section 12.1.4, 12.1.4.1, 12.1.4.2,	<p>12.1.4 Root Cause Analysis and Acknowledgement of Mistakes</p> <p>PROPOSAL #1 FOR 12.1.4.1: 12.1.4.1 CLEC may make a written request to its Qwest Service</p>	<p>Eschelon compensates Qwest, as its vendor, for certain services. For those services, Eschelon depends on Qwest to be able to provide service to its customers, in order to provide service to new customers, to change</p>	<p>12.1.4 Intentionally Left Blank</p>	<p>Qwest does not agree.</p>

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12.1.4.2.1; 12.1.4.2.2 see subparts below for 12.1.4.2.3; 12.1.4.2.4; 12.1.4.2.5 and 12.1.4.2.6 Acknowledge -ment of Mistakes	<p>Manager for root cause analysis and/or acknowledgement of a mistake relating to products and services under this Agreement. The written request should include the following information, when applicable and available: Purchase Order Number (PON), Service Order Number, billing telephone number, a description of the End User Customer impact and the ticket number associated with the repair of the impacting condition. It is expected that CLEC has followed usual procedures to correct a service impacting condition before beginning the process of requesting Qwest acknowledgement of error. PROPOSAL #2 FOR 12.1.4.1:</p> <p>12.1.4.1 CLEC may make a written request to its Qwest Service Manager for root cause analysis and/or acknowledgement of mistake(s) in processing wholesale orders, including pre-order, ordering, provisioning, maintenance and repair, and billing. The written request should include the following information, when applicable and available: Purchase Order Number (PON), Service</p>	<p>existing service, and to perform maintenance and repair. If Qwest makes a mistake, this may result in disruption of Eschelon’s customer’s service, which then results in harm to Eschelon. Eschelon’s proposed language, therefore, addresses Qwest mistakes that create service impacting conditions. Under Eschelon’s proposal, the context of the error (<i>e.g.</i>, installation or repair) is not a trigger for whether Qwest must perform root cause analysis or an acknowledgement of a mistake because one or both may be requested if the error, however it arose, created a service impacting condition. Eschelon has provided an alternative proposal for Section 12.1.4.1 regarding the single phrase on this issue that remained open in Minnesota. Although in Utah Qwest <i>opposes</i> all of Eschelon’s proposed language for Issue 12-64, Qwest <i>agreed</i> in Minnesota to all of Eschelon’s proposed language (which is the same in both states), except one phrase (“a mistake relating to products and services provided under this Agreement.”). Eschelon’s alternate proposal (proposal #2) regarding that one</p>		

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	<p>Order Number, billing telephone number, a description of the End User Customer impact and the ticket number associated with the repair of the impacting condition. It is expected that CLEC has followed usual procedures to correct a service impacting condition.</p> <p>ONLY ONE PROPOSAL FOR REMAINING SUBPARTS:</p> <p>12.1.4.2 When the Qwest Service Manager receives a request for root cause analysis and/or acknowledgement from CLEC, an investigation process will begin. When this investigation results in agreement that Qwest erred, the Qwest Service Manager will provide written correspondence to CLEC.</p> <p>12.1.4.2.1 The letter will include a recap of sufficient pertinent information to identify the issue, (e.g., PON, Service Order Number, order Due Date and billing telephone number, as provided in the CLEC request) and the following statement, “Qwest acknowledges its mistake. The error was not made by the other</p>	<p>open phrase (“<u>mistake(s) in processing wholesale orders, including pre-order, ordering, provisioning, maintenance and repair, and billing</u>”) was adopted by the Minnesota Commission.</p> <p>Utah customers should not have less protections than in other states. Eschelon’s proposal tracks a commission decision in Minnesota in a July 30, 2003 Order in Docket No. P-421/C-03-616 (<i>MN 616 Order</i>). Qwest, however, would like the parties’ ICA in all states other than Minnesota to be silent regarding the entire investigative/ acknowledgement issue. All of this language (not just the highlighted language in Eschelon’s proposal) is open, therefore, in Utah. Qwest can point to no state-specific reason why the terms should vary by state, so that customers in Minnesota may receive these explanations, but not Utah customers.</p> <p>Without a means to address Qwest errors through root cause analysis, the CLEC has no ability to prevent Qwest’s continued commission of the same errors, and the consequent</p>		

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	<p>service provider.”</p> <p>12.1.4.2.2 Qwest understands that time is of the essence in processing such a request and that a response should be provided as quickly as is possible given the particular issue raised by CLEC.</p>	<p>adverse impact on the CLEC’s service quality. Without a requirement for Qwest to acknowledge mistakes, a CLEC is unable to assign a Qwest error to the correct party---leaving the likely prospect that the end user customer will ascribe the resulting service defect to the CLEC as the customer’s immediate provider. Nearly all CLEC customers are hard-won from Qwest, the dominant monopoly provider of 100 years. If such a customer believes that Eschelon’s actions have caused a service disruption, the customer is very likely to return to its former provider. If the error was really caused by Qwest, the lack of attribution is another barrier to a CLEC’s meaningful opportunity to compete.</p>		
<p>Issue 12-64(a) Intentionally Left Blank</p> <p>Section 12.1.4.2.3; 12.1.4.2.4</p>	<p>12.1.4.2.3 Written responses acknowledging Qwest error will be provided with Qwest identification, such as Qwest letterhead, logo, or other indicia.</p> <p>12.1.4.2.4 The Qwest Service Manager will provide the acknowledgement to CLEC.</p>	<p>Eschelon’s language is a logical means of demonstrating to the CLEC end user that the acknowledgement of error was generated by Qwest. For example, in Minnesota, the Commission responded to Eschelon’s request for an investigation regarding Qwest’s handling of a customer’s transfer of</p>	<p>Intentionally left Blank.</p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Issue#/¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
<p>Acknowledge-ment of Mistakes –</p> <p>Qwest identification</p>		<p>service from Qwest to Eschelon. Qwest’s errors caused the customer to be out of service and resulted in the customer’s wrongly attributing the fault to Eschelon and Eschelon’s losing the valuable account. In its Order (<i>MN 616 Order</i>), that commission required that Qwest make a number of improvements to its wholesale process, including filing a plan to provide transparency regarding Qwest’s actions that harm customers who would reasonably conclude that a CLEC was at fault.</p> <p>Eschelon’s proposal tracks the Minnesota commission’s decision. Qwest, however, objects in Minnesota to the portion of Eschelon’s language that allows a CLEC to request a root cause analysis as well as an acknowledgement of the mistake (and, in Utah, to all of the language). In many instances, a root cause analysis is essential to getting to the heart of the error, and hopefully preventing further similar mistakes. Furthermore, the requirement for a root cause analysis, when necessary to</p>		

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		<p>establish the party who caused the error, is implicit in the Minnesota commission’s order. That commission cannot have meant that fault be arbitrarily assigned in order for an acknowledgement to be made. Similarly, the Arizona Commission ordered Qwest to provide root cause analysis to CLECs for network failures and to do so on a non-confidential basis so the analysis “can be used to explain to a customer the cause of the network problem they experienced.” (<i>AZ 271 Staff Report, ¶221</i>).</p> <p>Qwest’s attempts to limit this Section to “processing an LSR/ASR” and therefore proposes to delete Eschelon’s references to “products and services” and “repair.” While the particular example that led to the Minnesota investigation stemmed from an order processing error, the goal of the order was to protect consumers from problems in the future. The same problem will occur in other contexts and other states, as shown by the Arizona network failures example.</p>		

