

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of the Petition of)
Eschelon Telecom of Utah, Inc. for)
Arbitration with Qwest Corporation,) DOCKET NO. 07-2263-03
Pursuant to 47 U.S.C. Section 252 of the)
Federal Telecommunications Act of 1996)**

**DIRECT TESTIMONY
OF
KAREN A. STEWART
FOR
QWEST CORPORATION**

(Disputed Issue Nos. 4-5 (a, b, c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-41, 9-42, 9-50, 9-51, 9-52, 9-53, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a, b, c, d, e), 9-59, 9-61,(a, b, c) and 24-92)

QWEST EXHIBIT 3

JUNE 29, 2007

TABLE OF CONTENTS

I. IDENTIFICATION OF WITNESS	1
II. PURPOSE OF TESTIMONY	2
III. DISPUTED ISSUES	7
ISSUES 4-5 (A, B, C) - DESIGN CHANGES.	7
ISSUE 4-5(C)	8
ISSUE 9-31 - ACCESS TO UNES	15
ISSUES 9-33 AND 9-34 – QWEST NETWORK MAINTENANCE AND MODERNIZATION ACTIVITIES.	21
ISSUE 9-33	24
ISSUE 9-34	29
ISSUE 9-39 – PART ONE - WIRE CENTER CAPS ON ORDERS.	32
ISSUE 9-39 - PART TWO - REVIEW OF NEW QWEST PROPOSED NON-IMPAIRED WIRE CENTERS	32
ISSUE 9-40 TIMEFRAME CLECS HAVE TO HALT ORDERING UNES IN NEWLY IDENTIFIED NON-IMPAIRED WIRE CENTERS	33
ISSUE 9-42 TRANSITION RATES FOR NEWLY IDENTIFIED NON-IMPAIRED WIRE CENTERS	34
ISSUE 9-51 – APPLICATION OF UDF-IOF TERMINATION RATE ELEMENT	35
ISSUE 9-53 - ACCESS TO UCCRE.	35
ISSUE 9-55 - COMBINATIONS OF LOOPS AND TRANSPORT	47
ISSUES 9-56 AND 9-56A – SERVICE ELIGIBILITY CRITERIA AUDITS	53
ISSUES 9-58 (ALL A, B, C, D, E) ORDERING, BILLING, AND CIRCUIT ID FOR COMMINGLED ARRANGEMENTS.	58
ISSUE 9-58(A)	65
ISSUE 9-58(B)	70
ISSUE 9-58(C)	71

TABLE OF CONTENTS

ISSUE 9-58(E)	75
ISSUE 9-59 - ESCHELON ALTERNATE COMMINGLED EEL REPAIR LANGUAGE.	77
ISSUES 9-61(A, B, C) LOOP-MUX COMBINATIONS	84
IV. CONCLUSION	91

I. IDENTIFICATION OF WITNESS

1

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

4 A. My name is Karen A. Stewart. I am a Director in the Qwest Services Corporation
5 Regulatory Compliance Organization. My office is located at 421 SW Oak Street,
6 Portland, Oregon.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
8 **EMPLOYMENT EXPERIENCE.**

9 A. I received a Bachelor of Science degree in Business Administration from Portland
10 State University in 1980, and a Masters degree in Business Administration from
11 the University of Oregon in July 1994. I have been employed by Qwest and its
12 predecessor companies since 1981. I have held a variety of positions in Qwest,
13 including sales, product management, E911 project management and technical
14 design, regulatory affairs manager, and regulatory compliance.

15 I am currently a member of the Qwest Regulatory Compliance organization and
16 have represented Qwest in a number of workshops conducted under Section 271
17 of the Telecommunications Act of 1996 (“the Act”) related to Qwest’s
18 provisioning of unbundled network elements (“UNEs”) region-wide and
19 specifically in the state of Utah.

20 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

21 A. Yes.

22 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**
23 **COMMISSIONS?**

24 A. Yes. I have also testified in the states of Arizona, Idaho, Iowa, Minnesota,
25 Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah,
26 Washington, and Wyoming.

1

II. PURPOSE OF TESTIMONY

2

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

4 A. My testimony addresses the following issues, as they are designated in Qwest's
5 petition for arbitration: Issue Nos. 4-5 (a,b,c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36,
6 9-39, 9-41, 9-42, 9-50, 9-51, 9-52, 9-53, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58
7 (a,b,c,d,e), 9-59, and 9-61,(a,b,c), and 24-92. In particular, my testimony focuses
8 on Qwest's and Eschelon's competing interconnection agreement ("ICA")
9 language relating to provisions within Sections 4 and 9 of the ICA at issue in this
10 arbitration.

11 **Q. DO YOU HAVE AN UPDATED STATUS ON SETTLED ISSUES SINCE**
12 **THE FILING OF THE REQUEST FOR ARBITRATION?**

13 A. Yes. The parties have continued to negotiate and numerous issues have been
14 resolved. Specifically, of the issues that I am addressing on behalf of Qwest,
15 Issue Nos. 4-5, 4-5(a), 9-32, 9-35, 9-36, 9-39, 9-41, 9-42, 9-50, 9-51, 9-52, 9-54,
16 9-54a and 24-92 have been resolved.

17 **Q. PLEASE PROVIDE A FURTHER DESCRIPTION OF THE STATUS OF**
18 **THE PARTIES' SETTLEMENT RELATING TO ISSUES 9-39, 9-41, 9-42,**
19 **AND THE OTHER "WIRE CENTER ISSUES."**

20 A. These issues, along with Arbitration Issue Nos. 9-37, 9-38, and 9-40, involve
21 disputes relating to implementation of the Federal Communication Commission's
22 ("FCC") *Triennial Review Remand Order*¹ ("TRRO") and, in particular, disputes
23 relating to implementation of the "non-impairment" criteria the FCC established
24 in that order for high capacity loops and transport. These same disputes were

¹ Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313 (FCC rel. February 4, 2005) ("*Triennial Review Remand Order*" or "TRRO").

1 presented to the Commission in the generic *TRRO* wire center docket, Docket No.
2 07-2263-03. On June 20, 2007, Qwest and Eschelon filed with the Utah
3 Commission a joint motion informing the Commission of a settlement of all
4 issues in the wire center proceeding, explaining that if the settlement is approved,
5 it will resolve Arbitration Issue Nos. 9-37 through 9-42. As part of that motion,
6 the parties requested that they be permitted to submit a single compliance filing of
7 an interconnection agreement after (1) final resolution of all the arbitration issues
8 in this case and (2) final resolution of all the issues in the wire center docket. The
9 parties requested modification of the procedural schedule in this arbitration, if a
10 single compliance filing is permitted, to provide for supplemental testimony to be
11 filed in the future on Issue Nos. 9-37 through 9-42. The parties explained in their
12 motion that the supplemental testimony would not be necessary if the
13 Commission approves the settlement agreement in the wire center proceeding.
14 Qwest and a group of CLECs, including Eschelon, have since submitted the
15 settlement agreement to this Commission and requested approval of it. If the
16 Commission approves the settlement, that will resolve Arbitration Issues No. 9-37
17 through 9-42, and the parties will insert into their interconnection agreement
18 agreed language for these issues that is part of the settlement.

19 **Q. GIVEN THE PROCEDURAL POSTURE OF ARBITRATION ISSUE NOS.**
20 **9-37 THROUGH 9-42, HOW ARE YOU AND OTHER QWEST**
21 **WITNESSES ADDRESSING THESE ISSUES IN YOUR TESTIMONY?**

22 A. Because Qwest and Eschelon have reached an agreement on these issues that is
23 pending approval by the Commission, Qwest is presenting only brief overview
24 testimony on the issues in this opening round of testimony. Qwest does not
25 believe it is appropriate to burden the Commission with extensive testimony on
26 issues that the parties have agreed to resolve. The more efficient process is to
27 permit the Commission to rule on the pending motion in the wire center docket to
28 approve the settlement agreement. If the Commission approves the settlement, no
29 further testimony on these issues will be needed. If the Commission does not

1 approve the settlement, the efficient approach would be for the parties to then
2 submit detailed testimony on Arbitration Issue Nos. 9-37 through 9-42.

3 **Q. DOES YOUR DISCUSSION OF THE SECTION 4 AND 9 PROVISIONS**
4 **OF THE ICA REVEAL ANY COMMON THEMES ABOUT ESCHELON'S**
5 **ICA DEMANDS AND PROPOSALS?**

6 A. Yes. In general, my testimony highlights three themes common to many of
7 Eschelon's demands and proposals for Sections 4 and 9 of the ICA. First, in the
8 eleven years since Congress passed the Act, there have been many orders and
9 decisions from courts and the FCC that have further defined the respective rights
10 and obligations of incumbent local exchange carriers ("ILECs") like Qwest and
11 competitive local exchange carriers ("CLECs") like Eschelon. In multiple cases,
12 Eschelon's proposals in this arbitration fail to give proper effect to these orders
13 and decisions, including, for example, the FCC's *Triennial Review Order*
14 ("*TRO*")² and the *TRRO*. I discuss these departures from controlling decisions
15 and orders in my testimony.

