

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of the Petition of)
Eschelon Telecom of Utah, Inc. for)
Arbitration with Qwest Corporation,)
Pursuant to 47 U.S.C. Section 252 of the)
Federal Telecommunications Act of 1996)**

DOCKET NO. 07-2263-03

**DIRECT TESTIMONY
OF
WILLIAM R. EASTON
FOR
QWEST CORPORATION**

**(Disputed Issues 2-3, 2-4, 5-6, 5-7, 5-7(a), 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88,
22-88(a), 22-89, 22-90 and 22-90(a-e))**

QWEST EXHIBIT 2

June 29, 2007

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle Washington. I am employed as Director – Wholesale Advocacy. I am testifying on behalf of Qwest Corporation (“Qwest”).

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL BACKGROUND AND TELEPHONE COMPANY EXPERIENCE.

A. I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In 1980, I received a Masters of Business Administration from the University of Washington. In addition, I am a Certified Management Accountant.

I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in financial management with U S WEST, and now with Qwest, including staff positions in the Treasury and Network organizations. From 1996 through 1998, I was Director – Capital Recovery. In this role I negotiated depreciation rates with state commission and FCC staffs and testified in various regulatory proceedings. From 1998 until 2001, I was a Director of Wholesale Finance, responsible for the management of Wholesale revenue streams from a financial perspective. In this capacity I worked closely with the Product Management organization on its product

1 offerings and projections of revenue. In October of 2001, I moved from Wholesale
2 Finance to the Wholesale Advocacy group, where I am currently responsible for
3 advocacy related to Wholesale products and services. In this role I work
4 extensively with the Product Management, Network and Costing organizations.

5
6 **Q. HAVE YOU TESTIFIED PREVIOUSLY IN UTAH?**

7 A. Yes I have. I have testified previously in Docket Nos. 94-999-01, 95-049-22, 97-
8 049-16, 97-2227-01, 01-049-85, 03-049-19, 04-2277-02 and 06-2249-01.

9
10
11 **II. PURPOSE OF TESTIMONY**

12
13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my testimony is to explain Qwest's positions, and the policies
15 underlying those positions related to Disputed Issues Nos. 2-3, 2-4, 5-6, 5-7, 5-7(a),
16 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88, 22-88(a), 22-89, 22-90 and 22-
17 90(a-e). My testimony will show that the Qwest position on these issues strikes a
18 commercially reasonable and appropriate balance between meeting the needs and
19 concerns of both Eschelon and Qwest.

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III. SECTION 2 DISPUTED ISSUES

Issue No. 2-3

Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 2-3.

A. Issue No. 2-3 is one of two disputed issues related to section 2.2 of the Interconnection Agreement (“ICA”). Issue 2-3 has to do with the rates in Exhibit A and when they apply. Qwest has attempted to add clarifying language in section 2.2 that Eschelon finds objectionable.

Q. WHAT IS THE LANGUAGE THAT QWEST IS ATTEMPTING TO ADD?

A. Qwest has proposed the inclusion of the following sentence:

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.

Q. WHY IS QWEST PROPOSING TO ADD THIS LANGUAGE?

A. Qwest is attempting to avoid ambiguity in situations where a Commission order does not specifically state a true-up requirement as part of a cost docket order. Qwest will comply with an order that requires a true-up of past billing. However, in the absence of such an order, the appropriate implementation process is to apply the ordered rates prospectively from the effective date of the order.

1 **Q. ESCHELON ARGUES THAT THE LANGUAGE IN SECTION 22**
2 **ADDRESSES THIS ISSUE. DO YOU AGREE?**

3 A. No. Section 22 is silent as to what is to occur when a Commission order does not
4 specify a true-up of past billing. Section 22.4.1.1 states:

5

6 22.4.1.1 If the Approved Interim Rates are reviewed and changed by
7 the Commission, the Parties shall incorporate the rates established by the
8 Commission into this Agreement pursuant to Section 2.2 of this
9 Agreement. Such Commission-approved rates shall be effective as of the
10 date required by a legally binding order of the Commission.
11

12 **Q. WHY IS PROSPECTIVE APPLICATION OF RATES GENERALLY THE**
13 **MORE APPROPRIATE PROCESS?**

14 A. Qwest recognizes that Commission ordered rates could go up or could go down as a
15 part of future proceedings. Businesses make decisions regarding the products that
16 they purchase and the products they offer based in part on estimates of the costs of
17 each product and the revenues the product will generate. Applying rates
18 retroactively prevents businesses from making these decisions in an informed
19 manner. Furthermore, the retroactive true up of rates has at times led to protracted
20 disputes regarding the appropriate amount of true up payments. Applying rates
21 prospectively prevents such disputes and allow companies to make informed
22 business decisions regarding how to compete in the market.

23

1 **Q. DOES THE ADDITION OF THIS LANGUAGE ADD AMBIGUITY AS**
2 **ESCHELON ASSERTS?**

3 A. No. In fact, just the opposite is true. As I just explained, the Qwest language
4 provides clarity about the application of rates should there be any question
5 regarding the effective date.

6
7 **Q. DOES THE QWEST LANGUAGE TAKE AWAY ANY DISCRETION**
8 **FROM THE STATE COMMISSIONS?**

9 A. No. The language states that rates should be applied on a prospective basis “unless
10 otherwise ordered by the Commission.”

11

12 **Q. HAS ESCHELON NOW OFFERED ALTERNATIVE LANGUAGE FOR**
13 **ISSUE NO. 2-3?**

14 A. Yes. Eschelon is now offering to add a clarifying sentence in section 2.2 which
15 reads as follows:

16

17 The rates in Exhibit A and when they apply are further addressed in
18 Section 22. Generally, with respect to rates, this Section 2.2 addresses
19 changes to rates that have been previously approved by the Commission,
20 and Section 22 (Pricing) also addresses rates that have not been previously
21 approved by the Commission (Unapproved Rates).

22

23 **Q. DOES QWEST ACCEPT THE NEW ESCHELON LANGUAGE?**

24 A. No. It is not clear to Qwest what the addition of this language accomplishes. The
25 Qwest language is very clear about when rates apply. Under Qwest’s proposal, one

1 looks first to the commission order to determine when a rate applies. If the
2 commission order fails to address the issue, a rate change is applied prospectively.

3

4 **Q. HAS ESCHELON NOW ALSO PROPOSED ADDITIONAL LANGUAGE**
5 **FOR SECTION 22.4.1.2 THAT CLARIFIES THAT RATES ORDERED BY**
6 **THE COMMISSION SHOULD BE APPLIED ON A PROSPECTIVE BASIS**
7 **UNLESS ORTHERWISE ORDERED BY THE COMMISSION?**

8 A. Yes. Despite Eschelon's earlier claim that such language is not necessary, Eschelon
9 has now agreed to add clarifying language.