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Issue 12-64(b) Section 12.1.4.2.5; 12.1.4.2.6 Acknowledge-ment of Mistakes – Confidentiality	12.1.4.2.5 The acknowledgment response described in Section 12.1.4.2.3 and provided by the Qwest Service Manager to CLEC will be provided on a non-confidential basis and will not include a confidentiality statement. 12.1.4.2.6 Qwest external documentation available to CLEC will instruct CLEC to make requests for acknowledgements directly to its Qwest Service Manager. Such external documentation will also include instruction for accessing the Qwest Customer Contact Information Tool to identify the assigned Qwest Service Manager if CLEC does not know to whom its request can be sent.	Eschelon’s proposed addition eliminates the possibility of the Qwest acknowledgement being free of confidentiality language but a cover letter casting the entire matter as confidential.	Intentionally left Blank	Qwest does not agree.
Issues 12-65 & 12-66 Intentionally Left Blank				
EXPEDITE ORDERS				
Issue 12-67	12.2.1.2 Expedites. CLEC may request a Due Date earlier than the	Placement is an issue for Expedited Orders, because Eschelon’s	NOTE: QWEST COUNTER AT 7.3.5.2 AND 9.1.12.1 AND	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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<p>Section 12.2.1.2; See subparts below for 12.2.1.2.1, 12.2.1.2.2, 12.2.1.2.3,, 7.3.5.2 and subparts, 9.1.12.1 and subparts; 9.23.4.5.6 , Ex. A 9.20.14</p> <p>Expedited Orders</p>	<p><u>applicable Due Date interval for that product or service. Requests for expedites can be made either prior to, or after, submitting CLEC's service request.</u></p>	<p>language is in Section 12 and Qwest's is placed in Sections 7 and 9. Section 12 is the "OSS" section of the ICA. OSS includes manual processes and systems, and their "associated business processes." (<i>Third Report and Order</i> ¶425.)</p> <p>Section 12.2.1.2 describes Expedites as requests for due dates earlier than the due dates that would otherwise apply under the ICA. Qwest's proposal to refer to its web-based SIG instead of intervals in the ICA suffers from the same problems as its proposal to use those intervals in the first place. <i>See</i> Issue 1-1 above. Eschelon's reference to the term "Due Date" is appropriate because this is an agreed-upon defined term, meaning "the specific date on which the requested service is to be available to the CLEC or to CLEC's End User Customer, as applicable." Thus, the filed provisions of the ICA will determine how the particular Due Date will be calculated in each instance.</p> <p>The ICA must also be clear that requests for due dates may be made either on the CLEC's service</p>	<p>SUBSECTIONS SEE ISSUES 12-67(d) and (f) BELOW.</p>	

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
		<p>request, or, in some instances, after the original service request, such as when emergency circumstances may arise. This proposal requires no change by Qwest, as Qwest currently allows expedite requests at either time today. Qwest's proposed language, in contrast, is more limited than the current process, as discussed with respect to Issue 12-67(f).</p> <p>Section 12 is not product-specific. Placing the terms of expedites in Section 12 eliminates the need for redundancy and potential inconsistencies that arise with Qwest's proposal, because Qwest would address expedites in multiple sections by product. It is clearer and more streamlined to describe expedites once and refer to that description, if a cross reference is needed, in other sections.</p>		
Issue 12-67(a) Section 12.2.1.2.1 Expedited	<p>PROPOSAL #1:</p> <p>12.2.1.2.1 Notwithstanding any other provision of this Agreement, for all products and services under this Agreement (except for Collocation pursuant to Section 8).</p>	<p>The two over-arching questions regarding expedited orders for resolution in this arbitration are: (1) Interim Wholesale Rate (whether TELRIC): At what rate should expedites be provided to a Qwest wholesale customer (<i>i.e.</i> Eschelon),</p>	<p>NOTE: QWEST COUNTER AT 7.3.5.2 AND 9.1.12.1 AND SUBSECTIONS SEE ISSUES 12-67(d) and (f) BELOW.</p>	<p>Qwest does not agree.</p>

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Orders – Exceptions to Charging - Emergencies (1 of 2 Options)	<p>Qwest will grant and process CLEC's expedite request, and expedite charges are not applicable, if one or more of the following conditions are met:</p> <p>a) Fire;</p> <p>b) Flood;</p> <p>c) Medical emergency;</p> <p>d) National emergency;</p> <p>e) Conditions when the End User Customer is completely out of service (primary line);</p> <p>f) Disconnect in error when one of the other conditions on this list is present or is caused by the disconnect in error;</p> <p>g) Requested service necessary for CLEC End User Customer's grand opening event delayed for facilities or equipment reasons with a future Ready For Service (RFS) date;</p> <p>h) Delayed orders with a future RFS date that meet any of the</p>	<p>at least on an interim basis until a permanent rate is set? and; (2) <u>Exceptions to Charging for Expedites:</u> Should the circumstances when Qwest provides exception(s) to charging an additional fee for expedites be nondiscriminatory? Both of Eschelon's proposals for Issue 12-67(a) relate to the second of these questions.</p> <p>Qwest must provide access to UNEs on nondiscriminatory terms for all CLECs (facility-based and non-facility based), as well as for Qwest itself. <i>See</i> 47 C.F.R. §51.313. Qwest, including its predecessor USWC, has historically provided expedites for no additional charge when certain "Emergency" conditions were met. Until Qwest abruptly stopped doing so over CLEC objection, this applied to unbundled loop orders under the current Eschelon-Qwest ICA. Qwest recovered its costs through Commission approved charges, because, with an expedite, Qwest performs the same work (as the work included in the installation NRC), but Qwest just performs that</p>		

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	<p><u>above described conditions:</u></p> <p>i) <u>National Security;</u></p> <p>j) <u>Business Classes of Service unable to dial 911 due to previous order activity; or</u></p> <p>k) <u>Business Classes of Service where hunting, call forwarding or voice mail features are not working correctly due to previous order activity where the End User Customer’s business is being critically affected.</u></p>	<p>work earlier. Therefore, the expedites are not “free” but are included in those costs. Qwest continues to provide some exceptions to charging an additional fee for expedites for its own retail customers. Qwest also continues to grant expedite requests at no additional charge in the Emergency situations to CLECs that use exclusively Qwest facilities via QPP or resale without amendment of their ICAs. In contrast, when a facilities-based CLEC such as Eschelon uses a loop to provide the same functionality and service as a Qwest retail customer or a CLEC ordering resale voice or QPP, Qwest now refuses to grant expedite requests at no additional charge in the Emergency situations. Qwest initially claimed that it may change course because there is no “retail analogue” for loops. As discussed with respect to intervals (see Section 1.7.2 above), however, the FCC stated specifically that the test for a “meaningful opportunity to compete” when there is no retail analogue is no less rigorous than the test when there is one. (<i>NY 271 Order ¶ 55.</i>) Since then, Qwest has</p>		

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		<p>said its reason is that expedites are a “superior service,” which is also incorrect under the law. See Issue 67(b).</p> <p>For unbundled loops (and certain other products), Qwest is attempting to change the terms so that Qwest will only provide facilities-based CLECs expedites if they agree to pay an unapproved rate of \$200 per each day expedited (e.g., 5-day expedite = \$1,000) to expedite the loop order. That charge is <i>in addition</i> to the approved installation NRC, even when the conditions creating an exception for retail customers are met. In contrast, Eschelon’s first proposal is fully consistent with the manner in which expedites have been handled in the past and are handled for other carriers today.</p>		
Issue 12-67(a) Section 12.2.1.2.1 Expedited Orders –	<p><u>PROPOSAL #2:</u></p> <p>12.2.1.2.1 Notwithstanding any other provision of this Agreement, for all products and services under this Agreement (except for Collocation pursuant to Section 8), Qwest will grant and process</p>	<p>This language states that if Qwest does provide exceptions to charging an additional fee for expedites for its retail customers (as Qwest currently does, for example, “if a customer needs to restore service at the original location when it is re-entering the original facility, after a</p>		<p>Qwest does not agree.</p>

