

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

REBUTTAL TESTIMONY

OF

TERESA MILLION

FOR

QWEST CORPORATION

Disputed Issues: 4-5, 12-67 and 22-90

QWEST EXHIBIT 4R

JULY 27, 2007

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I. IDENTIFICATION OF WITNESS

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Teresa K. Million. I am employed by Qwest Services Corporation, parent
4 company of Qwest Corporation (“Qwest”), as a Staff Director in the Public Policy
5 organization. In this position, I am responsible for directing the preparation of cost
6 studies and representing Qwest’s costs in a variety of regulatory proceedings. My
7 business address is 1801 California St., Room 4700, Denver, Colorado.

8

9 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**

10 A. Yes, I did.

11

12

II. PURPOSE OF TESTIMONY

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

14 A. The purpose of my testimony is to respond to the cost issues raised in the testimony of
15 Mr. Douglas Denney with respect to Issue Nos. 4-5, Design Changes; 12-67, Expedites;
16 and 22-90, Unapproved Rates.

17

18 **Q. ARE YOU STILL OF THE OPINION THAT COST ISSUES SHOULD BE RAISED
19 IN A DIFFERENT PROCEEDING?**

20 A. Yes. As I stated in my direct testimony, generally, it is better to address all of the cost
21 issues raised in this arbitration proceeding in a separate docket because an arbitration,
22 such as this one, is a proceeding between only two parties, Qwest and Eschelon, that
23 would have limited application to the terms and conditions contained in a single
24 interconnection agreement (“ICA”). A separate proceeding to set permanent rates, on the
25 other hand, would afford all competitive local exchange carriers (“CLECs”) the

1 opportunity to participate and would be broadly applicable to all CLECs. Furthermore,
2 the issues presented in proceedings involving costs and rates are complex, as they require
3 detailed analysis of cost models, cost studies and the inputs and assumptions that go into
4 them. Issues that have this level of complexity are best addressed in generic proceedings
5 that involve all interested parties and that focus specifically and exclusively on cost and
6 rate-related issues.

7
8 **Q. WILL YOU ADDRESS MR. STARKEY'S DISCUSSION OF CONVERSIONS**
9 **(ISSUES 9-43 AND 9-44) IN YOUR REBUTTAL TESTIMONY?**

10 A. No. As I stated in my direct testimony, the parties settled this issue in the wire center
11 docket (Docket No. 06-049-40) and filed their Settlement Agreement with the
12 Commission on June 27, 2007. Although Mr. Starkey chose to file testimony on the
13 issue, assuming approval of that Agreement by the Commission, there should be no
14 further need to address the rate for conversions in this arbitration. If the Agreement is
15 not approved, the parties have requested that they be permitted to address this issue at a
16 later time in this proceeding.

17
18 **III. RESPONSE TO MR. DENNEY**

19 **ISSUE NO. 4-5 – DESIGN CHANGES**

20 **Q. MR. DENNEY SAYS AT PAGE 28 OF HIS DIRECT TESTIMONY THAT**
21 **ESCHELON "NEEDS A RULING THAT PROVIDES CERTAINTY THAT QWEST**
22 **WILL CONTINUE TO PROVIDE DESIGN CHANGES AT COST-BASED**
23 **RATES." HAS THE COMMISSION SET A COST-BASED RATE FOR DESIGN**
24 **CHANGES IN UTAH?**

25 A. Yes. The Commission set a TELRIC rate for design changes in Docket No. 00-049-105
26 (effective 7/10/02) as part of a group of rates that Qwest refers to as "Miscellaneous

1 Charges.” The design change charge of \$35.89 proposed by Qwest in Utah is the result
2 of a compliance run of Qwest’s nonrecurring cost study (Study ID #6564) filed in June
3 2002, at the direction of the Commission, in that docket. Furthermore, Qwest has agreed
4 to provide design changes to Eschelon at this rate. Thus, there is no basis for Mr.
5 Denney’s assertion that a ruling from the Commission is needed to ensure the availability
6 of design changes at cost-based rates.