10

11

12 **Issue No. 2-4**

13

14 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 2-4.**

15 A. Disputed Issue No. 2-4 relates to the changes in law provision of section 2.2 and
16 whether they are effective on the date of the change in law or effective on the date
17 that the interconnection agreement is amended.

18

19 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

20 A. Qwest is proposing the following language:

21 . When a regulatory body or court issues an order causing a change in law
22 and that order does not include a specific implementation date, a Party
23 may provide notice to the other Party within thirty (30) Days of the
24 effective date of that order and any resulting amendment shall be deemed
25 effective on the effective date of the legally binding change or

1 modification of the Existing Rules for rates, and to the extent practicable
2 for other terms and conditions, unless otherwise ordered. In the event
3 neither Party provides notice within thirty (30) Days, the effective date of
4 the legally binding change shall be the effective date of the amendment
5 unless the Parties agree to a different date.
6

7 **Q. WHAT LANGUAGE IS ESCHELON PROPOSING?**

8 A. Eschelon has proposed the following changes to Qwest's language

9 . ~~When a regulatory or court issues an order causing a change in law and~~
10 ~~that order does not include a specific implementation date, a Party may~~
11 ~~provide notice to the other Party within thirty (30) Days of the effective~~
12 ~~date of an order issuing a legally binding change, a~~Any amendment shall
13 be deemed effective on the effective date of the legally binding change or
14 modification of the Existing Rules for rates, and to the extent practicable
15 for other terms and conditions, unless otherwise ordered. ~~In the event~~
16 ~~neither Party provides notice within thirty (30) Days, the effective date of~~
17 ~~the legally binding change shall be the effective date of the amendment~~
18 ~~unless the Parties agree to a different date.~~
19

20 **Q. WHY SHOULD THE QWEST LANGUAGE BE ADOPTED?**

21 A. Many change of law orders do not provide clear implementation dates and require
22 the parties to negotiate changes to the ICA. Generally, one party or the other
23 obtains an advantage as a result of the change in law and the other party benefits
24 from delaying implementation. Qwest's proposed language accomplishes two
25 primary goals: 1) it removes the incentive for either party to delay negotiations of a
26 change in law; and 2) it eliminates the possibility, and subsequent significant
27 financial impact, of either party attempting to apply change in law retroactively
28 over a long period of time.

29

30 In the absence of clear direction in an FCC or court order, Qwest urges the
31 Commission to adopt the language proposed by Qwest because it provides incentive

1 to the parties to quickly either resolve their differences or bring their disputes to the
2 Commission. The language proposed by Qwest will reduce litigation by removing
3 one potential issue from dispute and will ensure that the parties have an incentive to
4 quickly resolve change of law issues that arise in the future.

5
6 **Q. IS ESCHELON NOW PROPOSING ALTERNATIVE LANGUAGE FOR**
7 **ISSUE NO. 2-4?**

8 A. Yes. Eschelon has now offered alternative language related to issue no. 2-4 -
9 change of law. The existing agreed upon language provides that the Agreement
10 “shall” be amended to reflect a legally binding modification or change of the
11 Existing Rules. Eschelon proposes to add a sentence stating, “Each Party has an
12 obligation to ensure that the Agreement is amended accordingly.” In addition,
13 Eschelon proposes to insert the following language.

14
15 Each Party reserves its rights with respect to the effective date of a legally
16 binding modification or change of the Existing Rules and, if different,
17 other dates for implementation or application of an order, if any. If a
18 Party desires a particular deadline or time period for application or
19 implementation of any aspect of a proposed order, the Party may request
20 under the Commission’s regularly established rules that the Commission
21 establish a specific implementation date, stay the order, or provide other
22 such relief as applicable. If, however, the Commission enters an order that
23 is silent on the issue, the order shall be implemented and applied on a
24 prospective basis from the date that the order is effective either by
25 operation of law or as otherwise stated in the order (such as “effective
26 immediately” or a specific date), unless subsequently otherwise ordered by
27 the Commission or, if allowed by the order, agreed upon by the Parties.
28

1 Qwest objects to this new language. Rather than providing a clear process for how
2 the parties are to proceed in cases of change of law as the Qwest language does, the
3 new Eschelon language appears only to preserve the parties' rights to resolve this
4 issue at a future time.

5
6 **IV. SECTION 5 DISPUTED ISSUES**
7

8 **Q. WHAT ARE THE ISSUES THAT ARE AT DISPUTE IN SECTION 5?**

9 A. There are nine issues at dispute in section 5. All but one of the issues concern
10 payment and deposit requirements and fall into three general subparts related to:

- 11 ▪ the time at which a party may discontinue processing orders or
12 disconnect service due to the other party's failure to pay
13 undisputed bills;
- 14 ▪ the definition of "repeatedly delinquent"; and
- 15 ▪ a party's right to review a credit report and increase deposit
16 requirements.

17
18 Qwest's proposals for these issues are consistent with the practices it follows with
19 other carriers in Utah. Qwest's proposals are designed to provide it with a
20 meaningful opportunity to protect against losses in the event that Eschelon fails to
21 pay or is unable to pay its bills.

1 Eschelon seeks to decrease Qwest's ability to collect its bills by requiring Qwest to
2 clear hurdles such as waiting for commission review before discontinuing order
3 processing (Issues 5-6) or demanding a deposit (Issues 5-12, 5-13, 5-14). Eschelon
4 seeks to water down its obligation to pay bills by limiting its obligations to pay not
5 to the amount of the bill, but rather an amount that is close to the amount billed.
6 (Issue 5-8). Even then, Eschelon seeks to water down that obligation to re-define
7 "repeatedly delinquent" in such a manner that it would only be obligated to pay its
8 bills on time four months a year to avoid triggering a potential deposit requirement.
9 (Issue 5-9).

10
11 Eschelon proposes to further limit Qwest's ability to seek a deposit by attempting to
12 limit that right to its weakened definition of "repeatedly delinquent" thereby
13 eliminating other possibilities where a deposit request would be appropriate (Issue
14 5-13). Even in that situation, Eschelon seeks to require Qwest to either seek
15 Commission approval or wait for a Commission decision to demand a deposit.
16 (Issue 5-12).

17
18 The cumulative effect of these proposals is to make it very difficult for Qwest to
19 take effective action to collect valid, undisputed bills owed by Eschelon. This
20 greatly increases Qwest's financial exposure. In the event Eschelon were to
21 experience financial difficulties, Eschelon's proposals could prove disastrous for

1 Qwest, particularly if a number of CLECs opt in to this agreement and then CLECs
2 face difficult financial times.

3
4
5 **Issue No. 5-6**

6
7 **Q. PLEASE DESCRIBE ISSUES NO. 5-6?**

8 A. Issue No. 5-6 is related to section 5.4.2 of the ICA that deals with the
9 discontinuation of taking orders in cases of non-payment.