16 Second, the eleven years that have passed since the Act was enacted has resulted
17 in some broad areas of agreement between ILECs and CLECs concerning how to
18 conduct wholesale business with each other. The ILEC and CLEC communities
19 long ago recognized that they have a common interest in having standardized,
20 reliable processes and systems in place for ordering, provisioning, measuring, and
21 billing interconnection services and unbundled network elements ("UNEs").
22 Qwest, CLECs, and regulators invested extraordinary amounts of time and
23 resources to develop and implement standardized processes, including, most

² Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dkt. Nos. 01-338, 96-98, 98-147, FCC 03-36 (FCC rel. Aug. 21, 2003) ("*Triennial Review Order*" or "*TRO*"), *vacated in part, remanded in part*, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

1 notably, in the extensive workshop and other proceedings throughout Qwest's
2 region relating to Qwest's applications under Section 271 for entry into the long
3 distance markets in its 14-state region. These efforts were quite successful, as
4 demonstrated by the FCC's region-wide approval of Qwest's long distance
5 applications. Despite the success that Qwest, CLECs, and state commissions had
6 in working out and agreeing upon standardized processes, in this arbitration,
7 Eschelon often proposes demands and ICA language that depart in significant
8 ways from these processes. In multiple cases, Eschelon improperly seeks to be
9 treated differently from other CLECs through non-standard processes for
10 ordering, provisioning, measuring, and billing interconnection services and UNEs.
11 While the processes that have resulted from the Section 271 workshops and other
12 proceedings are by no means forever fixed in place, there is an established
13 mechanism for modifying them. It is known as the Change Management Process
14 ("CMP") and it has been endorsed by state commissions as a part of Qwest's 271
15 applications and approved by the FCC as an appropriate vehicle for updating
16 Qwest's processes for handling wholesale orders under the Act.³ Eschelon
17 repeatedly ignores the CMP however, choosing instead to attempt to implement
18 process changes in this single arbitration between two carriers instead of in a
19 forum that provides the opportunity for input from all interested carriers who
20 would be affected by the changes.

³ See *Application by Qwest Communications International, Inc. for Authorization to Provided In-Region, Inter-LATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26409-10, at 18-32 (2002); *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, 18 FCC Rcd 7325 at 19-20 (2003); *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90, Memorandum Opinion and Order, 18 FCC Rcd 13323, ¶15 (2003); *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, Memorandum Opinion and Order, 18 FCC Rcd 25504, ¶¶ 20-21 (2003).

1 Third, in addition to being improper or unnecessary, many of the process and
2 systems changes that Eschelon is proposing would impose very substantial costs
3 on Qwest. A basic requirement of the Act is that ILECs like Qwest must be
4 compensated for the costs they incur to provide CLECs with access to UNEs and
5 interconnection services.⁴ Despite this requirement, Eschelon seeks to require
6 Qwest to implement far-reaching process and system changes without agreeing to
7 compensate Qwest for the associated costs. In my discussion of the issues that
8 follows, I highlight multiple examples of changes that Eschelon is proposing
9 without any accompanying agreement to compensate Qwest.

10 **Q. IN GENERAL, HOW DO QWEST'S PROPOSALS DIFFER FROM**
11 **ESCHELON'S?**

12 A. Qwest's proposals recognize the need for uniformity and standardization in the
13 wholesale processes and systems that Qwest and CLECs rely upon to conduct
14 business with each other. Qwest's proposals also recognize that its wholesale
15 relationships must be consistent with the law as it exists today and as reflected by
16 orders and decisions that include the *TRO* and the *TRRO*. Further, Qwest's
17 proposals are based on the important concept that if wholesale processes and
18 systems are to change, the changes should occur in a forum – the CMP, in
19 particular – that permits all interested carriers and parties to provide input. For
20 these reasons, the Commission should adopt Qwest's ICA proposals.

21 **Q. HOW HAVE YOU ORGANIZED THE FOLLOWING DISCUSSION OF**
22 **THE SECTION 4 AND 9 ICA ISSUES?**

23 A. For each issue, I begin with a general overview of the dispute and either recite or
24 describe the parties' competing ICA proposals. I then discuss the merits of the
25 parties' proposals, demonstrating why the Commission should adopt Qwest's
26 proposals.

⁴ See 47 U.S.C. § 252(d)(1).

1 **III. DISPUTED ISSUES**

2 **Issues 4-5 (a, b, c) - Design Changes.**

3 **Q. ISSUE 4-5 AND THE RELATED SUB-ISSUES INVOLVE DISPUTES**
4 **RELATING TO "DESIGN CHANGES." WHAT IS A "DESIGN**
5 **CHANGE?"**

6 A. A "design change" is any change to an order that requires engineering review.
7 When a CLEC has submitted an order for a facility or a service and later submits
8 a change to that order, a Qwest engineer must review the change to determine if
9 the facility or service should be provided in a manner different from that called
10 for by the CLEC's original order. Stated another way, the Qwest engineer must
11 review the changes requested by the CLEC to determine what change in the
12 circuit design, if any, is necessary to meet the changes requested by the CLEC. A
13 design change could include, for example, a change of end-user premises within
14 the same serving wire center, or the addition or deletion of optional features or
15 functions. A design change could also include a change in the type of channel
16 interface, the type of interface group or the technical specification of a package.
17 This review of orders by engineers requires time and imposes costs on Qwest.
18 Qwest has a right to recover these costs.

19 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE RELATING TO**
20 **DESIGN CHANGES?**

21 A. The disputes between the parties have included the definition of design changes,
22 the UNEs to which design change charges apply, and the appropriate rates for
23 design changes. In general, these disputes arise because although it is undisputed
24 that Qwest performs design changes for Eschelon and other CLECs and incurs
25 costs relating to these activities, Eschelon is proposing inappropriately low rates
26 for some design changes that would not permit Qwest to recover the costs it
27 incurs.

1 **Q. WHICH ISSUES INVOLVING DESIGN CHANGES ARE NO LONGER IN**
2 **DISPUTE?**

3 A. The parties have resolved the definition of "design change," and that issue is
4 therefore no longer in dispute. In addition, Qwest is agreeing to Eschelon's
5 proposed language for ICA Sections 9.2.3.8 and 9.2.4.4.2 – which is encompassed
6 by Issue 4-5—that involves references to the fact that the ICA includes design
7 change charges for unbundled loops. Further, Qwest has accepted Eschelon's
8 proposed language for ICA Section 9.6.3.6 that refers to the presence of design
9 change rates for unbundled dedicated interoffice transport ("UDIT") in Exhibit A
10 of the ICA. Qwest believes its acceptance of this language has resolved Issue 4-5
11 and Issue 4-5(b).

12 **Issue 4-5(C)**

13 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 4-5(C).**

14 A. This issue arises from Eschelon's contention that the TELRIC-based ("Total
15 Element Long Run Incremental Cost") rates this Commission has ordered and
16 adopted for design changes only apply to design changes involving UDIT and not
17 to design changes that Qwest performs for unbundled loops. This dispute
18 involving the applicability of the Commission's design change rate to unbundled
19 loops includes a dispute relating to the applicability of the rate to the design
20 change activity involving changes within Qwest central offices to the "connecting
21 facility assignments" ("CFAs") that are used to connect facilities leased to CLECs
22 to the frames used in central offices. The design change rate this Commission has
23 adopted and that is set forth in the "Miscellaneous Charges" section of Exhibit A
24 of the ICA should apply to all UNEs, including unbundled loops, and should not
25 be limited to UDIT.

26

1 **Q. PLEASE DESCRIBE QWEST'S AND ESCHELON'S COMPETING**
2 **PROPOSALS RELATING TO THIS ISSUE.**

3 A. The dispute boils down to the different rates the parties are proposing for design
4 changes. The Commission's TELRIC charge of \$35.89 for design changes should
5 apply not only to the design change activities for UDIT, but also to the design
6 activities for unbundled loops and CFAs. Thus, Qwest proposes the following for
7 Exhibit A:

8 Exhibit A

9 Design Change (UDIT)	\$35.89
10 Design Change (Loop)	\$35.89
11 CFA Change – 2/4 Wire Loop cutovers	\$35.89

12
13
14 By contrast, Eschelon proposes to limit the Commission-approved design change
15 charge to UDIT and proposes unsupported and unapproved lower rates for loop-
16 related and CFA design changes. Eschelon proposes the following specific rates
17 for Exhibit A:

18 Exhibit A

19 9.20.13 Design Change	
20 9.20.13.1 Design Change (Transport)	\$35.89
21 9.20.13.2 (Loop)	\$30.00
22 9.20 13.3 CFA - 2/4 Wire Loop cutovers	\$ 5.00

23
24
25
26 **Q. HAS ESCHELON PROVIDED COST STUDIES TO SUPPORT ITS**
27 **PROPOSAL FOR THE LOWER RATES FOR LOOP AND CFA DESIGN**
28 **CHANGES?**

29 A. No, I am not aware that Eschelon has provided any cost studies or other cost-
30 related support for its proposed rates for loops and CFA design changes. In fact,

1 Eschelon has acknowledged in arbitrations conducted in other states that these
2 proposed rates are not supported by cost studies.