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<p>Exceptions to Charging - Emergencies</p> <p>(2 of 2 Options)</p>	<p>CLEC's expedite request, and expedite charges are not applicable, if Qwest does not apply expedite charges to its retail Customers, such as when certain conditions (e.g., fire or flood) are met and the applicable condition is met with respect to CLEC's request for an expedited order.</p>	<p>fire, flood or Act of God disaster”), it will likewise provide those exceptions for CLECs when the same conditions are met.</p> <p>Eschelon’s second proposal for exceptions to charging omits the itemized list of conditions and instead articulates a standard. The approach reflected in Eschelon’s first proposal is preferable in that it offers more certainty as to the conditions under which exceptions to charging a separate fee will be made. If the Commission finds that some of all of these conditions are inapplicable (or does not reach that issue), however, Eschelon’s second proposal at least articulates a nondiscrimination standard. It also limits future disputes at least to the extent that the companies agree Qwest does not apply expedite charges for its retail customers.</p>		
<p>Issue 12-67(b)</p> <p>Section 12.2.1.2.2 & Exhibit A</p> <p>Expedited</p>	<p>12.2.1.2.2 If none of the conditions described in Section 12.2.1.2.1 are met, Qwest will grant and process CLEC's expedite request, but the expedite charges in Exhibit A will apply, unless the need for the expedite is caused by Qwest.</p>	<p>With this language, Eschelon is offering to pay an additional charge to expedite orders. The charge should be TELRIC based. Expedited treatment of UNE orders is obtained for purposes of accessing that UNE and, as such, are subject to the FCC’s TELRIC</p>	<p>12.2.1.2.2 If none of the conditions described in Section 12.2.1.2.1 are met, Qwest will grant and process CLEC's expedite request, but the expedite charges in Exhibit A will apply, unless the need for the expedite is caused by Qwest.</p>	<p>Qwest does not agree.</p>

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Orders – Charges in Exhibit A	Exhibit A, Section 9.20.14, <i>see</i> Issue 12-67(g), <i>below</i>	rules when determining charges for those rates. This conclusion follows directly from the FCC’s language regarding “access to unbundled elements” reflected in CFR §51.307 and 51.313. In ¶268 of its <i>First Report and Order</i> , the FCC similarly found that the requirement to provide “access” to UNEs must be read broadly, concluding that the Act requires that UNEs “be provisioned in a way that would make them useful.” As evident from these citations, an unbundled network element includes not only the physical facility, but also all the capabilities of providing service, such as provisioning and maintenance and repair. (<i>See also</i> Issue 9-31 above.) As accurately summarized by the North Carolina commission in a recent BellSouth proceeding, “[t]he Commission also believes that expediting service to customers is simply one method by which BellSouth can provide access to UNEs and that, since BellSouth offers service expedites to its retail customers, it must provide service expedites at TELRIC rates pursuant to Section 251 of the Act and Rule	Exhibit A, Section 9.20.14: Qwest’s FCC Tariff No. 1 (footnote 1)	

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		<p>51.311(b).” (See NC Access to UNEs, p. 47.)</p> <p>Unlike Qwest’s proposal which is unclear and permissive (“expedites are allowed”), Eschelon’s language provides that, for that charge, Qwest “will grant and process” the expedite request. This is important because of Qwest’s unilateral interpretation of the current ICA, indicating even more specificity is needed in the new ICA. The current ICA provides Qwest “shall provide” expedite capability to CLEC. (Att. 5, §3.2.2.13.) Qwest will not do so today under the current ICA for loop orders, however. Use of the word “shall” generally indicates a mandatory obligation. Qwest has testified, however, that this same language in the Colorado current contract gives Qwest “<i>complete discretion</i> to decide whether or not to grant expedites.” [(Albersheim CO Answer Testimony, p. 55, lines 15-16 (emphasis added).] Therefore, explicit contract language is needed to ensure that Qwest will expedite orders, including loop orders, for the expedite charge and that this is a contractual obligation - not at</p>		

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		<p>Qwest’s discretion.</p> <p>Qwest claims that it does not have to expedite loop orders because expedites are a superior service. In order to more fully ascertain the extent to which a service should be considered a “superior” service and, if so, how it should be priced, one threshold question to be addressed is whether Qwest provides the service to itself for its own retail customers, separate from the question of price. Qwest has admitted that Qwest provides expedites for itself and its retail customers. [AZ Tr., Vol. I, p. 58, lines 19-21 (“Q. Now, you would agree with me that Qwest provides itself with expedites; correct? A. Yes.”); <i>see also</i> Hearing Exhibit Q-1 (Albersheim Dir.), p. 61, lines 15-16 (“ . . . Qwest offers expedites today to its retail customers. . .”).]</p> <p>Therefore, the analysis moves to another question, which addresses what the price should be (whether TELRIC based). It is incorrect to equate not providing a wholesale service <i>at the same price</i> as a retail service with superior service, because it confuses these concepts</p>		

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		<p>and inappropriately collapsed the two questions into one. Although Qwest takes the position that private line service is the retail analogue of an unbundled DS1 Capable Loop, Qwest presumably would not claim it is appropriate to charge the same price for the unbundled loop as for the retail service, for example.</p> <p>This section contains an exception so that Qwest may not charge CLEC if Qwest caused the need for an expedite. If, for example, Qwest makes an error affecting Eschelon's customer's service and an expedite is needed to correct the error without pushing out the due date, Qwest should not be able to charge Eschelon for such an expedite. The addition of this language also removes an inappropriate incentive for Qwest to mishandle orders to create a situation requiring payment of expedited order charges. Qwest has agreed to similar language in 9.2.4.4.2(b) and 9.6.4.1.4(c) for loops and transport, so it is unclear why Qwest proposes deletion here and includes no similar language in its proposal in Section 7.3.5.2</p>		

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Issue 12-67(c) Section 12.2.1.2.3 Expedited Orders – NRC	12.2.1.2.3 Nothing in this Section 12.2.1.2 alters whether a non-recurring installation charge in Exhibit A applies to the CLEC order pursuant to the terms of the applicable section of this Agreement. The expedite charge, if applicable, is separate from the installation charge.	relating to trunking. Eschelon is not trying to get something for nothing through its expedite proposal. Eschelon included this language in its proposal to allay fears that the phrase no “additional” charge would somehow be interpreted to mean “no” charge. This language ensures that the provisions of §12.2.1.2 will not alter the application of installation charges under Exhibit A when they appropriately apply. Expedites are not free under Eschelon’s proposal. Eschelon clarifies that it will pay that installation charge (covering Qwest’s costs), in addition to expedite charges when applicable.	NOTE: QWEST COUNTER AT 7.3.5.2 AND 9.1.12.1 AND SUBSECTIONS SEE ISSUES 12-67(d) and (f) BELOW. 12.2.1.2.3 Nothing in this Section 12.2.1.2 alters whether a non-recurring installation charge in Exhibit A applies to the CLEC order pursuant to the terms of the applicable section of this Agreement. The expedite charge, if applicable, is separate from the installation charge.	Qwest does not agree.
Issue 12-67 (d) Section 9.1.12.1 and subparts; Expedited Orders – UNEs	9.1.12.1 For expedites, see Section 12.2.1.2.	As to placement, see Issue 12-67. Regarding Qwest’s proposal for 9.1.12.1, Qwest’s language says expedites are “allowed” but Qwest does not commit to granting them. In contrast, under its template “Pre-Approved Expedite” terms, Qwest automatically grants expedites when a CLEC pays Qwest’s requested per day expedite charges. Regarding intervals, see Issue 1-1 above.	9.1.12.1 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest’s Service Interval Guide (SIG), Exhibit C or Individual Case Basis (ICB) Due Dates as applicable. 9.1.12.1.1 CLEC will request an expedite for designed Unbundled Network Elements, including an	Qwest does not agree.