10
11 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR SECTION 5.4.2?**

12 A. Qwest proposes the following language:

13 5.4.2 One Party may discontinue processing orders for relevant services
14 for the failure of the other Party to make full payment, less any disputed
15 amount as provided for in Section 21.8 of this Agreement, for the relevant
16 services provided under this Agreement within thirty (30) Days following
17 the Payment Due Date. The Billing Party will notify the other Party in
18 writing and the Commission on a confidential basis at least ten (10)
19 business days prior to discontinuing the processing of orders for the
20 relevant services. If the Billing Party does not refuse to accept additional
21 orders for the relevant services on the date specified in the ten (10)
22 business days notice, and the other Party's non-compliance continues,
23 nothing contained herein shall preclude the Billing Party's right to refuse
24 to accept additional orders for the relevant services from the non-
25 complying Party without further notice. Additionally, the Billing Party
26 may require a deposit (or additional deposit) from the billed Party,
27 pursuant to Section 5.4.5. The Billing Party shall resume order processing
28 without unreasonable delay upon receipt of full payment of all charges,
29 and payment of a deposit, if any, for the relevant services not disputed in
30 good faith under this Agreement. Both Parties agree, however, that the
31 application of this provision will be suspended for the initial three (3)

1 Billing cycles of this Agreement and will not apply to amounts billed
2 during those three (3) cycles. In addition to other remedies that may be
3 available at law or equity, the billed Party reserves the right to seek
4 equitable relief, including injunctive relief and specific performance.
5

6 **Q. WHAT LANGUAGE IS ESCHELON PROPOSING?**

7 A. Eschelon has two alternative proposals for section 5.4.2.
8

9 **Q. WHAT IS THE FIRST ESCHELON PROPOSAL?**

10 A. Eschelon seeks to insert words requiring Commission approval at the beginning of
11 section 5.4.2:

12 5.4.2 **With the Commission's approval,** One Party may discontinue
13 processing orders for relevant services for the failure of the other
14 Party to make full payment, less any disputed amount as provided
15 for in Section 21.8 of this Agreement, for the relevant services
16 provided under this Agreement within thirty (30) Days following
17 the Payment Due Date.
18

19 **Q. WHAT LANGUAGE DOES ESCHELON PROPOSE AS A SECOND
20 ALTERNATIVE?**

21 A. Eschelon's alternative proposal is to insert an additional sentence into the Qwest
22 proposed language as indicated below:

23
24 5.4.2 One Party may discontinue processing orders for relevant services
25 for the failure of the other Party to make full payment, less any disputed
26 amount as provided for in Section 21.8 of this Agreement, for the relevant
27 services provided under this Agreement within thirty (30) Days following
28 the Payment Due Date. The Billing Party will notify the other Party in
29 writing and the Commission on a confidential basis at least ten (10)
30 business days prior to discontinuing the processing of orders for the
31 relevant services. If the Billing Party does not refuse to accept additional
32 orders for the relevant services on the date specified in the ten (10)
33 business days notice, and the other Party's non-compliance continues,

1 nothing contained herein shall preclude the Billing Party's right to refuse
2 to accept additional orders for the relevant services from the non-
3 complying Party without further notice. **If the billed Party asks the**
4 **Commission to prevent discontinuance of order processing and/or**
5 **rejection of orders (e.g., because delay in submitting dispute or**
6 **making payment was reasonably justified due to inaccurate or**
7 **incomplete Billing), the Billing Party will continue order processing**
8 **while the proceedings are pending, unless the Commission orders**
9 **otherwise.** Additionally, the Billing Party may require a deposit (or
10 additional deposit) from the billed Party, pursuant to Section 5.4.5. The
11 Billing Party shall resume order processing without unreasonable delay
12 upon receipt of full payment of all charges, and payment of a deposit, if
13 any, for the relevant services not disputed in good faith under this
14 Agreement. Both Parties agree, however, that the application of this
15 provision will be suspended for the initial three (3) Billing cycles of this
16 Agreement and will not apply to amounts billed during those three (3)
17 cycles. In addition to other remedies that may be available at law or
18 equity, the billed Party reserves the right to seek equitable relief, including
19 injunctive relief and specific performance.
20

21 **Q. WHY IS QWEST OPPOSED TO THE TWO ALTERNATIVES PROPOSED**
22 **BY ESCHELON?**

23 A. Qwest is entitled to timely payment for services rendered and to take remedial
24 action if the risk of non-payment is apparent. Although the language in section
25 5.4.2 is written as if it applies to either party, in practice, it applies only to Qwest
26 because Qwest is the only party that is processing orders under the ICA. Therefore,
27 this section restricts only Qwest's ability to discontinue processing Eschelon's
28 orders if Eschelon fails to pay.

29
30 Qwest's language provides Eschelon with 30 days before the billed amount is due
31 and another 30 days before Qwest would discontinue processing orders if Eschelon
32 failed to pay. Further, Eschelon may invoke a dispute resolution process under

1 section 21.8 if it has a good faith dispute about its bill. Under this process,
2 Eschelon is not required to pay disputed amounts until the dispute is resolved.
3 Eschelon's first proposal related to discontinuing orders would prevent Qwest from
4 taking action unless and until it obtains Commission approval. Placing the burden
5 on Qwest to file for Commission action and allowing Eschelon to continue to incur
6 debt while that action is pending as is required under Eschelon's first alternative is
7 unreasonable in light of the fact that it is Eschelon's obligation to pay its undisputed
8 bills in a timely fashion.

9
10 Eschelon's second alternative to Qwest's language is equally inequitable. Whereas
11 Eschelon's first alternative asks the Commission to adopt language requiring Qwest
12 to obtain Commission **approval** prior to discontinuing the processing of orders as a
13 result of Eschelon's own failure to pay its bills in a timely fashion, Eschelon's
14 second alternative proposes language whereby the simple act of its "**asking**" the
15 Commission to prevent the discontinuation of order processing would prevent
16 Qwest from protecting itself from mounting unpaid debt and force it to continue to
17 process orders pending the outcome of a proceeding. This places Qwest at
18 additional risk of providing service to the CLEC without assurance of being
19 compensated.

20
21 While it recognizes the significance of discontinuing order processing, Qwest
22 believes it serves no useful purpose to have the Commission get involved in
23 collection issues at this stage. Because this issue involves undisputed bills,

1 Eschelon should have no problem making a payment and resolving the situation. If
2 there is a dispute as to what constitutes an undisputed bill, Qwest may not, contrary
3 to Eschelon's assertion, unilaterally take such action pursuant to the terms of the
4 interconnection agreement. Finally, even if Qwest ignores these restrictions,
5 Eschelon has recourse under the provisions of the ICA if it believes that Qwest is
6 treating it unfairly. The Commission should become involved in issues between the
7 parties only as a last resort, not as a normal course of business.

8
9 **Q. DOES THE LANGUAGE IN QWEST'S UTAH SGAT REQUIRE**
10 **COMMISSION APPROVAL TO SUSPEND ORDER ACTIVITY IN CASES**
11 **OF NON-PAYMENT?**

12 A. No. The language in the SGAT, which was developed by the CLECs and Qwest
13 during the Section 271 workshops and approved by the Commission, does not
14 require Commission approval to suspend order activity in cases of non-payment.