7
8 **Q. MR. DENNEY IMPLIES THAT THE RATES THE COMMISSION SET FOR**
9 **DESIGN CHANGES ONLY APPLY TO TRANSPORT (I.E., “UDIT”) AND THAT**
10 **A DIFFERENT RATE SHOULD APPLY FOR UNBUNDLED LOOPS AND CFA**
11 **CHANGES. IS HE CORRECT?**

12 A. No. Mr. Denney is wrong. The design change study submitted by Qwest in the Utah
13 cost docket calculates the average cost of performing a design change for all types of
14 products (*i.e.*, loops and transport) and under all types of circumstances, including design
15 changes involving CFA (connecting facility assignment) changes. The nonrecurring cost
16 study that the Commission relied upon to set the rate of \$35.89 estimates the amount of
17 time, on average, that it will take to perform each of the activities listed in the study that
18 are necessary to complete a design change and the probability that each task will occur.
19 Qwest’s nonrecurring cost study that the Commission relied upon did not distinguish
20 among the various circumstances in which a design change might be requested by a
21 CLEC or develop individual rates tailored to each circumstance. Instead, as is common
22 with cost studies and rate designs, especially where there are only minor differences in
23 cost, the study developed an average rate that applies to all types of design changes.
24 Furthermore, it is clear from the description of the design change element, included in the
25 Executive Summary of the Nonrecurring Cost Study (Study ID# 6564 filed in June 2002,
26 and provided as Qwest Exhibit 4R.1) that the study and the rate resulting from it were

1 intended to apply to all types of design changes, not just transport or UDIT. Otherwise,
2 the description would not include references to end user premises (transport is from one
3 central office to another central office and does not involve end users), optional features
4 and functions, and type of channel interface. The notation, "type of channel interface," in
5 the design change description specifically contemplates situations involving CFA
6 changes.

7
8 Finally, it is important to note that the design change element in Utah is, as Qwest has
9 stated, contained within the Miscellaneous Charges section of its Exhibit A and not in the
10 section where the rates pertaining specifically to UDIT are contained. There has never
11 been a dispute about the fact that Qwest's miscellaneous charges apply in a variety of
12 circumstances and to a variety of products. That is why the charges are referred to as
13 "miscellaneous" and are not listed under or linked to any specific product or service in
14 Exhibit A. Mr. Denney's suggestion that the Commission-ordered design change charge
15 applies only to UDIT improperly ignores and fails to give effect to the significance of a
16 charge being included in Exhibit A as a "miscellaneous charge." Further, the fact that
17 Qwest declined to charge the Commission-approved rate for certain types of design
18 changes in the past does not mean, contrary to Mr. Denney's assertion, that Qwest's
19 design change cost study and the resulting rate excludes the costs for those design
20 changes. Nor does it mean that Qwest has no right to recover the costs it incurs to
21 perform those changes when Eschelon requests them.

22
23 **Q. IS IT NECESSARY TO DEVELOP SEPARATE CHARGES FOR THE VARIOUS**
24 **TYPES OF DESIGN CHANGES, AS MR. DENNEY SUGGESTS?**

25 A. No. Neither this Commission nor the FCC has required Qwest to provide nonrecurring
26 charges to cover every possible nuance of every possible way that every possible product

1 might be provisioned by Qwest for CLECs. Nor would it be appropriate to micromanage
2 Qwest's product offerings by requiring it to provide costs and processes to address every
3 possible "flavor" of provisioning activity in an increasingly competitive environment.
4

5 In addition, if Mr. Denney is correct in asserting that the costs of UDIT design changes
6 are higher than those required for loop and CFA design changes, then the average rate of
7 \$35.89 that Eschelon has been paying over the past several years for UDIT design
8 changes is actually less than the costs Qwest has incurred to provide those changes. In
9 arguing that Eschelon is prejudiced by the absence of individual, disaggregated design
10 rates, Mr. Denney fails to recognize that the necessary conclusion of his argument is that
11 Eschelon has benefited by paying a rate for UDIT design changes that is less than a fully
12 compensatory, stand-alone rate would be. The fact is, based on the activities necessary
13 for a design change, there is very little difference in cost between a design change for
14 UDIT and a design change for unbundled loops. At the same time, by Mr. Denney's own
15 admission,¹ until recently Eschelon has had the benefit of no charge at all for design
16 changes to unbundled loops. Now that Qwest has determined to charge CLECs for all of
17 the types of design change included in the calculation of the \$35.89 rate in order to begin
18 recovering all of its costs, Mr. Denney would have this Commission believe that Qwest
19 must accept interim rates for each type of design change, and then seek permanent rates
20 from the Commission in a different proceeding.² As I have pointed out above, however,
21 Qwest has already received approval from the Utah Commission for the design change
22 charge that it is proposing in this proceeding, and that rate is an average of the costs for
23 performing a design change for all types of products, under all types of circumstances.
24

¹ Direct Testimony of Douglas Denney ("Denney Direct"), p. 30.

² Denney Direct, p. 35.