3 **Q. WHAT IS THE SOURCE OF THE COMMISSION'S APPROVED DESIGN**
4 **RATE OF \$35.89?**

5 A. This rate is based on a cost study that Qwest submitted and that the Commission
6 analyzed in the last wholesale cost docket in this state, Docket No. 00-049-105.
7 The original Exhibit A contained these rates in the Miscellaneous Charges section
8 of the ICA, meaning they are applicable to all UNEs in the ICA. My
9 understanding is that application of the charge of \$35.89 to all UNEs is consistent
10 with the cost study the Commission relied upon to set the rate of \$35.89. The
11 design change rate elements addressed in that study encompassed costs and
12 activities for multiple design changes, not just design changes relating to UDIT.
13 Therefore, it is appropriate to apply the rate of \$35.89 to design changes for
14 UDIT, unbundled loops, and CFA changes. Qwest cost witness Teresa Million
15 will be supporting the application of this rate from a cost perspective in this
16 proceeding.

17 **Q. ARE DESIGN CHANGES SOMETIMES NECESSARY FOR**
18 **UNBUNDLED LOOPS?**

19 A. Yes. It should be undisputed that Qwest engineers must review modified orders
20 for unbundled loops to determine if changes in the design of the service are
21 needed. Examples of design changes for unbundled loops that may be caused by
22 a CLEC's submission of a modified order for a loop after submission of the initial
23 order include but are not limited to:

24 1. An address change: facility assignments are specific by address. A
25 change in address on an in-process service order would require a
26 Qwest engineer to redesign the service by assigning a different loop to
27 the order than was assigned to the original order. Accordingly, Qwest

1 engineers must review changes to loop orders for new addresses and
2 possible new facility assignments.

3 2. Technology changes due to:

4 a) A change in address may cause a change in technology. The
5 original address for an order may have been served by direct
6 copper facilities, while the new address may now require an order
7 to be designed using fiber facilities.

8 b) Technology changes are also made for compatibility reasons,
9 protocol and format requirements, and meeting design parameters
10 of the now modified order.

11 3. Network Interface/Network Channel Interface, meet point, and CFA
12 assignment changes may require a design change.

13 In each of these examples, a Qwest engineer would need to review the current
14 order and design, along with the change requested by the CLEC, and make design
15 changes so that the unbundled loop meets the CLEC's expectations. Engineering
16 review of modifications to pending orders is therefore an essential activity in
17 Qwest's provisioning process, including the processes that govern provisioning of
18 unbundled loops.

19 **Q. DO THESE DESIGN CHANGE ACTIVITIES FOR UNBUNDLED LOOPS**
20 **CAUSE QWEST TO INCUR COSTS?**

21 A. Yes. Both the review of changes to pending loop orders and the changes in the
22 design of an order impose costs on Qwest. The activities that impose these costs
23 include processing the supplemental order (the order that would request a design
24 change on a pending service order) in the engineering organization. An engineer

1 must re-process the order to compare the existing order and design with the new
2 order to see if design changes are required. Such order changes are manually
3 processed and may result in activities such as:

- 4 1. Changes in design may require unwiring the existing design and wiring
5 the new design (if wiring has already been completed at the time of the
6 requested change).
- 7 2. Expediting different cards (than originally ordered for carrier systems)
8 may be necessary to meet customer due dates.
- 9 3. A Qwest engineer may have to take steps to recover the equipment and/or
10 facilities that Qwest already installed in response to the first order. These
11 steps could include dispatching a technician to an office where the facility
12 or equipment is housed.
- 13 4. Qwest may incur overtime charges for short interval changes.

14 **Q. IS THERE MERIT TO ESCHELON'S CLAIM THAT THE COSTS OF**
15 **DESIGN CHANGES FOR LOOPS ARE LESS THAN THOSE FOR**
16 **DESIGN CHANGES FOR UDIT?**

17 A. No. There is no basis for this assumption, since DS1 and DS3 unbundled loops
18 on fiber systems may require the same type of re-design work as is required for
19 UDIT using similar fiber muxing equipment. In claiming that loop design
20 changes are less costly than UDIT design changes, Eschelon asserts that the use of
21 "Local Service Requests" ("LSRs") for loops instead of the "Access Service
22 Requests" ("ASRs") used for UDIT contributes to the alleged lower cost of loop
23 design changes. Eschelon bases this assertion on the claim that ASRs "are more
24 manually-intensive" than LSRs. The flaw in this analysis is that Eschelon fails to
25 account for the re-design work that may be required because of the use of fiber
26 muxing equipment.

1 **Q. WITH RESPECT TO CFA CHANGES, ESCHELON CONTENDS THAT**
2 **THESE CHANGES INVOLVE MINIMAL ACTIVITY THAT IS**
3 **ANALOGOUS TO THE SIMPLE ACTIVITY OF UNPLUGGING A LAMP**
4 **FROM AN OUTLET AND RE-PLUGGING IT INTO ANOTHER**
5 **OUTLET. IS THIS CONTENTION ACCURATE?**

6 A. No. Eschelon presents an inaccurate and over-simplified description of CFAs in
7 an attempt to support a non-compensatory rate for this activity and to avoid
8 application of the design change rate the Commission established in Cost Docket
9 Order No. 00-049-105. Eschelon fails to acknowledge that the activity involving a
10 Qwest central office technician's disconnection of a jumper from one CFA on a
11 frame and reconnection of the jumper to another CFA on a frame is only one of
12 the actions required for a CFA design change. Indeed, several other Qwest
13 departments and employees are needed to carry out CFAs properly. The central
14 office technician is also involved in the coordination, which results in turning a
15 standard installation into a coordinated installation without additional coordinated
16 installation cost recovery by Qwest. The testing personnel coordinate with the
17 central office technician to confirm the new CFA is viable. If viable, the testing
18 personnel provide the service delivery coordinator ("SDC") with the CFA
19 information to supplement the order. The designer must then review and
20 potentially redesign the circuit with the new CFA. Once the tester has
21 coordinated these efforts, the tester will have the central office technician run a
22 jumper from the tie pair to the new CFA per the new design, (*i.e.*, the "lift and
23 lay" portion of the effort). The testing personnel may have to re-test to confirm
24 with the CLEC testing personnel that the circuit is operational. In advocating a
25 much lower rate for CFA changes, Eschelon focuses on only the "lift and lay"
26 component of this process, failing to acknowledge the multiple other steps that are
27 involved.

28

1 **Q. ESCHELON ALSO ASSERTS THAT THE COSTS OF CFA DESIGN**
2 **CHANGES ARE REDUCED WHEN QWEST AND ESCHELON ARE**
3 **CARRYING OUT COORDINATED INSTALLATIONS SINCE QWEST**
4 **AND ESCHELON TECHNICIANS ARE ALREADY PRESENT IN THE**
5 **CENTRAL OFFICE FOR THE INSTALLATION. IS THIS ASSERTION**
6 **ACCURATE?**

7 A. No. A typical CFA change that occurs during the testing and "turn-up" process
8 required for a coordinated installation typically takes the same time regardless
9 whether CLEC and Qwest technicians are already present in the central office to
10 perform a coordinated installation. For example, the presence of technicians for
11 the coordinated installation does not eliminate the need for Qwest to validate the
12 availability and viability of the new CFA, confirm the new CFA and to
13 supplement Qwest's systems records. In fact, CFAs performed at the time of a
14 coordinated cut-over can be more burdensome to Qwest (and potentially to other
15 CLECs) if Qwest technicians involved in the cut-over are delayed and are unable
16 to promptly go on to perform cut-overs for the next CLEC's order due that day.
17 This type of delay could even result in performance measurement indicator
18 ("PIDs") issues and potential payments associated with these missed performance
19 measurements for subsequent orders that day.

20 **Q. DOES A CLEC HAVE THE ABILITY TO MINIMIZE COSTS OF CFA**
21 **CHANGES BY MINIMIZING THE NUMBER OF CFA CHANGES THAT**
22 **ARE REQUIRED?**

23 A. Yes. CFA assignments are controlled and inventoried by the CLEC. If the CLEC
24 has a quality control process in place for inventorying CFAs, then last-minute
25 changes to CFAs should rarely occur. The proper and fair way for Eschelon to
26 minimize the costs of CFAs is for it to exercise sound quality control in its
27 selection of proper, working CFAs, so that CFA changes are rarely needed.
28 However, on those occasions when CFA changes are needed, Eschelon must be
29 required to compensate Qwest for the significant time and expense of carrying out
30 those changes.