15
16
17 **Issue No. 5-7**

18
19 **Q. PLEASE DESCRIBE ISSUE NO. 5-7.**

20 A. Issue No 5-7 is related to section 5.4.3 of the ICA that deals with the disconnection
21 of service in cases of non-payment.

22

1 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR SECTION 5.4.3?**

2 A. Qwest proposes the following language:

3 5.4.3 The Billing Party may disconnect any and all relevant
4 services for failure by the billed Party to make full payment, less any
5 disputed amount as provided for in Section 21.8 of this Agreement, for the
6 relevant services provided under this Agreement within sixty (60) Days
7 following the Payment Due Date. For Resale products pursuant to Section
8 6, the billed Party will pay the applicable tariffed non-recurring charge
9 less the wholesale discount set forth in Exhibit A, required to reconnect
10 each resold End User Customer line disconnected pursuant to this
11 paragraph. The Billing Party will notify the billed Party in at least ten (10)
12 business days prior to disconnection of the unpaid service(s). In case of
13 such disconnection, all applicable undisputed charges, including
14 termination charges, if any, shall become due. If the Billing Party does
15 not disconnect the billed Party's service(s) on the date specified in the ten
16 (10) business days notice, and the billed Party's noncompliance
17 continues, nothing contained herein shall preclude the Billing Party's right
18 to disconnect any or all relevant services of the non-complying Party
19 without further notice. For reconnection of the non-paid service to occur,
20 the billed Party will be required to make full payment of all past and
21 current undisputed charges under this Agreement for the relevant services.
22 Additionally, the Billing Party may request a deposit (or recalculate the
23 deposit) as specified in Sections 5.4.5 and 5.4.7 from the billed Party,
24 pursuant to this Section. Both Parties agree, however, that the application
25 of this provision will be suspended for the initial three (3) Billing cycles of
26 this Agreement and will not apply to amounts billed during those three (3)
27 cycles. In addition to other remedies that may be available at law or
28 equity, each Party reserves the right to seek equitable relief, including
29 injunctive relief and specific performance
30

31 **Q. WHAT LANGUAGE DOES ESCHELON PROPOSE?**

32 A. Eschelon proposes to revise the Qwest language by adding the two passages which
33 are underlined in bold below:

34 5.4.3 **With the Commissions approval pursuant to Section**
35 **5.13.1, F**the Billing Party may disconnect any and all relevant services
36 for failure by the billed Party to make full payment, less any disputed
37 amount as provided for in Section 21.8 of this Agreement, for the relevant
38 services provided under this Agreement within sixty (60) Days following
39 the Payment Due Date. For Resale products pursuant to Section 6, the

1 billed Party will pay the applicable tariffed non-recurring charge less the
2 wholesale discount set forth in Exhibit A, required to reconnect each
3 resold End User Customer line disconnected pursuant to this paragraph.
4 The Billing Party will notify the billed Party in at least ten (10) business
5 days prior to disconnection of the unpaid service(s). In case of such
6 disconnection, all applicable undisputed charges, including termination
7 charges, if any, shall become due. If the Billing Party does not disconnect
8 the billed Party's service(s) on the date specified in the ten (10) business
9 days notice, and the billed Party's noncompliance continues, nothing
10 contained herein shall preclude the Billing Party's right to disconnect any
11 or all relevant services of the non-complying Party without further notice,
12 **if disconnection has been approved by the Commission.** For
13 reconnection of the non-paid service to occur, the billed Party will be
14 required to make full payment of all past and current undisputed charges
15 under this Agreement for the relevant services. Additionally, the Billing
16 Party may request a deposit (or recalculate the deposit) as specified in
17 Sections 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section.
18 Both Parties agree, however, that the application of this provision will be
19 suspended for the initial three (3) Billing cycles of this Agreement and
20 will not apply to amounts billed during those three (3) cycles. In addition
21 to other remedies that may be available at law or equity, each Party
22 reserves the right to seek equitable relief, including injunctive relief and
23 specific performance.
24

25 **Q. WHY IS QWEST OPPOSED TO THE ADDED LANGUAGE?**

26 A. As was the case in issue 5-6, Eschelon's language would prevent Qwest from taking
27 action unless and until it obtains Commission approval. Placing the burden on
28 Qwest to file for Commission action and allowing Eschelon to continue to incur
29 debt while that action is pending is unreasonable in light of the fact that it is
30 Eschelon's obligation to pay its undisputed bills in a timely fashion. Again, Qwest
31 does not believe that it is appropriate to involve the Commission when a CLEC fails
32 to pay undisputed bills, particularly since Eschelon has recourse under the
33 provisions of the ICA if it believes that Qwest is treating it unfairly.
34

1 **Q. DOES THE LANGUAGE IN THE QWEST SGAT REQUIRE COMMISSION**
2 **APPROVAL TO DISCONNECT SERVICE IN CASES OF NON-PAYMENT?**

3 A. No. The language in the SGAT, which was developed by consensus during the 271
4 workshops and approved by the Commission, does not require Commission
5 approval to disconnect service in cases of non-payment.

6

7 **Issue No. 5-7(a)**

8

9 **Q. PLEASE DESCRIBE ISSUE NO. 5-7(a)?**

10 A. This issue is related to the default provisions in section 5.13.1.

11 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR 5.13.1?**

12 5.13.1 If either Party defaults in the payment of any amount due
13 hereunder, or if either Party violates any other material provision of this
14 Agreement, and such default or violation shall continue for thirty (30)
15 Days after written notice thereof, the other Party may seek relief in
16 accordance with the Dispute resolution provision of this Agreement. The
17 failure of either Party to enforce any of the provisions of this Agreement
18 or the waiver thereof in any instance shall not be construed as a general
19 waiver or relinquishment on its part of any such provision, but the same
20 shall, nevertheless, be and remain in full force and effect. To the extent
21 that either Party disputes, pursuant to Section 21.8, any amount due
22 hereunder, the Party's withholding of such disputed amounts pursuant to
23 Section 21.8 shall not constitute a default under this Section 5.13 during
24 the pendency of such dispute.