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		<p>Regarding Qwest’s proposal for 9.1.12.1.1, Qwest recognizes requests for expedites only when requested on the service order. This is a departure from Qwest’s current practice of allowing requests either on or after the service request.</p> <p>Regarding Qwest’s proposal for 9.1.12.1.2, it varies from Eschelon’s proposal by referring to provisions outside the ICA rather than those filed and approved with this Commission. Qwest proposes to replace all of Eschelon’s ICA proposal with a reference to its web-based PCAT. The FCC has clearly held, however, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>FCC Forfeiture Order</i>, ¶32). See also Issue 1-1.</p>	<p><u>expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate.</u></p> <p><u>9.1.12.1.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest’s Product Catalog for expedites at Qwest’s wholesale web site.</u></p>	
<p>Issue 12-67 (e) Section 9.23.4.5.6 Expedited</p>	<p>9.23.4.5.6 For expedited orders, see Section 12.2.1.2.</p>	<p>Eschelon’s expedite proposal appropriately applies to Combinations of UNEs, as well as UNEs. To avoid redundancy and potential inconsistencies, Eschelon includes only a cross reference to Section 12.2.1.2 here.</p>	<p>9.23.4.5.6 For expedited orders, see Section 12.2.1.2.</p>	<p>Qwest does not agree.</p>

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Orders – Combina- tions				
Issue 12-67 (f) Section 7 3.5.2 and subparts Expedited Orders – Trunk orders 2 options	<p>PROPOSAL #1:</p> <p>7.3.5.2 For expedites, see Section 12.2.1.2</p> <p>PROPOSAL #2:</p> <p>7.3.5.2 Expedite requests for LIS Interconnection trunk orders are allowed only on an exception basis with executive approval within the same timeframes as provided for other designed services. When expedites are approved, expedite charges will apply to LIS Interconnection trunk orders based on rates, terms and conditions described in Exhibit A.</p>	<p>Placement: Eschelon’s language in Section 7 (Interconnection) refers the reader to Section 12, which deals with expedited orders generally (i.e., not limited to expedited Section 7 Interconnection orders only). See Eschelon’s position above with respect to Section 12.2.1.2 (Issue 12-67 and subparts). In the alternative, Eschelon also offers to replace all of Section 7.3.5.2 (consistent with its proposal for Sections 9.1.12.1 and 9.23.4.5.6) with a cross reference to Section 12.2.1.2 (Issue 12-67).</p> <p>The word “Interconnection” is used in the approved Qwest-AT&T ICA, which was used in part as the basis for negotiations. “LIS” is Qwest’s product name for interconnection service (which is the industry generic term, and as such, is more appropriate in the contract than a company product name). (See Definition in Section 4.0.)</p>	<p>SAME FOR BOTH PROPOSALS:</p> <p>7.3.5.2 Expedite requests for LISInterconnection trunk orders are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest's Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates. Expedite charges as identified in Exhibit A apply per order for every day that the Due Date interval is shortened, based on the standard interval in the SIG or based on ICB criteria for Due Dates.</p> <p>7.3.5.2.1 CLEC will request an expedite for LISInterconnection trunks, including an expedited Due Date, on anthe Access Service Request (ASR).</p> <p>7.3.5.2.2 The request for expedite will be allowed only when the request meets the criteria outlined in Section 12.2.1.2.2 the Pre-Approved Expedite Process in</p>	Qwest does not agree.

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		<p>Examination of the agreed-upon language of the ICA shows that the ICA uses the terms “Interconnection” and “Local Interconnection Service” to denote the same set of services. This conclusion is evident from the introductory closed language of ICA Section 7.1.1 (“Interconnection”). In other words, Eschelon’s proposal to use the industry-wide term “Interconnection,” rather than Qwest’s product name “LIS,” correctly describes the scope of the provision in section 7.3.5.2.</p> <p>In section 7.3.5.2.1 Qwest’s language states that a CLEC will request an expedite on <i>the</i> Access Service Request. The choice of the article “the” suggests that the expedite must be requested on the original Access Service Request, which is more restrictive than Qwest’s own current practice. Eschelon’s proposal in Section 12.2.1.2 (second sentence) is taken directly from Qwest’s PCAT and states: “Request for expedites can be made either prior to, or after, submitting CLEC’s service request.”</p> <p>In section 7.3.5.2.2, Qwest refers to its own website, which can change, and its</p>	<p>Qwest's Product Catalog for expedite charges at Qwest's wholesale web site.</p>	

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		proposal offers no contractual certainty. See also discussion of Issue 1-1.		
Issue 12-67 (g) Exhibit A Section 9.20.14 Expedite Charge	9.20.14 Expedite Charge \$100	Except as provided in Issue 12-67(a)), Eschelon offers to voluntarily pay an additional charge for expedites, even though Qwest has established no cost-based rate to expedite orders. Eschelon proposes an interim rate of \$100 per order. Eschelon’s proposed rate is higher than the most expensive Commission approved one-time rate for the complete installation of an entire new loop (<i>i.e.</i> , DS1 capable loop Coordinated Install with Cooperative Testing) in some states. Eschelon’s arbitration proposed charge is expressly an interim rate. Eschelon believes it exceeds costs. Eschelon offers the rate on an interim basis as a compromise in the arbitrations until a cost-based rate is established. It affords Qwest the opportunity to obtain a higher permanent rate, if Qwest can provide a TELRIC study to support that rate. If Qwest can present a cost study that supports a per-day charge, then it will be permitted to assess such a charge. To date,	9.20.14 Expedite Charge, per Day Advanced (uses rates from Qwest’s Tariff FCC No. 1 Section 5) \$200	Qwest does not agree.

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		<p>however, Qwest has provided no cost study and thus made no effort to prove that it incurs additional costs when providing expedites that are not recovered in the installation charge and the \$100 interim additional expedite fee. Eschelon is truly interested in establishing a cost-based rate. If the Commission decides to subject the rate to a true-up, then a cost based rate will apply from the time the interim rate is established.</p> <p>Qwest’s proposal for a charge for expediting orders has varied over time and by state. At times, Qwest has proposed language in Exhibit A that states “\$200 per day advanced” (which is the rate in its tariff and in the ICA amendments that Qwest currently requires CLECs to sign in many cases before it will provide expedited treatment for orders – regardless of any other expedite language in the CLEC’s current ICA). At other times, Qwest has proposed a reference to its federal tariff for this rate (instead of inserting the dollar amount in Exhibit A), claiming that the Commission does not have jurisdiction to decide a rate because</p>		

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		<p>expediting a UNE order is “not a UNE” and therefore the UNE standard does not apply. At this time, in this case, Qwest is proposing “ICB” in Exhibit A, instead of those other approaches. Although the Commission has not yet approved an “ICB” rate, Qwest opposes insertion of footnote 1 (which refers to rates not approved in a cost docket). In WA, Qwest testified “It is Qwest's position that the appropriate ICB rate is \$200.00 per day consistent with Qwest's its practices in other states.” (Albersheim WA Direct, p.. 60, lines 2-4.).</p> <p>Qwest’s proposed ICB rate must be viewed in the context of the language of the ICA. As discussed above with respect to Issue 12-67, Eschelon’s language proposals for Section 12.2.1.2 and subparts reflects the terms offered by Qwest previously in Utah and today in Washington. In addition, the proposed ICA contains a definition of “ICB” that includes longer intervals that are inconsistent with the need to expedite orders, but Qwest has not proposed any</p>		

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		<p>language to address an expedite situation. For example, Section 2.1 of Exhibit I to the proposed ICA provides in agreed upon language: “For those products and services identified in the SGAT that contain a provision for ICB rates, Qwest will provide CLEC with a written quote of the ICB rate within twenty (20) business days unless a specific interval for providing the quote is either contained in the SGAT or this Exhibit.” Qwest has shown no need to prepare a quote in these situations, and certainly 20 days is an unacceptable amount of time. A loop order is shorter than 20 days, and when requesting an expedite, Eschelon is seeking to shorten it to fewer days. While Eschelon may not oppose an ICB rate in the proper circumstances, Qwest’s proposal does not reflect such circumstances. Qwest has provided no cost support for a per day rate, whether that rate is charged at a specified dollar amount or on an ICB basis.</p>		
Issues 12-68 12-70 Intentionally				