1 **Q. WOULD IT BE CONSISTENT WITH THIS COMMISSION'S**
2 **PRACTICES RELATING TO THE ESTABLISHMENT OF WHOLESALE**
3 **RATES TO ADOPT RATES SUCH AS THOSE PROPOSED BY**
4 **ESCHELON FOR DESIGN CHANGES THAT ARE NOT NEGOTIATED**
5 **OR SUPPORTED BY A COST STUDY OR OTHER COST DATA?**

6 A. No. This Commission has long recognized the requirement of cost-based rates
7 under the 1996 Act. Eschelon has not provided any data or other support to
8 demonstrate that its proposed rates of \$30 and \$5 for loop and CFA design
9 changes are cost-based. Accordingly, to adopt Eschelon's rates, the Commission
10 would have to depart from the requirement that rates ordered by a Commission
11 must be shown to be cost-based. That result would be inconsistent with the Act
12 and with the Commission's prior practices and therefore would be improper.

13 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSAL**
14 **AND ADOPT QWEST'S LANGUAGE?**

15 A. For the reasons I describe above, the Commission should reject Eschelon's
16 attempt to avoid application of the existing Commission-approved rate for design
17 changes. The Commission should confirm that the design changes charges in
18 Exhibit A apply equally to the design changes for unbundled loops and CFAs, not
19 just for design changes involving UDIT.

20 **Issue 9-31 - Access to UNEs**

21 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE RELATING TO**
22 **ISSUE 9-31.**

23 A. This issue concerns language in Section 9.1.2 of the ICA that defines the access
24 that Qwest will provide Eschelon to the UNEs that Qwest makes available under
25 Section 251(c)(3) of the Act. Consistent with applicable legal requirements,
26 Qwest agrees to the following commitments in the undisputed portions of Section
27 9.1.2: (1) It will provide "non-discriminatory access to [UNEs] on rates, terms and
28 conditions that are non-discriminatory, just and reasonable;" (2) The quality of a

1 UNE it provides and the access to the UNE "will be equal between all Carriers
2 requesting access to that element;" (3) Subject to technical feasibility, the access
3 and UNEs that Qwest provides "will be provided in substantially the same time
4 and manner to that which Qwest provides to itself or to its affiliates"; (4) Qwest
5 will perform for Eschelon "those Routine Network Modifications that Qwest
6 performs for its own End User Customers;" and (5) Qwest will provide access to
7 UNEs at agreed service performance levels set forth in Section 20 of the ICA.

8 In its proposed Section 9.1.2, Eschelon has added language that would
9 impermissibly expand the access that Qwest provides to UNEs. As explained
10 below, Eschelon's proposal would create open-ended, undefined obligations that
11 go beyond the access to UNEs that Qwest is required to provide. Moreover, it is
12 apparent that Eschelon is attempting to impose these far-reaching obligations
13 without agreeing to compensate Qwest for the costs of complying with them.

14 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
15 **TO ESCHELON'S ISSUE 9-31?**

16 A. Qwest's proposal for Section 9.1.2 includes the parties' agreed-upon language that
17 establishes the UNE obligations summarized above and other related obligations,
18 and an additional statement to address Eschelon's and Qwest's concerns:

19 **Access to Activities available for** Unbundled Network Elements includes
20 moving, adding to, repairing and changing the UNE (through, e.g., design
21 changes, maintenance of service including trouble isolation, additional
22 dispatches, and cancellation of orders) **at the applicable rates.**

23 Qwest believes that the agreed-upon language fully captures all of the obligations
24 that Qwest has to provide Eschelon with access to UNEs and ensures that
25 Eschelon will have the same access to Qwest's UNEs as other CLECs have.
26 However, as shown (underlined-lined and compared to Eschelon's proposal)
27 above, Qwest is willing to acknowledge it will provide additional activities for
28 UNEs at the applicable rates.

1 **Q. WHAT IS ESCHELON'S PROPOSED ADDITION TO SECTION 9.1.2?**

2 A. Eschelon proposes to add the following sentence to Section 9.1.2:

3 9.1.2 . . . Access to Unbundled Network Elements includes moving,
4 adding to, repairing and changing the UNE (through, e.g., design
5 changes, maintenance of service including trouble isolation, additional
6 dispatches, and cancellation of orders). . .

7 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSED**
8 **LANGUAGE IN SECTION 9.1.2?**

9 A. Eschelon proposes its addition to Section 9.1.2 on the purported ground that the
10 language is needed to ensure that Eschelon has nondiscriminatory access to UNEs
11 and is not denied forms of access that Qwest provides to its customers. However,
12 the multiple agreed-to ICA provisions that I quote above already provide
13 assurance that the access to UNEs Eschelon will receive, as well as the quality of
14 the UNEs, will be equal to that Qwest which provides to other CLECs, to itself,
15 and to its affiliates. With these provisions in the ICA, there is no need for the
16 vague, undefined language that Eschelon proposes.

17 **Q. GIVEN THE AGREED PROVISIONS IN THE ICA THAT ALREADY**
18 **OBLIGATE QWEST TO PROVIDE NONDISCRIMINATORY ACCESS**
19 **TO UNES, IS THERE ANOTHER, UNSPOKEN REASON FOR**
20 **ESCHELON'S PROPOSED ADDITION TO SECTION 9.1.2?**

21 A. Yes. In using the term "access" to UNEs and providing a long list of activities --
22 moving, adding to, repairing, changing, design changes, maintenance of service,
23 trouble isolation, additional dispatches and cancellation of orders -- Eschelon is
24 apparently contending that "access" to all of these activities is included in the
25 monthly recurring rates for UNEs (*e.g.*, the monthly recurring rate of \$13.95 for a
26 Rate 1 unbundled loop). During the recent arbitration hearing in Minnesota,
27 Eschelon witness Douglas Denney made Eschelon's position quite clear when he
28 testified in reference to Eschelon's proposed language that "those types of things

1 are already covered in the recurring rates."⁵ Based on this testimony, it seems
2 clear that Eschelon's intent in proposing additional language for Section 9.1.2 is to
3 obtain all -- or at least most -- of the activities it lists without paying anything
4 additional for them.

5 **Q. DOES THE AMBIGUITY OF THE LANGUAGE IN ESCHELON'S**
6 **PROPOSAL CAUSE ADDITIONAL CONCERN ABOUT THE BREADTH**
7 **OF THE ACTIVITIES THAT ESCHELON MAY BE SEEKING**
8 **WITHOUT PAYING ANY ADDITIONAL COMPENSATION FOR**
9 **THEM?**

10 A. Yes. A paramount goal of this arbitration should be to establish clarity
11 concerning the parties' rights and obligations. Clear ICA language is necessary so
12 that the parties know what is expected of them under the agreement and to avoid
13 or minimize future disputes. Eschelon's proposed addition to Section 9.1.2
14 conflicts with this goal by broadly and vaguely requiring Qwest to "move," "add
15 to," and "change" UNEs. These terms are not defined anywhere in the ICA, and
16 Eschelon has never been able to describe them in a way that provides any
17 concrete meaning. Yet, at the same time, Eschelon claims that all the activities
18 encompassed by these undefined terms, which it says number into the thousands,
19 are already included in the monthly recurring rates for UNEs. That, of course,
20 cannot be the case, since not even Eschelon can say what activities these terms
21 encompass. Qwest's concern is that if Eschelon's language is adopted, Eschelon
22 will claim that it is entitled to obtain hundreds or even thousands of activities that
23 arguably fall within the broad terms "change," "move," and "add" without
24 compensating Qwest for the costs of the activities on the ground that they are
25 allegedly already included in monthly recurring rates.

26

⁵ Minnesota Hearing Transcript, Vol. 4, at 207, lines 17-18.

1 **Q. WHAT ARE THE OTHER FLAWS IN ESCHELON'S PROPOSED**
2 **ADDITION TO SECTION 9.1.2?**

3 A. Eschelon's proposed addition also violates the long-established rule that an ILEC
4 is only required to provide access to its existing network, not access to "a yet
5 unbuilt superior one."⁶ Under Eschelon's proposed language, Qwest could be
6 required to build new facilities and to provide access to "a yet unbuilt superior
7 network." For example, the undefined requirement for Qwest to "add to" UNEs
8 could obligate Qwest to build new facilities and to go beyond the routine network
9 maintenance that ILECs must provide. Similarly, Eschelon does not define the
10 meaning of "changing the UNE," thereby leaving the door open to changes that go
11 beyond routine network maintenance. In defining the routine network
12 modifications that ILECs are required to provide for UNEs, the FCC ruled in
13 paragraph 632 of the *TRO* that ILECs are not required to install new cables and
14 wires. Under Eschelon's use of the vague terms "add to" or "change," Eschelon
15 could be seeking to require Qwest to install new cables and wires. There is no
16 restriction in its proposed language that would prohibit this type of demand even
17 though the demand would violate the *TRO*.

18 **Q. IN VIEW OF THE CONCERNS YOU DESCRIBE ABOVE RELATING TO**
19 **ESCHELON'S PROPOSED ADDITION, WHAT IS QWEST'S**
20 **RECOMMENDATION FOR THIS ISSUE?**

21 A. The Commission should reject Eschelon's proposed addition in its entirety and
22 avoid including language in Section 9.1.2 that is impermissibly vague and that
23 could deny Qwest the cost recovery that it is entitled to under the Act for
24 providing access to UNEs and services related to such access.