25

26 **Q. WHAT IS ESCHELON'S PROPOSED LANGUAGE?**

27 A. Eschelon proposes to revise the Qwest language by adding the two passages which
28 are underlined in bold below:

29 5.13.1 If either Party defaults in the payment of any amount due
30 hereunder, or if either Party violates any other material provision of this

1 Agreement, and such default or violation shall continue for thirty (30)
2 Days after written notice thereof, the other Party **must notify the**
3 **Commission in writing and** may seek relief in accordance with the
4 Dispute resolution provision of this Agreement. The failure of either Party
5 to enforce any of the provisions of this Agreement or the waiver thereof in
6 any instance shall not be construed as a general waiver or relinquishment
7 on its part of any such provision, but the same shall, nevertheless, be and
8 remain in full force and effect. **Neither Party shall disconnect service to**
9 **the other Party without first obtaining Commission approval.** To the
10 extent that either Party disputes, pursuant to Section 21.8, any amount due
11 hereunder, the Party's withholding of such disputed amounts pursuant to
12 Section 21.8 shall not constitute a default under this Section 5.13 during
13 the pendency of such dispute.
14

15 **Q. WHY DOES QWEST OBJECT TO THE ESCHELON ADDITIONS?**

16 A. Qwest objects to the additional language for all of the reasons cited in the
17 discussion of issue 5-7.

18

19 **Q. WAS THE LANGUAGE QWEST IS PROPOSING AGREED TO BY**
20 **QWEST AND THE CLECS DURING THE 271 WORKSHOPS?**

21 A. Yes. The only difference between the Qwest language and the language that was
22 developed by consensus during the section 271 workshops is the addition of the last
23 sentence which clarifies that withholding disputed billing amounts does not
24 constitute default.

25

26 **Q. PLEASE DESCRIBE ISSUE NOS. 5-8 THROUGH 5-12.**

27 A. These issues are all related to section 5.4.5 of the contract concerning deposit
28 requirements.

29

1 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR THIS SECTION?**

2 A. Qwest proposes the following language for section 5.4.5:

3
4 5.4.5 Each Party will determine the other Party's credit status based on
5 previous payment history as described below or, if the Parties are doing
6 business with each other for the first time, based on credit reports such as
7 Dun and Bradstreet. If a Party that is doing business with the other Party
8 for the first time has not established satisfactory credit with the other
9 Party according to the previous sentence or the Party is Repeatedly
10 Delinquent in making its payments, or the Party is being reconnected
11 after a disconnection of service or discontinuance of the processing of
12 orders by the Billing Party due to a previous non-payment situation, the
13 Billing Party may require a deposit to be held as security for the payment
14 of charges before the orders from the billed Party will be provisioned and
15 completed or before reconnection of service. "Repeatedly Delinquent"
16 means payment of any undisputed amount received more than thirty (30)
17 Days after the Payment Due Date, three (3) or more times during a twelve
18 (12) month period on the same Billing account number. The deposit may
19 not exceed the estimated total monthly charges for an average two (2)
20 month period within the 1st three (3) months from the date of the
21 triggering event which would be either the date of the request for
22 reconnection of services or resumption of order processing and/or the
23 date CLEC is Repeatedly Delinquent as described above for all services.
24 The deposit may be a surety bond if allowed by the applicable
25 Commission regulations, a letter of credit with terms and conditions
26 acceptable to the Billing Party, an – interest bearing escrow account, or
27 some other form of mutually acceptable security such as a cash deposit.
28 Required deposits are due and payable within thirty (30) Days after
29 demand and conditions being met.
30

31

32 **Issue No. 5-8**

33

34 **Q. PLEASE EXPLAIN ISSUE NO. 5-8.**

35 A. Issue No. 5-8 concerns Eschelon's proposal to insert the words "non-de minimus"
36 into the repeatedly delinquent definition in section 5.4.5 so that "'Repeatedly

1 Delinquent' means payment of any undisputed *non-de minimus* amount received
2 more than thirty (30) days after the Payment Due Date . . . "

3

4 **Q. WHY IS QWEST OPPOSED TO THIS ADDITION?**

5 A. Rather than adding clarity to the language, this addition of a vague term such as
6 "non-de minimus" to the definition does just the opposite and creates the possibility
7 that the parties will be appearing before the Commission to clarify what they
8 intended by "non de-minimis amount". Eschelon argues that this language protects
9 it from Qwest action in the event Eschelon pays the wrong amount in error and is
10 off by a few dollars. Such a concern is unfounded. It is not Qwest's practice to
11 undertake this type of collections actions for minimal dollar amounts and Eschelon
12 itself has not claimed that Qwest has ever invoked deposit requirements based on
13 insignificant amounts. The more problematic situation relates to determining what
14 de minimus means. Does it mean \$100? Does it mean \$1,000? Does it mean
15 \$10,000 or \$100,000? Eschelon's language would give Eschelon the ability to
16 argue that any of these amounts is de minimus in a proceeding where it is
17 undisputed that Eschelon owes outstanding charges to Qwest. In that situation,
18 Eschelon should simply pay its bill.

19

20 **Q. DOES THE ESCHELON PAYMENT HISTORY REFLECT DE MINIMUS**
21 **DISPUTES?**

22 A. No. Qwest's recent letter to Eschelon demanded that it pay **undisputed** outstanding
23 bills of over \$3 million dollars. As noted above, it is not Qwest's practice, nor is it

1 financially wise or feasible, to take collection action for "a few dollars." Eschelon's
2 proposed language invites litigation and is wholly unnecessary.

3
4
5
6 **Issue No. 5-9**

7
8 **Q. PLEASE DESCRIBE ISSUE NO.5-9.**

9 A. Issue No. 5-9 concerns the first and second of three Eschelon alternative proposals
10 to define "repeatedly delinquent." Whereas the Qwest language defines "repeatedly
11 delinquent" to mean payment of any undisputed amount received more than thirty
12 (30) Days after the Payment Due Date, three (3) or more times during a twelve (12)
13 month period, in its first alternative, Eschelon proposes that payments must be more
14 than 30 days late for "three (3) consecutive months."

15
16 **Q. WHY IS QWEST OPPOSED TO THE ESCHELON DEFINITION?**

17 A. The Eschelon definition fails to provide the proper incentive for timely payment.
18 Under this proposal, Eschelon could be delinquent in its payments for two months,
19 pay the bill for the third month on time, and then be delinquent again for the next
20 two months. Qwest's proposal is a reasonable business practice and is identical to
21 the "repeatedly delinquent" definition that was reviewed and agreed to in the
22 Section 271 workshops by those participating CLECs. Eschelon can provide no

1 legitimate argument to change this language other than to give itself additional and
2 unwarranted business advantage.

3

4 **Q. WHAT IS ESCHELON'S SECOND ALTERNATIVE FOR THE**
5 **DEFINITION OF "REPEATEDLY DELINQUENT"?**

6 A. In its second alternative, Eschelon proposes that in order to be considered
7 "repeatedly delinquent," payments must be more than 30 days late "three or more
8 times during a six (6) month period."

9

10 **Q. WHY IS QWEST OPPOSED TO THIS DEFINITION?**

11 A. Like the first alternative, this definition fails to provide the proper incentive for
12 timely payment and should be rejected. Under this definition, Eschelon could still
13 be late with payments 33% of the time, which is hardly an encouragement for
14 timely bill payment.