1 **Q. ON PAGE 46 OF HIS DIRECT TESTIMONY, MR. DENNEY ATTEMPTS**
2 **TOSUPPORT HIS ARGUMENT RELATING TO THE RATE FOR CFA**
3 **CHANGES BY CLAIMING THAT THESE CHANGES REQUIRE “ONLY A FEW**
4 **SECONDS OR PERHAPS MINUTES” FOR A TECHNICIAN TO PERFORM.**
5 **DOES TECHNICIAN TIME HAVE ANY RELATIONSHIP TO THE DESIGN**
6 **CHANGE CHARGE APPROVED BY THIS COMMISSION?**

7 A. No. Regardless of the reason for a design change – whether it is caused by a CLEC
8 request after an order has been initiated or by a CLEC providing an incorrect CFA that
9 must be changed on an installation due date – Qwest must interrupt the order flow,
10 correct the information in its systems, and reinitiate the order process so that the order
11 can be completed with the new design or corrected information. These same activities
12 take place regardless whether the design change involves loops, CFAs or UDIT.
13 Furthermore, the costs of performing these activities are only slightly different for each
14 of these products. The biggest differences in the activities required for the design
15 changes, as described by Mr. Denney, are associated with work performed by Qwest’s
16 central office technicians on the installation due date. However, *there is no central*
17 *office technician time*, or any other type of technician time included in Qwest’s design
18 change study. That is because technician costs are captured in other nonrecurring cost
19 studies. The only times and activities included in the design change study are related to
20 service order processing and the manual efforts required to walk an order through to
21 completion once the automated process has been interrupted because of the need to
22 perform a design change. Thus, there is very little difference in cost among the various
23 types of design changes.

24

1 **Q. MR. DENNEY POINTS OUT, BEGINNING ON PAGE 48 OF HIS TESTIMONY,**
2 **THAT QWEST'S DESIGN CHANGE CHARGE IS HIGHER THAN ITS**
3 **INSTALLATION RATES FOR ANALOG LOOPS IN SEVERAL QWEST STATES.**
4 **PLEASE COMMENT.**

5 A. Mr. Denney argues that it “defies logic” that Qwest’s design change charge would exceed
6 the installation charges for 2/4 wire analog loops by 23% for basic installations, and 9%
7 for coordinated installations without cooperative testing. Mr. Denney’s statement is
8 misleading at best because it ignores the fact that, as I stated above, the design change
9 charge applies to *all* types of products and *all* types of circumstances. This means,
10 therefore, that the design change charge applies not only to analog loops, but also to DS1
11 and DS3 loops, UDIT, UDF (unbundled dark fiber), LMC (Loop MUX Combo) and
12 other loop-based products that involve connecting facility assignment (CFA) changes.
13 Mr. Denney failed to include the installation charges for any of those products in his
14 comparison to the design change rate. If he had, the Commission would have seen that
15 the approved installation charges for loops range from \$29.10 for 2 and 4-wire basic
16 installations to \$150.00 for coordinated installations with cooperative testing for DS1 and
17 DS3 loops. Furthermore, the installation rates for UDIT, UDF and LMC range from
18 approximately \$91 to more than \$300 in Utah. Thus, it is clear that while some of the
19 installation rates for some of the products to which design change charges apply are
20 lower than the proposed design change charge of \$35.89, some of them, including some
21 of the loop rates, are significantly higher. The point is that Mr. Denney’s discussion is
22 focused very narrowly on one product to which the design change charge applies, and
23 thus appears intended to lead the Commission to a conclusion that is irrelevant. The
24 Commission, however, established the nonrecurring rates for each of these elements on
25 the basis of the inputs that it believed were appropriate for that element. In the case of
26 design changes, Qwest proposes – and the Commission has previously adopted – a single

1 rate that is intended to apply to all product types, under all circumstances because Qwest
2 believes that a single rate appropriately reflects the costs. If Mr. Denney wants to discuss
3 how the design change rate compares to the Commission-approved installation rates, he
4 should compare it to all of the installation rates for all of the relevant products to which
5 design change charges apply. The fact that some rates are higher and some rates are
6 lower is not the point; each rate stands on its own based on the costs that are recovered by
7 that element.

8
9 **Q. MR. DENNEY ALSO POINTS OUT ON PAGES 48-49 THAT THE**
10 **COORDINATED INSTALLATION WITHOUT COOPERATIVE TESTING RATE**
11 **IN MANY OF QWEST'S STATES IS LOWER THAN THE DESIGN CHANGE**
12 **CHARGE APPROVED IN UTAH. IS THAT COMPARISON RELEVANT?**