25

⁶*Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

1 **Q. IF THE COMMISSION DOES NOT REJECT ESCHELON'S PROPOSED**
2 **ADDITION IN ITS ENTIRETY, DOES QWEST HAVE AN**
3 **ALTERNATIVE PROPOSAL THAT ADDRESSES SOME OF ITS**
4 **CONCERNS?**

5 A. Yes. Because of the multiple flaws in Eschelon's proposal, the proper course is
6 for the Commission to reject the proposal in its entirety and for the parties to
7 operate under the agreed language in Section 9.1.2 that already ensures Eschelon
8 of having nondiscriminatory access to UNEs. However, if the Commission
9 decides to adopt any portion of Eschelon's proposal, it should only adopt the
10 following modified version that Qwest offers as an alternative proposal:

11 **Access to Activities available for** Unbundled Network Elements includes
12 moving, adding to, repairing and changing the UNE (through, e.g., design
13 changes, maintenance of service including trouble isolation, additional
14 dispatches, and cancellation of orders) **at the applicable rates.**

15 **Q. HOW DOES QWEST'S MODIFIED PROPOSAL ADDRESS THE**
16 **CONCERNS YOU DESCRIBE ABOVE RELATING TO ESCHELON'S**
17 **PROPOSAL?**

18 A. Although Qwest's alternative proposal still uses Eschelon's undefined terms --
19 "change," "add to" and "move" -- the proposal provides some assurance that
20 Qwest will not have to provide the multiple activities that potentially fall within
21 these terms without being compensated for them. Specifically, Qwest's reference
22 to "additional activities" eliminates the improper inference established by
23 Eschelon's language that "access" to UNEs includes many undefined activities
24 that are "pre-paid" through payment of the monthly recurring rates for UNEs.
25 Similarly, Qwest's addition of activities being available "at applicable rates"
26 reinforces the fact that Eschelon must pay Qwest for UNE-related activities that
27 are not built into the monthly recurring rates for UNEs.

1 **Q. PLEASE SUMMARIZE QWEST'S POSITION RELATING TO ISSUE 9-**
2 **31.**

3 A. Through the parties' agreed language in Section 9.1.2, Qwest has fully committed
4 to provide Eschelon with the access to UNEs required by the Act and that other
5 CLECs in Utah receive. Eschelon's proposed addition to the parties' agreed
6 language should be rejected because it is overly broad, vague, and would create
7 obligations that the Act does not impose, while also denying Qwest the recovery
8 of costs to which it is entitled under the Act.

9 **Issues 9-33 and 9-34 – Qwest Network Maintenance and Modernization**
10 **Activities.**

11 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUES 9-33 AND 9-34 AND**
12 **HOW THEY ARE RELATED.**

13 A. These issues involve ICA terms and conditions relating to activities that Qwest
14 undertakes to maintain and modernize its network. It is, of course, essential that
15 Qwest have the ability to both maintain and modernize its telecommunications
16 network without unnecessary interference and restriction. The need for this
17 flexibility is particularly important in this era of rapidly changing technologies.
18 Utah consumers deserve – and Qwest strives to provide – the latest state-of-the art
19 telecommunications technologies. In addition, a clear objective of the
20 Telecommunications Act of 1996, as set forth in Section 706, is to increase the
21 deployment of advanced telecommunications services.

22 As described below, Eschelon's proposals relating to one of these issues could
23 impede Qwest's ability to modernize and maintain its Utah network, and its
24 proposals relating to another issue would improperly result in processes and
25 procedures for Eschelon different from those that apply to other carriers. As I
26 state below, two issues, Issue 9-35 and 9-36, have been settled between the parties
27 since the filing of the disputed issues matrix.

1 **Q. DOES THE TELECOMMUNICATIONS ACT PERMIT ILECS TO MAKE**
2 **CHANGES TO THEIR NETWORKS THAT AFFECT OTHER**
3 **CARRIERS?**

4 A. Yes. For example, Section 251(c)(5) anticipates network changes that could have
5 an effect on other carriers and that therefore trigger notice requirements.
6 Specifically, Section 251(c)(5) states:

7 NOTICE OF CHANGES- The duty to provide reasonable public notice of
8 changes in the information necessary for the transmission and routing of
9 services using that local exchange carrier's facilities or networks, as well
10 as of any other *changes that would affect the interoperability of those*
11 *facilities and networks.*
12

13 As this language shows, Congress recognized that with the rapid advancements in
14 telecommunications technology and innovation, ILECs must be permitted to make
15 changes to their networks that affect other carriers, including changes that "affect
16 the interoperability of [the] facilities and networks."

17 **Q. DOES THE FCC RECOGNIZE THAT IT IS NECESSARY FOR ILECS TO**
18 **MAKE NETWORK CHANGES THAT AFFECT OTHER CARRIERS?**

19 A. Yes. The FCC's rules relating to notices of network changes recognize this need.
20 The FCC provides a rule in the Code of Federal Regulations ("CFR") 51.325 that
21 provides as follows:

22 PART 51--INTERCONNECTION--Table of Contents
23
24 Subpart D--Additional Obligations of Incumbent Local Exchange Carriers
25
26 Sec. 51.325 Notice of network changes: Public notice requirement.
27
28 (a) An incumbent local exchange carrier ("LEC") must provide
29 public notice regarding any network change that:
30 (1) Will affect a competing service provider's performance
31 or ability to provide service;
32 (2) Will affect the incumbent LEC's interoperability with
33 other service providers; or

1 (3) Will affect the manner in which customer premises
2 equipment is attached to the interstate network.
3

4 As this language reflects, the FCC clearly anticipates and expects that ILECs will
5 perform network maintenance and modernization that affects other carriers.

6 **Q. PLEASE SUMMARIZE THE OBLIGATIONS THAT QWEST HAS**
7 **AGREED TO ASSUME IN PERFORMING THE ACTIVITIES NEEDED**
8 **TO MAINTAIN AND MODERNIZE ITS NETWORK.**

9 A. In the agreed-to provisions of Section 9.1.9, Qwest commits that in maintaining
10 and modernizing its Utah network, it will: (1) ensure that maintenance and
11 modernization activities "result in UNE transmission parameters that are within
12 transmission limits of the UNE ordered by [Eschelon];" (2) provide Eschelon
13 "advance notice of network changes pursuant to applicable FCC rules," including
14 notice containing "the location(s) at which the changes will occur, and any other
15 information required by applicable FCC rules;" (3) provide Eschelon with e-mail
16 notification "no less than three (3) business days in advance of [a] Qwest
17 dispatch" if Qwest intends to dispatch personnel to the premises of an Eschelon
18 customer; and (4) provide Eschelon with e-mail notification "within three (3)
19 business days after completing the maintenance or modernization activity"
20 involving a Qwest dispatch to the premises of an Eschelon customer.

21 In addition to these obligations, Qwest has also agreed in Section 9.1.9.1 that in
22 the event of an emergency maintenance or modernization activity, it will notify
23 Eschelon of the activity by e-mail within three business days of completing the
24 activity. Language that the parties recently agreed upon for Section 9.1.9.1 also
25 establishes that Qwest will provide its repair centers with information relating to
26 the status of network emergencies relating to modernization and maintenance
27 activities to the same extent that Qwest provides such information for its own
28 customers. Further, recently agreed language for Section 9.1.9.1 confirms that
29 Qwest will not assess charges for dispatches that are required as a result of

1 network emergencies arising from Qwest's network maintenance and
2 modernization.

3 **Q. WHAT IS THE INTENT OF QWEST'S PROPOSED LANGUAGE FOR**
4 **SECTION 9.1.9?**

5 A. Qwest's intent is to preserve its ability to maintain and modernize its network
6 without undue interference, while also ensuring that Eschelon continues to receive
7 the UNE transmission quality to which it is entitled. In addition, Qwest's intent
8 with its proposal is to ensure that Eschelon receives notice of these network
9 activities that is consistent with the FCC's rules relating to notices of network
10 changes.

11 **Issue 9-33**

12 **Q. PLEASE DESCRIBE ESCHELON'S PROPOSAL RELATING TO ISSUE**
13 **9-33.**

14 A. Under Eschelon's proposal for Section 9.1.9, Qwest would be prohibited from
15 making a change to its network for purposes of maintenance or modernization if
16 the change would "adversely affect service to any End User Customers."

17 **Q. WHY IS QWEST OPPOSED TO ESCHELON'S LANGUAGE THAT**
18 **WOULD PROHIBIT CHANGES THAT "ADVERSELY AFFECT**
19 **SERVICE TO ANY END USER CUSTOMERS?"**

20 A. This language is improper for multiple reasons. Most important, the Qwest
21 network is not a fixed static inventory of facilities, but, rather, is a dynamically
22 changing network that is routinely changed and updated to better meet the needs
23 of our retail and wholesale customers. As Qwest maintains and modernizes its
24 network, it does so pursuant to its technical publications, industry standards (*e.g.*,
25 ANSI standards), and consistent with FCC and state commission rules. These
26 standards and technical publications allow Qwest to maintain and update its
27 network in a seamless manner for its millions of customers.