15

16

17 **Issue No. 5-11.**

18

19 **Q. PLEASE DESCRIBE ISSUE NO. 5-11.**

20 A. Issue No. 5-11 concerns Eschelon's proposal to add a qualifier to the deposit due
21 date language at the end of section 5.4.5. Eschelon proposes to add the following
22 underlined information:

1 Required deposits are due and payable within thirty (30) Days after
2 demand and conditions being met, **unless the billed Party challenges the**
3 **amount of the deposit or deposit requirement (e.g., because delay in**
4 **submitting disputes or making payment was reasonably justified due**
5 **to inaccurate or incomplete Billing) pursuant to Section 5.18. If such**
6 **a Dispute is brought before the Commission, deposits are due and**
7 **payable as of the date ordered by the Commission.**

8
9 **Q. WHY IS QWEST OPPOSED TO THE ADDITIONAL LANGUAGE?**

10 A. The added language is not necessary. Eschelon has a right under section 5.4.4 to
11 dispute Qwest's billing; a second opportunity to do so, which is what Eschelon
12 seeks here, is unnecessary and inequitable. Eschelon simply seeks to further delay
13 Qwest's right to protection in the face of increased payment risk.

14
15
16 **Issue No. 5-12**

17
18 **Q. PLEASE DESCRIBE ISSUE NO. 5-12.**

19 A. Issue No. 5-12 concerns Eschelon's third alternative to Qwest's repeatedly
20 delinquent language. With this alternative, Eschelon proposes to do away entirely
21 with the repeatedly delinquent language and instead have the Commission
22 determine whether a deposit should be required. Under this alternative Eschelon
23 proposes the following language for section 5.4.5:

24 ~~Each Party will determine the other Party's credit status based on previous~~
25 ~~payment history as described below or, if the Parties are doing business~~
26 ~~with each other for the first time, **each party will determine the other**~~
27 ~~**Party's credit status** based on credit reports such as Dun and Bradstreet.~~
28 ~~If a Party that is doing business with the other Party for the first time has~~
29 ~~not established satisfactory credit with the other Party according to the~~

1 previous sentence ~~or the Party is Repeatedly Delinquent in making its~~
2 ~~payments,~~ or the Party is being reconnected after a disconnection of
3 service or discontinuance of the processing of orders by the Billing Party
4 due to a previous non-payment situation, the Billing Party may require a
5 deposit to be held as security for the payment of charges before the orders
6 from the billed Party will be provisioned and completed or before
7 reconnection of service. **The Billing Party may also require a deposit**
8 **for the failure of the other Party to make full payment, less any**
9 **disputed amount as provided for in Section 21 of this Agreement, for**
10 **the relevant services provided under this Agreement within ninety**
11 **(90) Days following the Payment Due Date, if the Commission**
12 **determines that all relevant circumstances warrant a deposit.**
13 ~~“Repeatedly delinquent” means any payment received thirty (30)~~
14 ~~Days or more after the Payment Due Date, three (3) or more times~~
15 ~~during a twelve (12) month period on the same Billing account~~
16 ~~number. Accounts with amounts disputed under the dispute~~
17 ~~provisions of this agreement shall not be included as Repeatedly~~
18 ~~Delinquent based on amounts in dispute alone.~~ The deposit may not
19 exceed the estimated total monthly charges for an average two (2) month
20 period within the 1st three (3) months from the date of the triggering event
21 which would be either the date of the request for reconnection of services
22 or resumption of order processing ~~and/or the date CLEC is repeatedly~~
23 ~~delinquent as described above~~ for all services. The deposit may be a
24 surety bond if allowed by the applicable Commission regulations, a letter
25 of credit with terms and conditions acceptable to the Billing Party, an –
26 interest bearing escrow account, or some other form of mutually
27 acceptable security such as a cash deposit. Required deposits are due and
28 payable within thirty (30) Days after demand and conditions being met.
29
30

31 **Q. WHY DOES QWEST OBJECT TO THIS LANGUAGE?**

32 A. This language would require a party to abstain from demanding and collecting a
33 deposit pending the outcome of a Commission proceeding addressing the issue of
34 whether a deposit can be required. By proposing this type of delay, Eschelon seeks
35 to have the Commission micro manage the parties' relationship and prohibit a party
36 from utilizing reasonable business practices. If a billed party is repeatedly
37 delinquent in making its payments, the billing party should be entitled to protect

1 itself from increasing debt and credit risk by requiring the other party to pay a
2 deposit.

3

4 **Q. IS THIS A SIGNIFICANT CONCERN FOR QWEST?**

5 A. This concern is very real. With the burst of the dot com bubble, many players in the
6 telecommunications industry have faced financial trouble. Where Qwest has faced
7 regulatory hurdles or been slow to take collection action, it has been faced with
8 millions of dollars in unpaid bills. Qwest has found it necessary on numerous
9 occasions to take action to limit its exposure when a CLEC struggles.

10

11

12 **Issue Nos. 5-13**

13

14 **Q. PLEASE EXPLAIN ISSUE NOS. 5-13.**

15 A. This issue has to do with credit review language in section 5.4.7. Qwest proposes
16 the following language:

17 5.4.7 The Billing Party may review the other Party's credit standing and
18 increase the amount of deposit required but in no event will the maximum
19 amount exceed the amount stated in Section 5.4.5.

20

21 **Q. WHAT LANGUAGE DOES ESCHELON PROPOSE?**

22 A. Eschelon has two alternative proposals. The first alternative is a proposal to omit
23 the Qwest section 5.4.7 language in its entirety. The second alternative is to modify
24 the Qwest language as follows:

1 **5.4.7 If a Party has received a deposit pursuant to Section 5.4.5 but**
2 **the amount of the deposit is less than the maximum deposit amount**
3 **permitted by Section 5.4.5,** the Billing Party may review the other Party's
4 credit standing and increase the amount of deposit required, **if approved**
5 **by the Commission,** but in no event will the maximum amount exceed the
6 amount stated in Section 5.4.5. **Section 5.4 is not intended to change the**
7 **scope of any regulatory agency's or bankruptcy court's authority with**
8 **regard to Qwest or CLECs.**
9

10 **Q. WHY DOES QWEST BELIEVE ITS SECTION 5.4.7 LANGUAGE IS**
11 **NECESSARY?**

12 A. Qwest proposes language that allows it to review the other party's credit standing
13 and increase the amount of deposit required subject to the limitations set forth in
14 section 5.4.5. This proposal reflects a reasonable and customary business practice.
15 Again, a billing party is entitled to protect itself from credit risk. Eschelon argues
16 that there is no "triggering event" for the deposit requirement, but the credit review
17 itself is that event if Qwest determines that Eschelon's credit standing warrants the
18 imposition of a deposit requirement. In light of the frequency of
19 telecommunications carriers declaring bankruptcy or simply shutting their doors,
20 the need for a service provider like Qwest to be able to conduct credit reviews of its
21 customers is acute

22
23 **Q. WHY IS QWEST OPPOSED TO THE LANGUAGE ESCHELON**
24 **PROPOSES AS AN ALTERNATIVE TO STRIKING SECTION 5.4.7**
25 **ENTIRELY?**

26 A. Eschelon's second alternative again inappropriately involves the Commission as a
27 party to the business relationship and adds significant delay and inefficiency to a

1 reasonable business practice accepted by every other CLEC doing business with
2 Qwest. In addition, Qwest objects to the clause inserted at the beginning of the
3 section. This language is designed to prevent Qwest from asking for a deposit if a
4 deposit has not previously been requested. This undermines the purpose of section
5 5.4.7 which is to allow deposit requirements to reflect a change in circumstances. A
6 change in circumstances may well warrant a deposit requirement despite the fact
7 that a deposit has not been required previously. Eschelon's language would
8 prohibit this reasonable business practice and should be rejected.