13 A. No. First, the Commission should be aware that in many of the states referred to by Mr.
14 Denney (*e.g.*, Idaho, Iowa, Montana, Nebraska, North Dakota and South Dakota) the rate
15 for coordinated installation without cooperative testing is a voluntarily-reduced rate that
16 Qwest agreed to as part of a benchmarking process it went through during the
17 proceedings involving entry into long distance markets conducted under Section 271 of
18 the Act. Second, Mr. Denney incorrectly lumps Wyoming in that group because at one
19 time it too had benchmarked installation rates. However, in Wyoming, as a result of a
20 2004 cost docket,³ not only is the coordinated installation without cooperative testing rate
21 for analog loops higher (at \$120.80) than Qwest's proposed design change charge in this
22 proceeding, but the same is true for the basic installation rate for analog loops (at
23 \$104.73). Once again, Mr. Denney focuses the Commission on the 2/4 wire analog loop
24 rates in these states, but he ignores the often much higher installation rates for the other

³ *In the Matter of the Filing of Qwest Corporation for Approval of Its 2004 Total Element Long Run Incremental Cost Studies*, Public Services Commission of Wyoming, Docket No. 70000-TA-04-1023 (Record No. 9277).

1 products to which the design change charge applies. This results in an analysis that is
2 just as misleading and irrelevant for these states as it is for Utah.

3
4 **ISSUE NO. 12-67 – EXPEDITES**
5

6 **Q. MR. DENNEY DISCUSSES ON PAGE 161 OF HIS TESTIMONY ESCHELON’S**
7 **RIGHT TO A “COST-BASED” RATE FOR EXPEDITES IF ONE IS**
8 **ESTABLISHED. WHAT IS COST-BASED PRICING?**

9 A. There are two common types of cost-based pricing utilized in the telecommunications
10 industry: Total Element Long Run Incremental Cost (“TELRIC”) and Total Service Long
11 Run Incremental Cost (“TSLRIC”). TELRIC is an economic costing method that was
12 established by the FCC as a result of the 1996 Telecommunications Act for use in pricing
13 the UNEs that incumbent local exchange carriers (“ILECs”), such as Qwest, are required
14 to provide to CLECs pursuant to Section 251 of the Act.

15
16 In the case of TELRIC, the ILEC estimates the average cost (including direct, indirect,
17 overhead and common costs) of providing an unbundled element, such as a loop, to a
18 CLEC, and the resulting cost is equivalent to the price of the element. In the case of
19 TSLRIC, the ILEC estimates the average direct and indirect cost of providing a service to
20 its customers. The purpose of TSLRIC is to determine a level of cost *above which* a
21 given service (or group of services) is to be priced. Instead of cost and price being equal,
22 as in the TELRIC method, TSLRIC is typically used to determine the price floor for retail
23 services, as well as some wholesale telecommunications services, such as basic local
24 exchange and private line services.
25

1 The amount of contribution above TSLRIC that is assigned to any given service for
2 purposes of recovering a portion of the ILEC's overhead and common costs varies
3 depending on a number of factors, including demand, competitiveness of the service, and
4 the social and political pressures society places on the ILEC to provide the service. For
5 example, basic local exchange services provided to residential customers have
6 traditionally been priced very low when compared to TSLRIC costs, while private line
7 services provided to business customers are often priced well above TSLRIC and,
8 therefore, make a greater contribution to the overhead costs of the ILEC.

9
10 **Q. WHY ISN'T TELRIC AN APPROPRIATE METHOD FOR DETERMINING THE**
11 **PRICE FOR EXPEDITING AN ORDER FOR AN UNBUNDLED NETWORK**
12 **ELEMENT, SUCH AS A DS1 CAPABLE LOOP?**

13 A. As I explained above, the application of TELRIC pricing is limited to Section 251 UNEs.
14 The only pricing authority the Act confers upon state commissions is that set forth in
15 Section 252(c)(2), which directs states to set prices in the exercise of their Section 252
16 arbitration authority for interconnection services and UNEs that ILECs provide under
17 Sections 251(c)(2) and (c)(3). Section 252(c)(2) provides specifically that, in exercising
18 their arbitration authority, states shall determine "the just and reasonable rate for the
19 interconnection of facilities and equipment for purposes of subsection [251(c)(2)] . . .
20 [and] for network elements for purposes of subsection [251(c)(3)]."⁴ As shown by this
21 language, nothing in this section gives state commissions pricing authority over superior
22 services that an ILEC is not required to provide, such as expedited orders; instead, the
23 authority that Congress granted in that section is plainly limited to unbundled elements
24 and services that must be provided under Section 251(c). Thus, nowhere in Section 251

⁴ 47 U.S.C. § 252(d)(1).

1 is there a requirement for ILECs to provide CLECs with superior service. And, contrary
2 to Mr. Denney's claims, expedites do constitute a superior service, if for no other reason
3 than that Qwest *already* provisions services for CLECs in shorter intervals than it does
4 for its own retail customers (*i.e.*, five days compared to the standard nine days).
5 Furthermore, when the FCC initially interpreted the Section 251(c)(3) requirement to
6 provide nondiscriminatory access to UNEs as requiring ILECs to provide superior
7 service, the Eighth Circuit struck down this language as violating the Act.