1 Eschelon's proposal is not tied to any industry standard, as it does not provide, for
2 example, that changes to Qwest's network must be consistent with ANSI or other
3 accepted industry standards. Instead, Eschelon relies on the entirely vague
4 concept that changes to the network cannot have an "adverse affect" on service.
5 Eschelon does not define the term "adverse affect," leaving a gaping ambiguity in
6 its proposal. If this vague language were adopted, it could have a chilling effect
7 on Qwest's modernization and maintenance of its network. Specifically, with the
8 presence of the undefined terms "adverse affect" in the ICA, Qwest would be
9 required to perform network changes at the risk of being in violation of the ICA
10 through application of an uncertain, malleable standard. A rational response
11 could be to decide not to perform a maintenance activity, which would undermine
12 the Act's basic purpose of fostering the development and deployment of new,
13 advanced forms of technologies.

14 **Q. WHY IS QWEST'S RIGHT TO MODERNIZE ITS NETWORK**
15 **IMPORTANT?**

16 A. The answer is simple -- to promote advances in technology and consumer service.
17 The advancement of technology provides more services, better quality services,
18 more secure services, and often does so at a lower cost. For example, when
19 Qwest has upgraded its analog switches to digital switches, additional services
20 became available, the quality of the services provided by the switches improved,
21 and the security of the network was increased.

22 **Q. IS IT APPROPRIATE TO HAVE A PERFORMANCE REFERENCE --**
23 **THE "NO ADVERSE AFFECT" REFERENCE -- THAT FOCUSES ON**
24 **ESCHELON'S SERVICE TO ITS END-USER CUSTOMERS INSTEAD OF**
25 **THE SERVICE QWEST PROVIDES TO ESCHELON?**

26 A. No. By proposing a performance measure that focuses on the service it provides
27 to its end-user customers, Eschelon is attempting to hold Qwest accountable to

1 commitments that Eschelon may have made to its end users regardless whether
2 Eschelon itself is complying with industry standards. Eschelon's proposal
3 assumes incorrectly that the service for which quality is to be measured is that
4 which Eschelon provides to its customers. The proper focus for this ICA between
5 Qwest and Eschelon is the service that Qwest provides to Eschelon, not that
6 Eschelon provides to its customers. That is what ANSI and other industry
7 standards measure for ILEC-CLEC interconnection relationships. Indeed, it is
8 Eschelon that ultimately is responsible for the service its customers receive, and
9 Eschelon – not Qwest – has final control over the quality of that service.

10 For example, the service that Eschelon's customers receive could be degraded
11 because of Eschelon's use of outdated technology in its network that is not
12 entirely compatible with more current technology and equipment that Qwest adds
13 to its network. In that circumstance, Qwest, of course, should not be prohibited or
14 discouraged from modernizing its network because of a potential adverse effect
15 on an Eschelon customer. That approach would improperly impede
16 modernization and maintenance.

17 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SITUATION IN WHICH**
18 **QWEST'S MODERNIZATION OF ITS NETWORK COULD AFFECT A**
19 **CLEC CUSTOMER BECAUSE OF EQUIPMENT OR FACILITIES THE**
20 **CLEC IS USING?**

21 A. Yes. A CLEC could be providing Digital Subscriber Line ("DSL") service to an
22 end user over a two-wire analog loop (the actual service the CLEC ordered from
23 Qwest). If the loop is relatively short and completely made of copper, the service
24 would work for the end user, regardless of the fact it was a loop not designed for
25 digital data services. Over time, if Qwest were to perform modernization or
26 growth activities in that area, the two-wire analog loop could become a hybrid
27 loop (using both copper and fiber facilities). An end-user with basic local phone
28 service would not be affected by this change. In fact, the end user's service could

1 improve. However, this change could cause the CLEC's DSL equipment to cease
2 working, resulting in service problems for the CLEC's customer.

3 In this situation, the failure or omission would not be on Qwest's part. Instead,
4 the responsibility would lie with the CLEC, since the CLEC's decision not to use
5 a data-capable digital loop would lead directly to the customer's service problems.
6 If the CLEC had ordered the proper loop, Qwest would have been able to track
7 the facility in its repair and provisioning systems and could have taken steps to
8 attempt to serve the loop in some other manner. Alternatively, Qwest could have
9 notified the CLEC in advance about the possible negative impact on service.

10 **Q. IS QWEST ALSO CONCERNED ABOUT THE VAGUENESS OF**
11 **ESCHELON'S PROPOSAL?**

12 A. Yes. Eschelon's language that network changes "will not adversely affect service"
13 is so imprecise as to fail to apprise the parties of their rights and obligations.
14 With no definition of "adverse affect" and no tie to industry standards, there
15 would not be a meaningful, reliable way for Qwest to determine whether an
16 activity involving modernization or maintenance is prohibited under the ICA.
17 This lack of definition and vagueness would inevitably lead to disputes between
18 the parties concerning whether a change to the network produced a prohibited
19 effect. As I discuss above, a basic purpose of the ICA, as with any contract, is to
20 give the parties certainty about their rights and obligations and to avoid or
21 minimize future disputes about their rights and obligations. Eschelon's proposal
22 is directly at odds with that purpose.

23 **Q. COULD THE VAGUENESS OF ESCHELON'S PROPOSAL AFFECT**
24 **QWEST'S ABILITY TO PERFORM THE TYPES OF ROUTINE, FAR-**
25 **REACHING NETWORK CHANGES THAT CARRIERS ARE**
26 **ROUTINELY REQUIRED TO MAKE?**

27 A. Yes. By failing to define what it means to "adversely affect service," Eschelon's
28 proposal could potentially prohibit Qwest from making broad, necessary changes

1 to its network that affect all end users, not just Eschelon's end users. For
2 example, it is sometimes necessary for a carrier to modify end user dialing
3 requirements by increasing the number of dialed digits from seven to ten by
4 splitting an area code and requiring some end users to adopt a new area code.
5 Although these changes are necessary to management of the network, they may
6 be deemed by some end users as having an adverse effect on service. Under
7 Eschelon's proposal, there is no language that would protect against having these
8 necessary network changes being prohibited. While Eschelon may respond that it
9 does not intend for such changes to be covered by its proposal, its proposed
10 language does not reflect that intent. As a result, Qwest would have to proceed at
11 its peril in performing almost any network modernization or maintenance activity
12 in its network.

13 **Q. DOES ESCHELON'S USE OF THE TERM "END-USER CUSTOMER" IN**
14 **ITS PROPOSED LANGUAGE FOR SECTION 9.1.9 CREATE**
15 **ADDITIONAL CONCERNS FOR QWEST?**

16 A. Yes. "End-User Customer" is a defined term in Section 4.0 of the ICA and is
17 defined as "a third party retail customer that subscribes to a Telecommunications
18 Service provided by either of the Parties or by another Carrier or by two or more
19 Carriers." The use of this term in Eschelon's proposal raises two concerns beyond
20 those I have already described. First, the term expands the prohibition against
21 changes that have an undefined "adverse effect" beyond Eschelon's customers to
22 all "third party retail customers," including customers of carriers that are not
23 parties to this ICA. This broad expansion of the no "adverse effect" prohibition
24 even further limits Qwest's ability to engage in network modernization and
25 maintenance activities. Second, by including the term "End-User Customer" in its
26 proposed language for Section 9.1.9, Eschelon is attempting to regulate Qwest's
27 relationship with other CLECs through this ICA that is between only Eschelon
28 and Qwest. It is clearly improper to attempt through this ICA to set terms and
29 conditions for Qwest's relationship with other CLECs.

1 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSED**
2 **LANGUAGE FOR SECTION 9.1.9?**

3 A. Eschelon's proposed language should be rejected because it could effectively
4 prohibit Qwest from upgrading its network to provide better service to all
5 customers, including Qwest customers and other CLEC customers. Under
6 Eschelon's proposed language, Qwest could only upgrade its network if Qwest
7 was certain that the upgrade would have no impact on Eschelon end users. This
8 could decrease the availability of newer technologies to Qwest retail and
9 wholesale customers. For the reasons that I have explained above, Eschelon's
10 proposed language should be rejected.

11 **Issue 9-34**

12 **Q. PLEASE DESCRIBE QWEST'S PROPOSAL RELATING TO ISSUE 9-34.**

13 A. This issue involves a dispute concerning the information that Qwest will include
14 in the notices that inform Eschelon of changes to Qwest's network resulting from
15 maintenance and modernization. As I describe above, Qwest is committing to
16 provide notices that meet the requirements of the FCC's notice rule relating to
17 network changes, set forth 47 C.F.R. § 51.327. Consistent with the requirements
18 of that rule, Qwest will include in the notice information indicating the location at
19 which the changes will occur.