9
10 **Q. WAS THE QWEST PROPOSED LANGUAGE AGREED TO BY QWEST**
11 **AND THE CLECS DURING THE 271 PROCESS?**

12 A. Yes.

13
14
15 **Issue No. 5-16**

16
17 **Q. PLEASE DESCRIBE ISSUE NO. 5-16.**

18 A. Issue No. 5-16 is related to section 5.16.9.1 of the ICA that concerns the very
19 limited disclosure of CLEC individual forecasts and forecasting information.

20
21 **Q. WHAT LANGUAGE IS QWEST PROPOSING?**

22 A. Qwest proposes the following language:

1 5.16.9.1 The Parties may disclose, on a need to know basis only, CLEC
2 individual forecasts and forecasting information disclosed by Qwest, to
3 legal personnel, if a legal issue arises about that forecast, as well as to
4 CLEC's wholesale account managers, wholesale LIS and Collocation
5 product managers, network and growth planning personnel responsible for
6 preparing or responding to such forecasts or forecasting information. In
7 no case shall retail marketing, sales or strategic planning have access to
8 this forecasting information. The Parties will inform all of the
9 aforementioned personnel, with access to such Confidential Information,
10 of its confidential nature and will require personnel to execute a non-
11 disclosure agreement which states that, upon threat of termination, the
12 aforementioned personnel may not reveal or discuss such information with
13 those not authorized to receive it except as specifically authorized by law.
14 Violations of these requirements shall subject the personnel to disciplinary
15 action up to and including termination of employment.
16

17 **Q. WHAT IS ESCHELON'S PROPOSED LANGUAGE?**

18 A. Eschelon accepts the Qwest language but proposes to insert the following language
19 prior to final sentence of the Qwest provision:

20 Qwest shall provide CLEC with a signed copy of each non-disclosure
21 agreement executed by Qwest personnel within ten (10) Days of
22 execution.
23

24 **Q. WHY IS QWEST OPPOSED TO THE INSERTED LANGUAGE?**

25 A. The proposed insertion is unnecessary. Qwest's provision mandates very strict
26 procedures for the handling of CLEC forecasted information. Qwest may disclose
27 the information only to legal personnel, if a legal issue arises, and to CLEC
28 wholesale account managers, wholesale LIS and Collocation product managers,
29 network and growth planning personnel "responsible for preparing or responding to
30 such forecasts or forecasting information." The provision expressly prohibits
31 disclosure to retail marketing, sales or strategic planning personnel, and requires
32 Qwest employees to execute nondisclosure agreements.

1 Eschelon demands a change to this provision to require Qwest to provide it with
2 copies of employee's nondisclosure agreements within 10 days of execution. This
3 demand places an unnecessary administrative burden on Qwest, particularly if the
4 precedent set here forces Qwest to have to provide every CLEC with copies of
5 nondisclosure agreements. Already, Qwest bears the burden of ensuring that
6 forecasts and forecasting information are handled properly and securely.

7
8 In addition to the stringent requirements set forth in section 5.16.19.1, under section
9 18, Eschelon has further protection and recourse if it believes that Qwest has
10 misused confidential information. Section 18.3.1 of the ICA provides that "either
11 party can request an audit of the other party's compliance with the Agreement's
12 measures and requirements applicable to limitations on distribution, maintenance,
13 and use of proprietary or other protected information that the requesting party has
14 provided the other."

15
16
17 **V. SECTION 7 DISPUTED TRANSIT RECORD ISSUES**

18
19 **Issue No. 7-18**

20
21 **Q. PLEASE EXPLAIN DISPUTED ISSUE NO. 7-18.**

22 A. This issue and the following issue, No. 7-19, are related to Eschelon's desire to
23 obtain transit records to validate bills that Qwest sends to Eschelon.

1 **Q. WHAT IS THE LANGUAGE THAT ESCHELON IS PROPOSING?**

2 A. Eschelon proposes the following language:

3 **7.6.3.1 In order to verify Qwest's bills to CLEC for Transit Traffic**
4 **the billed party may request sample 11-01-XX records for specified**
5 **offices. These records will be provided by the transit provider in EMI**
6 **mechanized format to the billed party at no charge, because the**
7 **records will not be used to bill a Carrier. The billed party will limit**
8 **requests for sample 11-01-XX data to a maximum of once every six**
9 **months, provided that Billing is accurate.**
10

11 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S LANGUAGE?**

12 A. Eschelon seeks to obtain transit records from Qwest in order to validate bills that
13 Qwest sends to Eschelon. In a recent complaint proceeding in Minnesota, Qwest
14 negotiated a compromise solution to the issue of exchanging records when Qwest
15 transits traffic to a terminating carrier. In that proceeding, all parties recognized
16 that the best source of information for determining the source of such calls was the
17 originating switch. Transit records are a poor substitute for originating switch
18 records because the purpose of a transit switch is to complete calls, with billing
19 considerations being secondary. Nonetheless, because the terminating carrier does
20 not necessarily know the identity of the originating company, an extensive records
21 exchange is one way to identify carriers originating calls.

22
23 The issue in this case presents the opposite situation. Here, Eschelon is the
24 originating carrier, and therefore its switch produces the best information with
25 regard to traffic that it sends to Qwest for termination to a third party. Requiring
26 Qwest to provide Eschelon with detailed records of information it already has and

1 to do so without charge is an unreasonable and inefficient way to determine
2 appropriate billing by Eschelon.

3 **Q. ESCHELON HAS ARGUED IN OTHER STATES THAT ITS RECORDS DO**
4 **NOT ALLOW IT TO VALIDATE TRANSIT BILLING, AND THAT THE**
5 **RECORDS ONLY ALLOW IT TO INFER IF QWEST IS ACTING AS A**
6 **TRANSIT PROVIDER. ARE YOU AWARE OF INFORMATION THAT**
7 **ESCHELON HAS AVAILABLE TO IT THAT WOULD ALLOW IT TO**
8 **VALIDATE QWEST'S TRANSIT BILLING?**

9 A. Yes. Eschelon has two sources of information that allows it to validate transit
10 billing. First, Qwest's monthly transit bills provide detail of transiting minutes by
11 end office and provide the company code of the terminating carrier. Attached as
12 Qwest Exhibit 2.1 is a sample of a Qwest transit bill, which indicates how this
13 information is provided. Through a comparison with the recordings from its own
14 switch, Eschelon can validate that Qwest transited these calls to the terminating
15 carrier. In addition, presumably the terminating carrier is billing Eschelon for
16 termination. Eschelon can therefore compare the details of the termination bill with
17 the details of the Qwest transit bill to determine if there are any inconsistencies.