8
9 It is also important to note that this particular portion of the Eighth Circuit's decision was
10 never disturbed by the United States Supreme Court.⁵ In fact, the Florida Commission
11 articulated this point clearly when it said:

12
13 It is clear there is no obligation imposed or implied in Rule 51.311(b) that an
14 incumbent render services to a CLEC superior in quality to those provided to a
15 retail customer requesting similar services. So long as rates are identical for all
16 requesting parties, CLEC and retail alike, parity exists in the provisioning
17 structure for service expedites, and there is no conflict with Rule 51.311(b). We
18 reiterate that current regulations do not compel an ILEC to provide CLECs with
19 access superior in quality to that supplied to its own retail customers.⁶

20 Thus, because this Commission's authority to apply TELRIC pricing is limited to Section
21 251 services and elements under the Act, and the service of expediting orders is a
22 superior service not required by Section 251, it would be inappropriate for the
23 Commission to determine a TELRIC-based price for the Expedited Order charge.

⁵ See *e.g.*, *Iowa Utilities Board v. AT&T*, 120 F.3d 753, 812-813 (8th Cir. 1997), *aff'd in part and rev'd in part*, 525 U.S. 366, 397 (1999).

⁶ *In re Joint Petition by NewSouth et al.*, 2005 Fla. PUC LEXIS 634 *150, Order No. PSC-05-0975-FOF-TP (Fla. PSC Oct. 11, 2005).

1 **Q. WHEN YOU SAY THAT THE COMMISSION'S TELRIC PRICING AUTHORITY**
2 **IS LIMITED, ARE YOU SUGGESTING THAT THE COMMISSION DOES NOT**
3 **HAVE JURISDICTION OVER WHOLESALE RATES?**

4 A. No. Clearly, the Commission has pricing authority under the Act over Section 251
5 services and elements. Indeed, Qwest has participated in cost dockets before this
6 Commission in which various rates for Section 251 services and elements were set.
7 These rates are the rates associated with Qwest's universal service order codes
8 ("USOCs"), and are the rates charged by Qwest to CLECs in Utah. Qwest is not trying
9 to modify any of these rates. These rates are completely separate from the expedite
10 charge at issue in this proceeding.

11
12 The FCC's list of Section 251 elements is generally limited to those elements and
13 services that are "necessary" for a CLEC to be able to compete with ILECs on an equal
14 footing. In cases where the FCC has found that access to a specific element in an ILEC's
15 network is not required, cost-based pricing no longer applies and an ILEC is free to
16 negotiate a market rate with CLECs. For example, as a part of the *TRRO*, the FCC
17 determined that ILECs were no longer required to provide CLECs with access to
18 unbundled switching or shared transport at TELRIC rates, effectively eliminating the
19 Section 251 product that up until then had been referred to as "UNE-P." As a result,
20 Qwest negotiated commercial agreements with CLECs and began offering a non-Section
21 251 product called "Qwest Platform Plus" ("QPP") that included market-based rates.
22 As discussed above, because the service of expediting an order is a superior service that
23 allows a CLEC to circumvent the standard installation intervals provided for UNEs,
24 which are already installed on shorter intervals than Qwest provides for its own retail
25 customers, it cannot be considered a Section 251 service. Further, the Commission has
26 accepted the same Expedite Charge in multiple tariffs and price lists under the same

1 terms and conditions for Qwest's other customers who wish to leapfrog ahead of other
2 customers with their installation requests. In fact, the Expedite Order Charge that Qwest
3 uses for its CLEC customers is the same rate, and is assessed under the same terms and
4 conditions, as the charge for expedites that currently exists for both Qwest's retail and
5 wholesale customers in Utah. Thus, the \$200 per-day-advanced Expedite Order Charge
6 that exists in Qwest's tariffs, including the Private Line Transport Services Price List and
7 the Exchange and Network Services Price List, has already been accepted by this
8 Commission.

9
10 **Q. WHY ISN'T TSLRIC AN APPROPRIATE COST-BASED METHOD FOR**
11 **DETERMINING THE PRICE FOR EXPEDITING AN ORDER?**

12 A. The reason that TSLRIC cannot be used to "determine the price" for the Expedited Order
13 Charge is that the purpose of TSLRIC is not to determine a price but, rather, to establish
14 a *price floor* for a service. This means that as long as the service is priced at some level
15 above its direct and indirect costs (*i.e.*, its TSLRIC), then the purpose of TSLRIC has
16 been met. In the case of the Expedited Order Charge, the way to establish the appropriate
17 level above TSLRIC for pricing the service is for Qwest to determine the value of an
18 expedite based on what the market will bear. Qwest went through that process when it
19 sought, and received, Commission acceptance of \$200 per day as the charge for
20 expediting an order for its retail and wholesale customers in its tariffs.