20 **Q. PLEASE DESCRIBE ESCHELON'S PROPOSAL RELATING TO ISSUE**
21 **9-34.**

22 A. Eschelon proposes the following underlined changes:

23 9.1.9 . . . Such notices will contain the location(s) at which the changes
24 will occur, **including if End User Customer specific, the circuit**
25 **identification and End User Customer address information,** and any
26 other information required by applicable FCC rules. . . .

27

1 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S PROPOSED**
2 **LANGUAGE RELATING TO NOTICE OF NETWORK CHANGES?**

3 A. Qwest will provide notice of changes to its network, including the location of
4 changes, consistent with the requirements of applicable FCC rules. By attempting
5 to include end-user information in the notice requirement, Eschelon is exceeding
6 the requirements in the FCC's notice rules. In addition, Eschelon's proposal is not
7 practical when considered in the context of all the network modifications
8 anticipated by Section 9.1.9. For example, changes to area codes and 7- to 10-
9 digit dialing would affect telephone numbers that Eschelon could be using only in
10 its own network to provide local exchange service. In this situation, Qwest would
11 have no access to information regarding Eschelon's end-user specific telephone
12 number and/or address.

13 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S**
14 **ADDITIONAL LANGUAGE IN 9.1.9 FOR CUSTOMER-SPECIFIC**
15 **INFORMATION WHENEVER QWEST MAKES ANY PUBLIC NOTICE**
16 **REGARDING NETWORK CHANGES AS PROPOSED IN ISSUE 9-34?**

17 A. Eschelon's proposed language inappropriately requires Qwest to provide end-
18 user, customer-specific circuit identification and end-user customer address
19 information in addition to the notice of network change requirements of the FCC.
20 Qwest is willing to provide (and does provide) public notice of Qwest's network
21 changes and does so pursuant to the FCC's "Notice of Network Changes."
22 Eschelon's proposed language is overly burdensome, as it would require Qwest to
23 identify each and every Eschelon customer address and associated customer
24 circuit(s) when Qwest makes a network change. Under Eschelon's proposal,
25 Qwest would be required to provide this information whether or not the Qwest
26 network change would actually have a noticeable impact to either Eschelon or its
27 customer. Eschelon may assert that its language is not intended to have such a
28 broad effect, since the language limits the requirement to provide circuit
29 identifications and customer addresses to changes that are "End-User Customer
30 specific." However, Eschelon fails to define the term "End-User Customer

1 specific," leaving the provision open to the interpretation that Qwest must provide
2 circuit identifications and customer addresses for any change that affects any
3 "End-User Customer."

4 For example, Qwest provides notice to the industry pursuant to the FCC's Notice
5 of Network Changes when Qwest upgrades its switch software. Typically, there
6 would be no impact to any CLEC customers. However, Eschelon's proposed
7 language apparently would require Qwest to provide to Eschelon a list of every
8 Eschelon customer address and every circuit that is used by Eschelon to serve its
9 customers for an entire exchange and for each exchange which Qwest plans to
10 upgrade its switch software. In addition, Eschelon's requirement places even
11 more burden on Qwest if Qwest were to modify its dialing plan. Because such
12 changes typically have a LATA-wide affect, Eschelon would require Qwest to
13 identify each and every Eschelon customer address and each and every Eschelon
14 customer circuit for each and every Eschelon customer in the LATA.

15 **Q. DOES ESCHELON'S USE OF THE TERM "END-USER CUSTOMER"**
16 **CREATE ADDITIONAL CONCERNS ABOUT THE POTENTIAL REACH**
17 **OF ESCHELON'S PROPOSED REQUIREMENT TO INCLUDE CIRCUIT**
18 **IDENTIFICATION NUMBERS AND CUSTOMER ADDRESSES IN**
19 **NOTICES OF NETWORK CHANGES?**

20 A. Yes. As I describe above in connection with Issue 9-33, "End-User Customer" is
21 a defined term that includes customers of other CLECs and carriers. Eschelon's
22 use of the term therefore could result in Qwest being required to provide notices
23 containing circuit identification numbers and customer addresses not just to
24 Eschelon, but also to all other local carriers in Utah. Further, as I have discussed
25 above, it is improper to attempt to regulate Qwest's relationships with other
26 CLECs through this ICA, which would be the end result of Eschelon's language.

27

1 not seek to file for non-impairment specific to a single CLEC, but rather for all
2 CLECs, and Qwest would appropriately use the process outlined in the order in
3 Docket No. 06-049-40.

4 **Q. WHAT IS ESCHELON'S PROPOSAL REGARDING THE DATA FOR**
5 **ADDING WIRE CENTERS TO THE LIST OF NON-IMPAIRED WIRE**
6 **CENTERS?**

7 A. Eschelon seeks to include the list of specific data it believes Qwest is required to
8 provide to CLECs for a showing of non-impairment.

9 **Q. WHAT IS QWEST'S RECOMMENDATION TO THE COMMISSION AT**
10 **THIS TIME FOR ISSUE 9-39?**

11 A. Qwest recommends that the Commission approve the wire center settlement
12 agreement and that, if the settlement agreement is not approved, the parties submit
13 further testimony explaining their positions on this issue and the other wire center
14 issues.

15 **Issue 9-40 Timeframe CLECs Have to Halt Ordering UNEs in Newly**
16 **Identified Non-Impaired Wire Centers**

17
18 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 9-40.**

19 A. This issue concerns the time frame within which CLECs are required to stop
20 ordering the FCC identified list of UNEs in wire centers that are newly identified
21 as being non-impaired. As part of the settlement of the wire center issues pending
22 before the Commission, Qwest agrees to include the following new ICA section
23 as identified below:

24 9.1.14.4 Additional Non-Impaired Wire Centers. When Qwest files a
25 request(s) with the Commission to add additional Wire Center(s) to the
26 Commission-Approved Wire Center List, Qwest will follow the procedures
27 for making such requests adopted by the Commission in the Wire Center
28 Docket. When additional Qwest Wire Center(s) meet the relevant factual
29 criteria discussed in Sections V and VI of the FCC's Triennial Review
30 Remand Order as reflected in this Agreement and the Commission adds the

1 Wire Center(s) to the Commission-Approved Wire Center List, the terms of
2 this Section will apply to facilities subject to the transition based on any
3 addition(s) to the Commission-Approved Wire Center List. Fifteen (15)
4 Days after Commission-approval of addition(s) to that list, CLEC will no
5 longer order impacted High Capacity Loops, high capacity transport UNEs,
6 or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops)
7 or between (for transport) those additional Wire Centers. Qwest and CLEC
8 will work together to identify those circuits impacted by such change

9 Qwest recommends that the Commission approve the wire center settlement
10 agreement and that, if the settlement agreement is not approved, the parties submit
11 further testimony explaining their positions on this issue and the other wire center
12 issues.

13 **Issue 9-42 Transition Rates for Newly Identified Non-Impaired Wire Centers**
14

15 **Q. HAVE THE PARTIES RESOLVED ISSUE 9-42?**

16 A. Yes. As part of the wire center settlement pending before the Commission, Qwest
17 agrees to include the two new ICA sections proposed by Eschelon as identified
18 below:

19 9.1.14.4.1 Transition Periods for additions to the Commission-Approved
20 Wire Center List.

21 9.1.14.4.1 For a ninety (90) day period beginning on the effective
22 date on which the Commission approves an addition to the
23 Commission-Approved Wire Center List, any DS1 Loop UNEs,
24 DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3
25 Dedicated Transport UNEs that CLEC leases from Qwest as of that
26 date, but which Qwest is not obligated to unbundle, shall be
27 available for lease from Qwest at a rate equal to 115% of the UNE
28 rates applicable as of the effective date on which the Commission
29 adds the Wire Center to the Commission-Approved Wire Center
30 List.

31 9.1.14.4.2 For a one-hundred and eighty (180) day period
32 beginning on the effective date on which the Commission approves
33 an addition to the Commission-Approved Wire Center List, any
34 Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs

1 that CLEC leases from Qwest as of that date, but which Qwest is
2 not obligated to unbundle, shall be available for lease from Qwest
3 at a rate equal to 115% of the UNE rates applicable as of the
4 effective date on which the Commission adds the Wire Center to
5 the Commission-Approved Wire Center List.
6

7 **Issue 9-51 – Application of UDF-IOF Termination Rate Element**

8 **Q. DO YOU HAVE AN UPDATE ON THE STATUS OF THIS ISSUE?**

9 A. Yes. The parties have resolved this issue in its entirety, and no further action is
10 required of the Commission.

11 **Issue 9-53 - Access to UCCRE.**

12 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE 9-53.**

13 A. This issue originated from Eschelon's initial request that Qwest place the
14 "Unbundled Customer Controlled Rearrangement Element" ("UCCRE") product
15 in the ICA at Section 9.9. However, the FCC has removed from its rules the
16 former requirement for ILECs to provide digital cross-connects for the unbundled
17 customer controlled rearrangement element.⁷ UCCRE was the product that
18 Qwest developed to meet the previous FCC requirement. UCCRE was intended
19 to provide the means by which a CLEC could control the configuration of UNEs
20 or ancillary services on a near real-time basis through a digital cross-connect
21 device.