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
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JEOPAR- DIES				
Issue 12-71 Section 12.2.7.2.4.4 Jeopardy (1 of 2 Options)	PROPOSAL #1: 12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR).	Timely delivery of service on the requested due date is critical to meeting customer expectations and remaining competitive. Jeopardies relate to whether Qwest will meet the requested due date and, if not, how the parties will proceed. How they will proceed may depend on how the “jeopardy” (relating to the reason for a missed due date) is classified. Eschelon’s proposal states that Qwest will classify a jeopardy caused by Qwest as a Qwest jeopardy and a jeopardy caused by CLEC as a CLEC jeopardy (known as Customer Not Ready – “CNR”). In Minnesota, Qwest’s witness testified: “We don’t disagree with the notion that a CNR jeopardy should be assigned appropriately.” Tr., Vol., 1, p. 94, lines 5-6 (Ms. Albersheim). Qwest cannot show that it is reasonable or in the public interest for Qwest to classify a jeopardy caused by Qwest as a CLEC jeopardy. Qwest’s proposal (for Issues 12-71,	SAME FOR BOTH: 12.2.7.2.4.4 Specific procedures are contained in Qwest’s documentation, available on Qwest’s wholesale web site.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		12-72 and 12-73) is to refer to its web site. The FCC found that a “web-posting exception’ would render [252(a)(1) of the Act] meaningless, since CLECs could not rely on a website to contain all agreements on a permanent basis.” (<i>FCC Forfeiture Order</i> , ¶32) The FCC held, therefore, that at “no point did we create a general ‘web-posting exception’ to section 252(a).” (<i>Id.</i>) Eschelon needs contractual certainty. See also Issue 1-1.		
Issue 12-71 Section 12.2.7.2.4.4 Jeopardy (2 of 2 Options)	PROPOSAL #2: 12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR). Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Attachments 1 and 2 to Exhibit K of this Agreement.	Eschelon added a second sentence to this provision in response to the Minnesota Arbitrators’ Report and, with this sentence, the Minnesota Commission adopted Eschelon’s language for Issues 12-71, 12-72 and 12-73. Eschelon offers this modified language in all six states.	SAME FOR BOTH: 12.2.7.2.4.4 Specific procedures are contained in Qwest’s documentation, available on Qwest’s wholesale web site.	Qwest does not agree.
Issue 12-72 Section 12.2.7.2.4.4.1	12.2.7.2.4.4.1 There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or	Timely delivery of service on the requested due date is critical to meeting customer expectations and remaining competitive. A jeopardy	12.2.7.2.4.4 Specific procedures are contained in Qwest’s documentation, available on Qwest’s wholesale web site.	Qwest does not agree.

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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Jeopardy Classification	<p><u>service order is not accepted by the CLEC (when Qwest has tested the service to meet all testing requirements.); and (2) End User Customer access was not provided. For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs but at least the day before Qwest attempts to deliver the service. CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.</u></p>	<p>notice is a notice that Qwest sends to inform a CLEC that a due date is in jeopardy of being missed. For the category of jeopardies covered by Eschelon’s language, Qwest’s PCAT provides Qwest “will advise” CLEC of the new due date “when the jeopardy condition has been resolved.” Qwest has admitted the Firm Order Confirmation (“FOC”) is “the agreed upon process by which Qwest” will advise Eschelon “of the due date for a circuit.” (MN Tr., Vol. 1, p. 38, lines 17-19.) Qwest has also admitted that the reason Qwest is supposed to send an FOC after a Qwest facility jeopardy is cleared is “to let the CLEC know that the CLEC should be expecting to receive the circuit” so the CLEC may have personnel available and may make arrangements with the customer if access to the customer premises is needed. (<i>Id.</i> p. 37, line 16 – p. 38, line 6.) But, Qwest’s position is that -- when Qwest fails to fulfill its own obligation to send an FOC or a timely FOC -- Qwest may nonetheless attribute fault for failure to complete delivery to Eschelon (by coding it as Customer</p>		

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		<p>Not Ready, “CNR”) and therefore require Eschelon to supplement its order to request a new due date <i>at least three days later</i>. Qwest’s FOC failure, however, deprives Eschelon of the proper and agreed upon opportunity to schedule resources, obtain premise access from the customer, and prepare to accept delivery of the service. Eschelon’s language promotes timely service delivery by providing first that, regardless of whether an FOC is sent, Eschelon will use best efforts to accept service when delivery is attempted. Second, Eschelon’s language provides that, if despite using best efforts Eschelon cannot accept service when Qwest has failed to send an FOC or a timely FOC, the jeopardy should not be classified as CNR. This means that Qwest will not require a supplemental order with a three-day interval but will, as stated in the language, attempt to set a new appointment time <i>on the same day</i> and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date. If Qwest had followed its own process and abided by the contractual</p>		

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		<p>requirement to provide advance notice via FOC, this would not be an issue. Thus, any further disruption or delay in service is clearly a direct product of Qwest’s jeopardy and failure to send an FOC after the jeopardy cleared, not of any unwillingness on Eschelon’s part to mitigate the consequences of Qwest’s issue. If the obstacles are too great because of Qwest’s failure to provide proper timely notice to Eschelon of service delivery, and Eschelon cannot accept delivery at the time, Qwest should not classify this as a CLEC (CNR) jeopardy. Qwest created the situation that lead to the inability to complete delivery.</p>		
<p>Issue 12-73 Section 12.2.7.2.4.4.2 Jeopardy Correction</p>	<p><u>12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy.</u></p>	<p>If a CLEC demonstrates that Qwest has erred in designating a jeopardy as caused by a CLEC, Qwest should correct the erroneous CNR classification and treat the jeopardy going forward as a Qwest jeopardy. In Minnesota, Qwest’s witness testified: “We don’t disagree with the notion that a CNR jeopardy should be assigned appropriately.” Tr., Vol., 1, p. 94, lines 5-6 (Ms. Albersheim). Therefore, there is no reason for Qwest not to correct an</p>	<p><u>12.2.7.2.4.4 Specific procedures are contained in Qwest’s documentation, available on Qwest’s wholesale web site.</u></p>	<p>Qwest does not agree.</p>

Eschelon requested position statements from Qwest, and Qwest replied that it would provide them by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix.

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		error when it assigns a CNR jeopardy inappropriately.		
Issues 12-74-12-86 Intentionally Left Blank				
CON-TROLLED PRO-DUCTION				
Issue 12-87 Section 12.6.9.4 Controlled Production (1 of 2 Options)	PROPOSAL #1: 12.6.9.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 (or mutually agreed upon substitute) standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account	Controlled production is one type of testing. Language relating to other types is closed, and such testing will be conducted. In addition, under Eschelon’s proposal, controlled production testing will be performed in the same circumstances as it is performed today – which does not include recertification. Eschelon has already certified so does not also have to do controlled production for recertifications. The Commission in the Minnesota Qwest-Eschelon arbitration adopted Eschelon’s first proposal. The ALJs in that case said (¶255): “Qwest agrees that Eschelon’s language accurately depicts its current practice, which does not require CLECs to recertify if they have successfully completed testing of a previous release; in addition, Qwest admits that Qwest can control whether a CLEC can access	SAME FOR BOTH: 12.6.9.4 Controlled Production – Qwest and CLEC will perform controlled production. The controlled production process is designed to validate the ability of CLEC to transmit EDI data that completely meets X12 (or mutually agreed upon substitute) standards definitions and complies with all Qwest business rules. Controlled production consists of the controlled submission of actual CLEC production requests to the Qwest production environment. Qwest treats these pre-order queries and orders as production pre-order and order transactions. Qwest and CLEC use controlled production results to determine operational readiness. Controlled production requires the use of valid account	Qwest does not agree.