21
22 **Q. HAS QWEST GENERATED A TSLRIC COST STUDY TO DETERMINE THE**
23 **MINIMUM RATE THAT QWEST MUST CHARGE TO ENSURE THE SERVICE**
24 **IS ABOVE COST?**

25 A. Yes. Qwest determined the minimum price floor that it could charge for performing an
26 expedite and opted to charge \$200 per day, the exact same amount utilized by BellSouth

1 (AT&T) to perform the exact same work.

2
3 **Q. IS MR. DENNEY'S PROPOSED CHARGE OF \$100 A COST-BASED CHARGE?**

4 A. No. As Mr. Denney states on page 180 of his testimony, the \$100 fee proposed by
5 Eschelon is a compromise. It is not based on any analysis of Qwest's costs to perform an
6 expedite and is, in fact, below the minimum price floor established in Qwest's TSLRIC
7 study for the activities necessary to complete an expedite. Nor is Mr. Denney's proposed
8 expedite fee based on any analysis of the value associated with Eschelon's ability to
9 leapfrog ahead of its competitors' orders that are already in queue.

10
11 **Q. WHAT IS THE APPROPRIATE BASIS FOR THE \$200 EXPEDITED ORDER**
12 **CHARGE?**

13 A. The fee for an expedited order is payment to Qwest for the value of a premium or
14 superior service that it provides to CLECs and to its retail and other wholesale customers
15 alike. It is not based on cost, although Qwest certainly does incur costs to process a
16 request for an expedited order. For these orders, Qwest must invest time and resources to
17 work the order into an existing provisioning schedule, coordinate activities among the
18 several Qwest departments that are involved in the installation process, and communicate
19 with the customer regarding the status of the order. However, the value of an expedited
20 order is the intangible benefit of a superior service provided to the customer by Qwest
21 (*i.e.*, the ability to go to the head of the line and leapfrog over the other customers whose
22 orders are already in queue). If Qwest did not charge its customers for the value they
23 receive in going to the head of the line, those customers would receive an unfair
24 advantage over other customers. Thus, by making expedites available to all of its
25 customers *for a fee*, every customer has the same ability as every other customer to
26 decide for itself how important it is to obtain expedited orders. Obviously, *it would be*

1 *impossible for Qwest to expedite every order*; thus, Qwest sets a price for obtaining
2 superior service that guarantees that only those customers for whom the priority to
3 expedite an order is very high will request the service.
4

5 **Q. ARE THERE SIMILAR EXAMPLES IN EVERYONE'S COMMON EXPERIENCE**
6 **THAT COULD HELP EXPLAIN THIS CONCEPT?**

7 A. Yes. Take a concert, for example. Whether it is a rock concert, a symphony or a country
8 and western concert, they all have one thing in common: concert-goers pay a premium
9 for seats that are up front and closer to the stage than they do for seats that are in the back
10 and farther away from the stage. And while it does not cost any more to produce a show
11 for the people in the front row than it does to produce a show for the people in the last
12 row, it is not unusual for the people in the front row to pay a ticket price that is two or
13 three times (or more) higher than the price for back-row tickets. The reason some
14 concert-goers are willing to pay the higher price is because they perceive enough value in
15 being close to the stage to make it worth paying the premium fee. Other concert-goers
16 are willing to sit farther away to pay a lower price. The same is true of expedite charges;
17 some customers, including CLECs, are willing to pay a premium in order to receive what
18 they perceive to be the superior service of shortening their installation interval and
19 moving to the head of the line. Other CLECs are satisfied to accept the standard
20 installation interval and forego paying the additional fee. Each CLEC makes the business
21 choice to pay the fee or not pay the fee on the basis of the perceived value to its business
22 to expedite orders. This is no different than the decision process that Qwest's retail and
23 other wholesale customers go through when they determine whether or not to pay the
24 \$200 per-day fee to expedite their installation orders.
25

1 **ISSUE NO. 22-90(a) – (e) – UNAPPROVED RATES**
2

3 **Q. ON PAGE 213 OF HIS DIRECT TESTIMONY, MR. DENNEY CITES TO THE**
4 **DESIGN CHANGE CHARGE AS AN EXAMPLE OF ESCHELON’S “PROBLEM”**
5 **WITH QWEST’S TREATMENT OF UNAPPROVED RATES. PLEASE**
6 **COMMENT.**