18

19 **Q. WAS THE QWEST TRANSIT RECORD PRODUCT DESIGNED TO**
20 **PROVIDE RECORDS FOR ORIGINATING CARRIERS?**

21 A. No. The Qwest Category 11 transit record product was designed to create records
22 for terminating carriers, not originating carriers. Qwest did not design a transit
23 record product for originating carriers because the originating carrier's switch

1 already has the capability of creating such a record. Qwest cannot, without
2 significant expense, provide Category 11 records associated with transit traffic
3 originated by Eschelon. If the terminating party does not request the transit records,
4 Qwest does not create them. To accomplish what Eschelon is asking for, Qwest
5 would have to undertake a significant amount of additional programming, solely to
6 meet the needs of just one carrier. Eschelon's proposed language should be
7 rejected.

8
9
10 **Issue No. 7-19**

11
12 **Q. PLEASE DESCRIBE ISSUE NO. 7-19.**

13 A. Issue No. 7-19, like Issue No. 7-18, involves transit records. Eschelon seeks to add
14 the following language to the Agreement:

15
16 **7.6.4 Qwest will provide the non-transit provider, upon request, bill**
17 **validation detail including but not limited to: originating and**
18 **terminating CLI code, originating and terminating Operating**
19 **Company Number, originating and terminating state jurisdiction,**
20 **number of minutes being billed, rate elements being billed, and rates**
21 **applied to each minute.**
22
23

24 **Q. WHY IS QWEST OPPOSED TO THIS LANGUAGE?**

25 A. Qwest is opposed to the language for all of the reasons given in the discussion of
26 Issue No. 7-18. In addition, Qwest's existing transit records do not contain all of
27 the information that Eschelon seeks in its proposed language in Section 7.6.4. For

1 example, transit records do not contain the originating and terminating Common
2 Language Location Identification (“CLLI”) codes, the originating and terminating
3 state jurisdiction, the rate elements being billed, or the rates applied to each minute.
4 Qwest should not be required to provide Eschelon with information that it already
5 has.

6
7
8 **VI. SECTION 22 DISPUTED ISSUES**

9 **Issue No. 22-88**

10
11 **Q. PLEASE DESCRIBE ISSUE NO. 22-88.**

12 A. Issue No. 22-88 has to do with whether the rates in Exhibit A are reciprocal or
13 whether they apply to the services Qwest provides to Eschelon.

14
15 **Q. WHAT LANGUAGE IS QWEST PROPOSING FOR THIS ISSUE?**

16 A. Qwest proposed the following language:

17 22.1.1 The rates in Exhibit A apply to the services provided by Qwest to
18 CLEC pursuant to this Agreement.
19

20 **Q. WHAT LANGUAGE IS ESCHELON PROPOSING?**

21 A. Eschelon proposes to strike the words “by Qwest to CLEC” so that the language
22 reads as follow:

1 22.1.1 The rates in Exhibit A apply to the services provided pursuant to
2 this Agreement.
3

4 **Q. WHY IS QWEST OPPOSED TO THIS CHANGE?**

5 A, The change makes the Exhibit A rates reciprocal. Qwest disagrees with Eschelon's
6 claims that the rates are reciprocal. Qwest does not purchase any services from
7 Eschelon. To the extent there are charges from Eschelon to Qwest, these charges
8 are spelled out specifically in the ICA. Therefore the Exhibit A rates apply only to
9 services Qwest provides to Eschelon. It is simply unnecessary to define the rates as
10 reciprocal.

11

12

13 **Issue No. 22-88 (a)**

14

15 **Q. PLEASE EXPLAIN ISSUE NO. 22-88(A).**

16 A. Issue No. 22-88(a) has to do with line 7.11 of Exhibit A. Eschelon objects
17 to Qwest's inclusion of a reference to Qwest's Utah Access Service Tariff
18 and proposes to strike the reference to Qwest.

19

20 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S PROPOSAL?**

21 A. As was the case in Issue No. 22-88, Eschelon is attempting to make the rates on the
22 Exhibit A reciprocal. The Exhibit reflects rates for services that Qwest provides to
23 Eschelon. Section 7.2.2.3.3.1 of Agreement specifically spells out when CLEC
24 access rates apply. There is not need for such a reference in Exhibit A.

1 **Issue No. 22-89**

2

3 **Q. PLEASE EXPLAIN ISSUE NO. 22-89.**

4 A. Issue No. 22-89 has to do with Eschelon's proposed language for section 22.4.1.3:

5 22.4.1.3 Nothing in this Agreement shall waive any right of either Party to
6 request a cost proceeding at the Commission to establish a Commission-
7 approved rate to replace an Interim rate.
8

9 **Q. WHY IS QWEST OPPOSED TO THE LANGUAGE?**

10 A. The language is unnecessary. Given that commission rules and federal law govern a
11 parties' right to initiate a cost proceeding, there is no need to address it in a contract.
12 In addition, I would suggest is that there is a danger that, by including rights such as
13 this one, it could create a risk that other rights not listed are excluded.
14
15

16 **Issue No. 22-90**

17

18 **Q. ISSUE 22-90 CONCERNS THE PROCESS TO BE FOLLOWED FOR**
19 **UNAPPROVED TELRIC RATES. DOES QWEST AGREE WITH THE**
20 **LANGUAGE AND PROCESS PROPOSED BY ESCHELON?**

21 A. No. This process is not one that this Commission has deemed to be necessary in the
22 past, and Eschelon offers no compelling reason why it is necessary now.
23

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VII. EXHIBIT A DISPUTED ISSUES

Q. PLEASE DESCRIBE ISSUE NOS. 22-90(A-E).

A. These issues involve rates that have not been approved by the Commission. Eschelon proposes that these rates should be determined in this proceeding.

Q. IS THIS ARBITRATION THE APPROPRIATE PLACE TO MAKE SUCH A DETERMINATION?

A. No. A cost docket is the most appropriate place to determine rates, not an arbitration between only two parties. Issues explored in a cost docket proceeding are complex and involve analysis of cost models, cost studies and the inputs and assumptions that go into them. In addition, a cost docket provides for the intervention of all interested parties.

Q. WHAT IS THE BASIS FOR THE QWEST RATES?

A. Qwest proposed rates are based on cost studies which are updated from time to time as products evolve and as cost studies are updated to accurately reflect costs. Qwest offers these same rates to all CLECs and these rates are updated as time goes by. It would be unfair for Eschelon to receive different interim rates than those offered to other CLECs.

1

VIII. CONCLUSION

2 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

3 **A. Yes.**