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Issue#/¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	<p>and order data. All certification orders are considered to be live orders and will be provisioned. Controlled production is not required for recertification, unless the Parties agree otherwise. Recertification does not include new implementations such as new products and/or activity types.</p>	<p>its OSS.” The ALJs also said (¶258): “There is no evidence that Eschelon has or would opt out of recertification testing for any improper purpose.” Eschelon has a strong incentive to test when needed, as it is affected as well. Eschelon’s language allows the parties to agree to perform controlled production for recertifications by mutual agreement if a situation arises in which an exception is needed.</p> <p>As indicated by the Minnesota ALJs, Eschelon’s proposal requires no change by Qwest, as Qwest does this today. (Although Qwest has recently attempted to back away from that admission, Eschelon will show that controlled production is not required for recertifications currently.) IMA Release 20.0 is a new implementation (so under Eschelon’s language, controlled production testing is required, as it is not a recertification.) It is necessary to include Eschelon’s proposed language in the ICA because, without it, the broader language in the remainder of the paragraph may suggest that</p>	<p>and order data. All certification orders are considered to be live orders and will be provisioned. Controlled production is not required for features or products that the CLEC does not plan on ordering. Recertification does not include new implementations such as new products and/or activity types.</p>	

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		controlled production is required for recertification, when it is not. The first sentence, for example, broadly states: “Qwest and CLEC will perform controlled production.” That is not always the case, and the ICA should be clear on this point when outlining the terms of controlled production.		
Issue 12-87 Section 12.6.9.4 Controlled Production (2 of 2 Options)	PROPOSAL #2: 12.6.9.4 Controlled Production – Qwest and CLEC will perform controlled production <u>for new implementations, such as new products, and as otherwise mutually agreed by the Parties.</u> . . .	Controlled production is not required in all situations, but without Eschelon’s modification, the first sentence reads as though it is. If this is not clarified as shown in Eschelon’s first proposal, another alternative is to alter the first sentence to specifically state that controlled production applies to new implementations. Under both of Eschelon’s proposals, Eschelon would participate in controlled production testing for IMA Release 20.0 (which is a new implementation).	SAME FOR BOTH: 12.6.9.4 Controlled Production – Qwest and CLEC will perform controlled production <u>for new implementations, such as new products, and as otherwise mutually agreed by the Parties.</u> . . .	Qwest does not agree.
Issue 21-87A Intentionally Left Blank				
RATES FOR SERVICES				
Issue 22-88	22.1.1 The rates in Exhibit A apply	Eschelon proposes striking the	22.1.1 The rates in Exhibit A apply	Qwest does not agree.

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Section 22.1.1 Rates in Exhibit A	to the services provided by Qwest to CLEC pursuant to this Agreement.	phrase “by Qwest to CLEC” because Exhibit A also includes rates for services provided by CLEC to Qwest. <i>See, e.g.</i> , Sections 7.3.7.1 and 7.3.7.2 (charges for local, ISP-bound and intraLATA toll transit traffic); 9.2.5.2 and 9.2.5.2.1 (trouble isolation); and 10.2.5.5.4 and 10.2.5.5.5 (Qwest Requested LNP Managed Cuts). Qwest’s language, which limits the scope of Exhibit A to services provide by Qwest, is inaccurate and unnecessary.	to the services <u>by Qwest to CLEC</u> provided pursuant to this Agreement.	
Issue 22-88 (a) Section Exhibit A – Section 7.11	Qwest’s Utah Access Services Tariff	The parties have agreed on the mutual exchange of traffic, including intraLATA toll traffic. <i>See</i> Section 7.2.1.2.2. At line 7.11 of Exhibit A, Qwest has proposed the inclusion of a reference to Qwest’s Utah Access Service Tariff as establishing the rate for intraLATA toll traffic. However, because the parties will mutually exchange this traffic, they should also mutually compensate one another. Accordingly, Eschelon proposes deleting the word “Qwest’s” from line 7.11 to clarify that, when Eschelon is carrying Qwest’s intraLATA toll traffic,	Qwest’s Utah Access Services Tariff	Qwest does not agree.

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Issue 22-89 Section 22.4.1.3 Request for Cost Proceeding	22.4.1.3 Nothing in this Agreement shall waive any right of either Party to request a cost proceeding at the Commission to establish a Commission-approved rate to replace an Interim Rate.	Eschelon’s access tariff will apply. The opportunity to obtain Commission-approved rates is necessary to assure that rates are cost-based, just and reasonable. If Qwest believes the parties have this right (so the language is “unnecessary”) it should not oppose insertion of a short paragraph for clarity.	22.4.1.3 Intentionally Left Blank	Qwest does not agree.
Section 22.4.1.1 <i>See Issue 2-3 above, footnote 6</i>				
Section 22.4.1.2 <i>See Issue 2-3 above</i>				
UN- APPROVED RATES				
Issue 22-90 Section 22.6.1 <i>See subparts (a) - (g) below for</i>	22.6.1 Qwest shall obtain Commission approval before charging for a UNE or process that it previously offered without charge. If Qwest offers a new Section 251 product or service or one that was previously offered with a charge for which a price/rate	Often, in cost cases, the Commission does not ultimately adopt Qwest’s “going-in” position for its desired rate. Commissions often approve something less than any one party’s wish list of desired rates. In Section 22.6 and subparts, Eschelon proposes a process for	22.6.1—Qwest shall obtain Commission approval before charging for a UNE or process that it previously offered without charge. If Qwest offers a new Section 251 product or service or one that was previously offered with a charge for which a price/rate	Qwest does not agree.

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related issues in 22.6.1.1, & Exhibit A Unapproved Rates	<p><u>has not been approved by the Commission in a TELRIC Cost Docket (“Unapproved rate”), Qwest shall develop a TELRIC cost-based rate and submit that rate and related cost support to the Commission for review within sixty (60) Days of the later of (1) the Effective Date of this Agreement, or (2) Qwest offering the rate to CLEC, unless the Parties agree in writing upon a negotiated rate (in which case Qwest shall file the negotiated rate with the Commission within 60 Days). Except for negotiated rates, Qwest will provide a copy of the related cost support to CLEC (subject to an applicable protective agreement, if the information is confidential) upon request or as otherwise ordered by the Commission. If the Parties do not agree upon a negotiated rate and the Commission does not establish an Interim Rate for a new product or service or one that was previously offered under Section 251 with an Unapproved Rate, CLEC may order, and Qwest shall provision, such product or service using such Qwest proposed rate until the Commission orders a rate. In such</u></p>	<p>ensuring that Qwest’s “going-in” positions or “wish-list” rates are not unilaterally implemented and then remain in effect indefinitely with no action by Qwest to support the rates to the Commission or Commission approval of those rates. Eschelon’s proposal tracks a commission decision in Minnesota in a July 30, 2003 Order in Docket No. P-421/C-03-616 (<i>MN 616 Order</i>). The intent is for the language to operate as it does in Minnesota. In other states, Qwest has proposed modifying the process so that it no longer achieves the same goals and instead allows Qwest a fairly automatic way to impose unapproved rates upon CLECs. Without these procedures, Qwest can extend the period by which it imposes unapproved rates by not filing cost support with the Commission and requesting approval of the rates. Eschelon is seeking a meaningful process under which unapproved rates do not go into effect without full cost support being reviewed by the Commission and without a prompt and fair opportunity in each case to have interim rates set while the final rate is under determination.</p>	<p>has not been approved by the Commission in a TELRIC Cost Docket (“Unapproved rate”), Qwest shall develop a TELRIC cost-based rate and submit that rate and related cost support to the Commission for review within sixty (60) Days of the later of (1) the Effective Date of this Agreement, or (2) Qwest offering the rate to CLEC, unless the Parties agree in writing upon a negotiated rate (in which case Qwest shall file the negotiated rate with the Commission within 60 Days). Except for negotiated rates, Qwest will provide a copy of the related cost support to CLEC (subject to an applicable protective agreement, if the information is confidential) upon request or as otherwise ordered by the Commission. If the Parties do not agree upon a negotiated rate and the Commission does not establish an Interim Rate for a new product or service or one that was previously offered under Section 251 with an Unapproved Rate, CLEC may order, and Qwest shall provision, such product or service using such Qwest proposed rate until the Commission orders a rate. In such</p>	