7 A. Mr. Denney says that “Qwest has provided *no* related cost study, obtained *no* related ICA
8 amendment, and sought *no* related Commission approval, but, instead, simply
9 commenced billing for design changes for loops.”⁷ This is not quite true. First, as I
10 explained above, Qwest had a Commission approved rate based on a cost study that was
11 presented as part of Docket No. 00-049-105. That study quite clearly calculated a rate
12 for design changes that was intended to apply in a variety of circumstance to a variety of
13 Qwest products including loops. Second, the fact that Qwest chose not to bill the CLECs
14 for design changes for loops pursuant to that approved rate, as it was entitled to do, was
15 simply a benefit that Eschelon and the other CLECs quietly took advantage of. Qwest
16 received no compensation from the CLECs during that time for the design work it was
17 performing on their behalf at no charge. Now that Qwest has determined to bill Eschelon
18 the Commission-approved design change charge for all of the products to which it was
19 intended to apply, Mr. Denney claims that Eschelon is being treated unjustly and that
20 Qwest bears the burden for substantiating its rates. In the case of the design change
21 charge, Qwest has not only already substantiated the rate, but has also obtained approval
22 from this Commission to charge that rate. There is nothing unjust about Qwest charging
23 the CLECs for services it performs on their behalf; what is unjust is Mr. Denney’s
24 suggestion that Qwest be required in the current competitive environment to provision
25 products at no charge simply because Eschelon did not budget for work which Qwest

⁷ Denney Direct, p. 214.

1 performs on Eschelon's behalf and which imposes costs upon Qwest.

2
3 **Q. MR. DENNEY ARGUES AT PAGE 215 THAT QWEST NEEDS AN "INCENTIVE"**
4 **TO SUBSTANTIATE ITS RATES AND OBTAIN APPROVAL IN A "MORE**
5 **TIMELY MANNER." PLEASE COMMENT.**

6 A. This argument ignores the fact that there are many reasons why services might be
7 provided using unapproved rates, sometimes for long periods of time, and often through
8 no fault of Qwest. For example, many of the rates in dispute in the Eschelon arbitration
9 in Oregon were filed there in Docket No. UM-1025. After extensive workshops and
10 discovery in that docket, the Commission chose to suspend it pending the outcome of the
11 FCC's TELRIC pricing NPRM that was initiated in 2004. Of course, because of
12 intervening issues, nothing has materialized in that matter at the FCC, and the Oregon
13 Commission therefore recently closed Docket UM-1025 without reaching any decision
14 about Qwest's TELRIC rates. As a result, Qwest operates using approximately 150
15 unapproved rates in Oregon despite its efforts to have those rate approved in a cost
16 docket.

17
18 In Minnesota, Qwest filed cost studies on May 16, 2006, to open a cost docket (MPUC
19 Docket No. P-421/AM-06-713) to address more than 400 nonrecurring and collocation
20 rates. Some of those rates have been previously approved by the Minnesota
21 Commission, but many have not. In October 2006, Qwest conducted workshops with the
22 parties, and as a result, re-filed its cost studies on December 22, 2006. The procedural
23 schedule in this docket has twice been adjusted since Qwest's December filing and, as of
24 the date of this writing, is now scheduled to go to hearing in December 2007, nearly 19
25 months after Qwest's initial filing. The point is that it would place a chilling effect on
26 Qwest's provisioning of services for which permanent rates have not been established if

1 Qwest were expected to begin providing products and services to the CLECs, but not be
2 able to charge CLECs for those services until after the Commission approved rates for
3 them. This is especially true given the fact that many of the products and services that
4 Qwest offers are added at the request of CLECs. For Mr. Denney to suggest that, absent
5 Commission approval of a rate, it is fair to allow Qwest to charge only the unsupported
6 rates that Eschelon proposes, ignores the realities of the competitive environment and all
7 but guarantees that Qwest would not recover its costs to provide those services.

8
9 **Q. IN PROPOSING RATES FOR CERTAIN ELEMENTS, MR. DENNEY MAKES**
10 **SEVERAL CLAIMS IN HIS DIRECT TESTIMONY, BEGINNING ON PAGE 221,**
11 **ABOUT THE ADEQUACY OF QWEST'S COST SUPPORT. PLEASE**
12 **COMMENT.**

13 A. Mr. Denney claims that Qwest provided cost studies with inputs that were inconsistent
14 with prior Commission decisions. In addition, he points out that Qwest only provided
15 cost studies for only some of its proposed rates. On page 226, Mr. Denney provides a
16 table that summarizes the basis for Eschelon's proposed rates. He then provides a table
17 on page 232 of his direct testimony that shows both Qwest's and Eschelon's proposed
18 rate for the elements he has selected. My review of these tables and Mr. Denney's claims
19 uncovers a number of concerns with what he has portrayed in his testimony and his table.