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	<p><u>cases, the Qwest proposed rate (including during the aforementioned sixty (60) Day period) shall be an Interim Rate under this Agreement.</u></p> <p><u>22.6.1.1 For a UNE or process that Qwest previously offered without charge, the rates in Exhibit A do not apply until Qwest obtains Commission approval or the Parties agree to a negotiated rate. If the Parties do not agree on a negotiated rate, the Commission does not establish an Interim rate, and Qwest does not submit a proposed rate and related cost support to the Commission within the time period described in Section 22.6.1 for a new product or service or one that was previously offered under Section 251 with an Unapproved Rate, the Unapproved rate(s) in Exhibit A do not apply. Qwest must provision such products and services pursuant to the terms of this Agreement, at no additional charge, until Qwest submits the rate and related cost support to the Commission for approval.</u></p>	<p>In the context of the 271 Cost Docket, the Minnesota Commission required that, for new elements for which there is no Commission-approved rate, Qwest would be required to file its proposed rate, including cost support for the proposed rate, for Commission review and approval within 60 days of offering the element. In recommending the adoption of such a process, the ALJ observed, “There should be an established process for obtaining Commission approval of any element not priced in the Generic Cost Case or in this proceeding. There is clearly a need for a procedure to establish new UNE prices or modify discrete prices without waiting for resource-intensive generic cost cases.” (271 Cost Docket – ALJ ¶222.)</p>	<p>cases, the Qwest proposed rate (including during the aforementioned sixty (60) Day period) shall be an Interim Rate under this Agreement.</p> <p>22.6.1.1 For a UNE or process that Qwest previously offered without charge, the rates in Exhibit A do not apply until Qwest obtains Commission approval or the Parties agree to a negotiated rate. If the Parties do not agree on a negotiated rate, the Commission does not establish an Interim rate, and Qwest does not submit a proposed rate and related cost support to the Commission within the time period described in Section 22.6.1 for a new product or service or one that was previously offered under Section 251 with an Unapproved Rate, the Unapproved rate(s) in Exhibit A do not apply. Qwest must provision such products and services pursuant to the terms of this Agreement, at no additional charge, until Qwest submits the rate and related cost support to the Commission for approval.</p>	

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Issue 22-90(a) Exhibit A Sections 8.1.1.2; §.3.2.7.5; §.3.2.7.6; §.3.2.7.7; §.3.2.7.8; 8.8.1 Adjustments for prior Commission decision	Reference REC NRC Cable Augment Quote Prep Fee 8.1.1.2 \$0.00 -48 Volt DC Power Cable-100 Amp 8.3.2.7.5 \$26.43 \$14,153.23 200 Amp 8.3.2.7.6 \$52.86 \$28,306.46 300 Amp 8.3.2.7.7 \$79.29 \$42,459.69 400 Amp 8.3.2.7.8 \$105.72 \$56,612.92 ICDF Collo – Quote Prep Fee 8.8.1 \$0.00	Closed language in the ICA defines rates not approved in a cost case as interim rates. (Section 22.4.1.1.) Both Eschelon and Qwest are proposing interim rates in this proceeding for elements with unapproved rates. As between the two proposed rates for each element, the Commission should choose Eschelon's interim rate proposals. Eschelon's interim rate proposals are appropriate because they either reflect rates that Qwest currently offers to other CLECs, are reasonable in light of Qwest's failure to provide any cost support, or incorporate findings from prior Commission decisions with respect to Collocation, Non-recurring and recurring rates. Until such time that Qwest seeks permanent rates to replace interim rates, Qwest should be required to reflect prior Commission decisions in its interim rate proposals. Eschelon's interim rate proposals are reasonable and should be adopted.	Reference REC NRC Cable Augment Quote Prep Fee 8.1.1.2 \$1,512.51 -48 Volt DC Power Cable-100 Amp 8.3.2.7.5 \$36.06 \$19,457.53 200 Amp 8.3.2.7.6 \$68.30 \$36,851.10 300 Amp 8.3.2.7.7 \$111.77 \$60,306.77 400 Amp 8.3.2.7.8 \$159.69 \$86,162.16 ICDF Collo – Quote Prep Fee 8.8.1 \$1,512.51	Qwest does not agree.
Issue 22-90(b)	Reference REC NRC Collo Space Option Admin Fee	See Issue 22-90(a).	Reference REC NRC Collo Space Option Admin Fee	Qwest does not agree.

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Exhibit A Section 8.1.14; 8.6.1.1; 8.6.1.2; 8.6.2.2.1; 8.6.2.2.2; 8.7.1.2; 8.7.2.4 Collocation cost study adjustments	8.1.14 <u>\$1,681.94</u> Remote Collo-Space, per Standard Mounting Unit 8.6.1.1 <u>\$0.71</u> <u>\$793.74</u> FDI Terminations, per 25 Pair 8.6.1.2 <u>\$0.41</u> <u>\$511.09</u> Adjacent Collo-Space (per Standard Mounting Unit 8.6.2.2.1 <u>\$0.71</u> <u>\$793.74</u> FDI Terminations, per 25 Pair 8.6.2.2.2 <u>\$0.41</u> <u>\$511.09</u> CLEC-CLEC Fiber Flat Charge, per Request 8.7.1.2 <u>\$1,301.21</u> Cable Racking, Fiber, per Request 8.7.2.4 <u>\$101.79</u>		8.1.14 <u>\$1,828.19</u> Remote Collo-Space, per Standard Mounting Unit 8.6.1.1 <u>\$0.99</u> <u>\$862.76</u> FDI Terminations, per 25 Pair 8.6.1.2 <u>\$0.58</u> <u>\$555.53</u> Adjacent Collo-Space (per Standard Mounting Unit 8.6.2.2.1 <u>\$0.99</u> <u>\$862.76</u> FDI Terminations, per 25 Pair 8.6.2.2.2 <u>\$0.58</u> <u>\$555.53</u> CLEC-CLEC Fiber Flat Charge, per Request 8.7.1.2 <u>\$1,423.14</u> Cable Racking, Fiber, per Request 8.7.2.4 <u>\$109.72</u>	
Issue 22- 90(c) Exhibit A Sections 8.8.4 (NRC); 8.15.2.1; 8.15.2.2	Reference REC NRC DS3 Circuit, per Two Legs 8.8.4 <u>\$614.02</u> Special Site Assessment Fee 8.15.2.1 <u>\$529.00</u> Network Systems Assessment Fee	See Issue 22-90(a).	Reference REC NRC DS3 Circuit, per Two Legs 8.8.4 <u>\$1,228.04</u> Special Site Assessment Fee 8.15.2.1 <u>\$1,058.00</u> Network Systems Assessment Fee	Qwest does not agree.

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Utah Disputed Issues List – April 30, 2007
Eschelon/Qwest ICA Negotiations Docket Number _____

Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
ICDF Collocation & Special Sites	8.15.2.2 \$831.50		8.15.2.2 \$1,663.00	
Issue 22-90(d) Exhibit A Sections 8.13.1.1; 8.13.1.2.1; 8.13.1.2.2; 8.13.1.2.3; 8.13.1.3; 8.13.1.4; 8.13.2.1 DC Power Reduction	Reference REC NRC Quote Preparation Fee, per Office 8.13.1.1 \$441.00 Power Reduction/Restoration, Less than 60 Amps 8.13.1.2.1 \$346.00 Power Reduction/Restoration, Equal to 60 Amps 8.13.1.2.2 \$346.00 Power Reduction/Restoration, Greater Than 60 Amps 8.13.1.2.3 \$587.00 Power Off, per Feed Set, per Secondary Feed 8.13.1.3 \$597.60 Power Maintenance Charge, per Fuse Set	See Issue 22-90(a).	Reference REC NRC Quote Preparation Fee, per Office 8.13.1.1 \$812.65 Power Reduction/Restoration, Less than 60 Amps 8.13.1.2.1 \$631.94 Power Reduction/Restoration, Equal to 60 Amps 8.13.1.2.2 \$888.76 Power Reduction/Restoration, Greater Than 60 Amps 8.13.1.2.3 \$1,116.51 Power Off, per Feed Set, per Secondary Feed 8.13.1.3 \$1,070.64 Power Maintenance Charge, per Fuse Set	Qwest does not agree.