20
21 For example, in the case of the -48 Volt Power Cable feed rates for Cageless Physical
22 Collocation, Mr. Denney notes that he simply added the Commission approved rates for
23 the 40 Amp and 60 Amp cable together to determine his proposal for a 100 Amp cable.
24 He then multiplied his result for a 100 Amp cable by 2 to determine the rate for a 200
25 Amp cable, and so on. This methodology used by Mr. Denney understates Qwest's costs
26 because it ignores the sizes of cable necessary to accommodate larger amperages, the

1 differences in the types of power boards (*i.e.*, BDFB versus PDB) required, as well as the
2 distances of this equipment from the CLECs' collocations. These facts and their effects
3 on the costs of larger amp cables are evidenced by the cost studies for 100 – 400 Amp
4 power cables that have already been approved by this Commission for Caged Physical
5 Collocation in Docket No. 00-049-106. And, the methodology that produced Qwest's
6 proposed rates for power cables for cageless collocation is entirely consistent with the
7 rates already established for power cables for caged collocation. Thus, Eschelon's
8 proposal for rates for power cables is the one that is unsupported by the facts and
9 inconsistent with prior Commission decisions, while Qwest's proposal for these rates is
10 more appropriate and the one the Commission should accept.

11
12 **Q. HOW DO YOU RESPOND TO MR. DENNEY'S ASSERTIONS THAT QWEST'S**
13 **RATES DO NOT REFLECT PRIOR COMMISSION DECISIONS?**

14 A. As I discussed above, when it suits Eschelon's purposes, Mr. Denney ignores Qwest's
15 rates that are consistent with prior Commission decisions. In the case of -48 Volt Power
16 Cables, the assumptions about cable size, power boards and placement of equipment
17 within a central office should be consistent because they do not change from one iteration
18 of costs to another. Nevertheless, I think it is important to note that when Qwest
19 calculates costs for new elements subsequent to a Commission decision in a cost docket,
20 it is not obligated to rigidly follow the inputs ordered in that docket. The inputs ordered
21 in a specific docket may be specific to the rate elements that were at issue in that case and
22 do not, necessarily or by Commission mandate, carry forward to each future cost study
23 that Qwest might prepare. The reason for this is simply that the passage of time,
24 refinement of studies and the incorporation of new and updated information in studies
25 often result in costs for new elements that do not warrant the changes in inputs decided
26 for previously-submitted elements.

1 For example, assume the Commission determined in a prior cost docket that a particular
2 time estimate for a particular function in a nonrecurring cost study should be reduced by
3 30%, from 10 minutes to 7 minutes. In a subsequent filing, assume that Qwest has
4 revisited this time estimate with its subject matter experts and, based on current practices
5 and their application in a new element, the subject matter experts estimate the forward-
6 looking time for that function to be 8 minutes. It would be unreasonable to presume that
7 Qwest should simply reduce that estimate by 30%, down to 5.6 minutes without first
8 being given the opportunity to present the new study and new evidence to the
9 Commission to demonstrate why 8 minutes is a better estimate for the task than the 7
10 minutes ordered for another element in a previous cost docket. The mere passage of time
11 between a Commission decision in one docket and the presentation of new costs and
12 elements in another docket, not to mention other factors (such as the changing
13 competitive environment), provides a sufficient reason for taking a fresh look at cost
14 study inputs, rather than simply automatically applying previous decisions to new
15 information. This is the main reason that Qwest believes that the appropriate place to
16 review detailed inputs in cost studies and determine permanent rates is in a cost
17 proceeding, instead of this arbitration.

18
19 **Q. DOES MR. DENNEY PROVIDE THE COMMISSION WITH A SINGLE,**
20 **CONSISTENT APPROACH TO DETERMINING INTERIM RATES?**

21 A. No. Mr. Denney uses several approaches to determine the rates he is proposing on
22 Eschelon's behalf. For example, in addition to adjusting Qwest's rates to reflect prior
23 Commission decisions in some cases without examining what may have changed in the
24 interim, and ignoring prior Commission decisions in other cases as I discussed above, he
25 sometimes merely halved Qwest's proposed rate. He does not justify his "pick and
26 choose" approach to proposing interim rates; rather, he goes to great lengths to explain

1 *what* he did in making each of his various proposals, but not *why* it was appropriate to
2 use so many varied approaches in proposing rates. Thus, for Mr. Denney to propose the
3 adjustments he has in this proceeding, without giving the Commission the opportunity to
4 conduct a detailed analysis of the underlying studies or factors, such as the current
5 competitive environment, is, once again, support for establishing a separate proceeding to
6 address permanent costs. Therefore, I reiterate my position that the merits of the
7 permanent treatment of unapproved rates should be addressed as a part of that process
8 and not as a part of this arbitration proceeding.

9

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

11 A. Yes, it does.