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
	8.13.1.4 \$37.00 Power Restoration, QPF per Office 8.13.2.1 \$441.00 Power Restoration-Less than 60 Amps 8.13.2.2.1.1 \$346.00 Equal to 60 Amps 8.13.2.2.1.2 \$346.00 Greater than 60 Amps 8.13.2.2.1.3 \$587.00		8.13.1.4 \$51.58 Power Restoration, QPF per Office 8.13.2.1 \$812.65 Power Restoration-Less than 60 Amps 8.13.2.2.1.1 \$631.94 Equal to 60 Amps 8.13.2.2.1.2 \$888.76 Greater than 60 Amps 8.13.2.2.1.3 \$1,116.51	
Issue 22- 90(e) Exhibit A Sections 9.6.12; 9.7.6; 9.23.6.2.1.1; 9.23.6.2.1.2; 9.23.6.3.1.1; 9.23.6.3.1.2; 9.23.6.4.1.1; 9.23.6.4.1.2; 9.23.6.8.1; 9.23.6.8.2; 9.23.7.7.1; 9.23.7.7.2; 10.7.10	Reference REC NRC Private Line/Special Access to UDIT Conversion 9.6.12 \$67.98 Dark Fiber Splice 9.7.6 \$363.72 Loop Mux, DS0 2-Wire, Analog 9.23.6.2.1.1 First \$129.39 9.23.6.2.2.2 Each Addl \$84.44 Loop Mux DS0 4-Wire, Analog 9.23.6.3.1.1 First \$129.39 9.23.6.3.1.2 Each Addl \$84.44	See Issue 22-90(a).	Reference REC NRC Private Line/Special Access to UDIT Conversion 9.6.12 \$115.34 Dark Fiber Splice 9.7.6 \$683.74 Loop Mux, DS0 2-Wire, Analog 9.23.6.2.1.1 First \$243.24 9.23.6.2.2.2 Each Addl \$158.74 Loop Mux DS0 4-Wire, Analog 9.23.6.3.1.1 First \$129.39 9.23.6.3.1.2 Each Addl \$84.44	Qwest does not agree.

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Issue#/ ¹ Section# ²	ESCHELON PROPOSED LANGUAGE ³	ESCHELON POSITION ⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
NRC Cost Study Adjustments	Loop Mux DS1 Loop 9.23.6.4.1.1 First <u>\$163.67</u> 9.23.6.4.1.2 Each Addl <u>\$119.83</u> LMC Rearrangement – DS0 9.23.6.8.1 <u>\$76.25</u> LMC Rearrangement – High Capacity 9.23.6.8.2 <u>\$86.54</u> EEL Rearrangement – DS0 9.23.7.7.1 <u>\$76.25</u> EEL Rearrangement – High Capacity 9.23.7.7.2 <u>\$86.54</u> Poles, Ducts, ROWs-Transfer of Responsibility 10.7.10 <u>\$70.07</u>		Loop Mux DS1 Loop 9.23.6.4.1.1 First <u>\$163.67</u> 9.23.6.4.1.2 Each Addl <u>\$119.83</u> LMC Rearrangement – DS0 9.23.6.8.1 <u>\$137.50</u> LMC Rearrangement – High Capacity 9.23.6.8.2 <u>\$156.07</u> EEL Rearrangement – DS0 9.23.7.7.1 <u>\$137.50</u> EEL Rearrangement – High Capacity 9.23.7.7.2 <u>\$156.07</u> Poles, Ducts, ROWs-Transfer of Responsibility 10.7.10 <u>\$131.73</u>	
Issues 24-91-24-92 Intentionally Left Blank				
Section 24.3.2 – See Issue 9-58(e) (Section 9.23.4.4.3.1)				

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Issue#¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
<i>above</i>				
Section 24.4 and subparts – See Issue 9- 61 (Section 9.23.9) <i>above</i>				
For Exhibit A, Section 8.1.1.2– See Issue 22- 90(a) <i>above</i>				
For Exhibit A, Section 8.1.14 – See Issue 22- 90(b) <i>above</i>				
For Exhibit A, Sections 8.3.2.7.5; 8.3.2.7.6; 8.3.2.7.7 and 8.3.2.7.8 – See Issue 22- 90(a) <i>above</i>				
For Exhibit A, Sections 8.6.1.1; and 8.6.1.2 – See				

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Issue#¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Issue 22-90(b) <i>above</i>				
For Exhibit A, Section 8.6.2.2.1 – <i>See Issue 22-90(b) above</i>				
For Exhibit A, Section 8.7.1.2– <i>See Issue 22-90(b) above</i>				
For Exhibit A, Section 8.7.2.4 – <i>See Issue 22-90(b) above</i>				
For Exhibit A, Section 8.8.1 – <i>See Issue 22-90(a) above</i>				
For Exhibit A, Section 8.8.4 (NRC) – <i>See Issue</i>				

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Issue#¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
22-90(c) <i>above</i>				
For Exhibit A, Sections 8.13.1.1; 8.13.1.2 & subparts; 8.13.1.3; 8.13.1.4; 8.13.1.5 and 8.13.2 and subparts – <i>See Issue 22-90(d) above</i>				
For Exhibit A, Sections 8.15.2.1 and 8.15.2.2 – <i>See Issue 22-90(c) above</i>				
For Exhibit A, Section 9.6.1.2 – <i>See Issue 22-90(e) above</i>				
For Exhibit A, Section 9.7.6 – <i>See</i>				

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Issue#¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
Issue 22-90(e) <i>above</i>				
For Exhibit A, Section 9.20.13.1; 9.20.13.2 and 9.20.13.3 – <i>See Issue 4-5(c) above</i>				
For Exhibit A, Section 9.20.14 – <i>see</i> – Issue 12-67 (g)				
For Exhibit A, Section 9.23.6.1.1 and 9.23.6.1.2 - <i>See Issue 9-61(c) above</i>				
For Exhibit A, Section 9.23.6.2.1.1 and 9.23.6.2.1.2 – <i>See Issue 22-90(e)</i>				

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Issue#¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
<i>above</i>				
For Exhibit A, Section 9.23.6.3.1.1 and 9.23.6.3.1.2 – See Issue 22-90(e) <i>above</i>				
For Exhibit A, Section 9.23.6.4.1.1 and 9.23.6.4.1.2 – See Issue 22-90(e) <i>above</i>				
For Exhibit A, Section 9.23.6.6.1 and 9.23.6.6.2 and subparts - See Issue 9-61(c) <i>above</i>				
For Exhibit A, Section 9.23.6.8.1 and 9.23.6.8.2 –				

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<i>See Issue 22-90(e) above</i>				
For Exhibit A, Section 9.23.7.7.1 and 9.23.7.7.2 – <i>See Issue 22-90(e) above</i>				
For Exhibit A, Section 10.7.10 <i>See Issue 22-90(e) above</i>				
EXHIBIT C				
Exhibit C, 2.0 Rearrangement – <i>See Issue 1-1 (Section 1.7.2 of ICA) above</i>				
Exhibit C, 6.0– <i>See Issue 9-61 (Sections 9.23.9 [24.4] of ICA)</i>				

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Issue#¹ Section#²	ESCHELON PROPOSED LANGUAGE³	ESCHELON POSITION⁴	QWEST PROPOSED LANGUAGE	QWEST POSITION (SEE FOOTER)
<i>above</i>				
Exhibit C, 9.0 (LIS Trunking) – See Issue 1-1 (Section 1.7.2 of ICA) <i>above</i>				
EXHIBIT I				
Exhibit I – See Issue 1-1 (Section 1.7.2 of ICA) <i>above</i>				
EXHIBITS N & O				
Exhibits N & O – See Issue 1-1 (Section 1.7.2 of ICA) <i>above</i>				

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