22 Although Qwest developed and made UCCRE available to CLECs, there has
23 never been any CLEC demand for this product. Qwest has no information from
24 CLECs suggesting that there will be future demand for UCCRE. Because the
25 FCC has removed UCCRE from its rules and given the absence of demand for it,
26 Qwest has decided to discontinue offering this product on a going-forward basis.

⁷ See and compare former 47 C.F.R. § 51.319(d)(2)(iv) and current 47 C.F.R. § 51.319(d)(2).

1 Although Eschelon apparently has never ordered UCCRE from Qwest, it has
2 nevertheless expressed a desire to have access to this product if Qwest revives it
3 in the future and provides it in future ICAs. Eschelon apparently does not have
4 any impending need for UCCRE or plans to use it, so its concern relating to this
5 issue is largely hypothetical.

6 **Q. PLEASE DESCRIBE QWEST'S AND ESCHELON'S COMPETING**
7 **PROPOSALS RELATING TO UCCRE.**

8 A. Because there is no legal obligation to offer UCCRE and CLECs have no demand
9 for it, Qwest proposes not to include any reference to the discontinued product in
10 the ICA. It thus proposes the following:

11 9.9 Intentionally Left Blank.

12 By contrast, Eschelon proposes the following language specific to UCCRE:

13 **9.9.1 If Qwest provides or offers to provide UCCRE to any other**
14 **CLEC during the term of this Agreement, Qwest will notify CLEC**
15 **and offer CLEC an amendment to this Agreement that allows CLEC,**
16 **at its option, to request UCCRE on nondiscriminatory terms and**
17 **conditions.**

18 **Q. DOES ESCHELON HAVE AN ADDITIONAL PROPOSAL RELATING**
19 **TO UCCRE AND OTHER PRODUCTS AND SERVICES THAT QWEST**
20 **INTENDS TO STOP OFFERING BECAUSE OF LACK OF DEMAND**
21 **AND/OR THE ABSENCE OF ANY LEGAL OBLIGATION TO OFFER A**
22 **PRODUCT OR SERVICE?**

23 A. Yes. Eschelon is also proposing that Qwest be required to go through a
24 regulatory proceeding to obtain Commission approval to stop offering certain
25 products and services for which there is no demand and/or no legal obligation to
26 provide. Eschelon presents three different versions of this very detailed proposal.
27 To understand Qwest's significant concerns about these proposals, it is necessary
28 to set forth each proposal in its entirety, which I do below.

1 **Q. WHAT IS ESCHELON'S FIRST VERSION OF ITS ALTERNATIVE**
2 **PROPOSAL TO ESTABLISH A PRODUCT WITHDRAWAL PROCESS?**

3 A. Eschelon's first version of its alternative proposes to add the following new
4 Section:

5 1.7.3 If Qwest desires to phase out or otherwise cease offering on a
6 wholesale basis to any Competitive Local Exchange Carriers an
7 Interconnection service, access to Unbundled Network Elements (UNEs),
8 additional Ancillary Services or Telecommunications Services available
9 for resale which is contained in the Statement of Generally Available
10 Terms (SGAT) or this Agreement, Qwest must request and obtain
11 Commission approval, after CLEC and other potentially affected carriers
12 are afforded reasonable notice and opportunity to be heard in a generic
13 Commission proceeding. If the basis for Qwest's request is that Qwest is
14 no longer required to provide the product or service pursuant to a legally
15 binding modification or change of the Existing Rules, in the cases of
16 conflict, the pertinent legal ruling and the terms of Section 2.2 of this
17 Agreement govern notwithstanding anything in this Section 1.7.3. This
18 provision is not intended to change the scope of any regulatory agency's
19 authority with regard to Qwest or CLECs.

20 1.7.3.1 Before Qwest submits a request to cease offering a product
21 or service pursuant to this Section 1.7.3, and while a request
22 pursuant to this Section 1.7.3 is pending before the Commission,
23 Qwest must continue to offer the product or service to CLEC,
24 unless the Commission orders otherwise.

25 1.7.3.1.1 If the Commission orders that Qwest need not
26 offer the product or service while the proceeding is
27 pending, the Commission may place such restrictions on
28 that order as allowed by its rules and authority, including a
29 condition that if Qwest later offers the product or service to
30 any CLEC, it must then inform CLECs of the availability
31 of the product or service and offer it to other CLECs on the
32 same terms and conditions. If those terms and conditions
33 are in this Agreement (but were not in effect due to the
34 Commission order that Qwest need not offer the product or
35 service while the proceeding is pending), once Qwest offers
36 those terms to any other CLEC, Qwest must offer those
37 terms to CLEC pursuant to those terms in this Agreement
38 without amendment as well.

1 1.7.3.2 If the Commission approves the phase out or other
2 cessation of a product or service offering, the Agreement will be
3 amended as set forth in Section 2.2 to reflect the outcome of the
4 generic proceedings by the Commission, except where CLEC
5 notifies Qwest in writing that an amendment is not required.
6 Qwest will also amend its SGAT consistent with the Commission's
7 ruling, unless the Commission orders otherwise.

8
9 **Q. WHAT IS ESCHELON'S SECOND VERSION OF ITS ALTERNATIVE**
10 **PROPOSAL TO ESTABLISH A PRODUCT WITHDRAWAL PROCESS?**

11 A. Eschelon's second version of its alternative proposes to add the following new
12 Section:

13 1.7.3 If Qwest desires to phase out or otherwise cease offering on a
14 wholesale basis (without first individually amending every interconnection
15 agreement containing that term and updating the SGAT) an
16 Interconnection service, access to Unbundled Network Elements (UNEs),
17 Ancillary Services or Telecommunications Services available for resale,
18 Qwest must request and obtain Commission approval, after CLEC and
19 other potentially affected carriers are afforded reasonable notice and
20 opportunity to be heard in a generic Commission proceeding. For
21 example, if a product is generally available per the terms of the SGAT and
22 is contained in the ICAs of other CLECs (but not CLEC), before refusing
23 to make that product available to CLEC on the same terms on the basis
24 that Qwest intends to cease offering the product (such as due to lack of
25 demand), Qwest must either (1) amend the ICAs of those other CLECs
26 and update the SGAT to remove the product; or (2) obtain Commission
27 approval to cease offering the product on a wholesale basis. This
28 provision is intended to help facilitate nondiscrimination by ensuring that
29 Qwest cannot refuse to offer a product on the same terms to CLEC while
30 that product is still contained in the ICAs of other CLECs or in the SGAT.

31 1.7.3.1 If the basis for Qwest's request is that Qwest is no longer
32 required to provide the product or service pursuant to a legally
33 binding modification or change of the Existing Rules, in the cases
34 of conflict, the pertinent legal ruling and the terms of Section 2.2
35 of this Agreement govern notwithstanding anything in this Section
36 1.7.3.

37 1.7.3.2 This Section 1.7.3 is not intended to change the scope of
38 any regulatory agency's authority with regard to Qwest or CLECs.

1 1.7.3.3 This Section 1.7.3 relates to the cessation of a product or
2 service offering on a wholesale basis as described in Section 1.7.3
3 (referred to as a “phase out” or as “cease offering”). Nothing in
4 this Section 1.7.3 prevents another CLEC and Qwest from
5 mutually agreeing to remove a product from an individual ICA to
6 which CLEC is not a party.

7 1.7.3.4 Before Qwest submits a request to phase out or cease
8 offering a product or service (as those terms are used in this
9 Section 1.7.3) pursuant to this Section 1.7.3, and while a request
10 pursuant to this Section 1.7.3 is pending before the Commission,
11 Qwest must continue to offer the product or service, unless the
12 Commission orders otherwise.

13 1.7.3.4.1 If the Commission orders that Qwest need not
14 offer the product or service while the proceeding is
15 pending, the Commission may place such restrictions on
16 that order as allowed by its rules and authority, including a
17 condition that if Qwest later offers the product or service to
18 any CLEC, it must then inform CLECs of the availability
19 of the product or service and offer it to other CLECs on the
20 same terms and conditions. If those terms and conditions
21 are in this Agreement (but were not in effect due to the
22 Commission order that Qwest need not offer the product or
23 service while the proceeding is pending), once Qwest offers
24 those terms to any other CLEC, Qwest must offer those
25 terms to CLEC pursuant to those terms in this Agreement
26 without amendment as well.

27 1.7.3.5 If the Commission approves the phase out or other
28 cessation of a product or service offering that is contained in this
29 Agreement, the product or service will no longer be available per
30 the terms of the Commission’s order without the need for an
31 amendment to this Agreement, unless the Commission orders
32 otherwise or the Parties agree to amend this Agreement. Qwest
33 will amend its SGAT consistent with the Commission’s ruling,
34 unless the Commission orders otherwise.

35
36 **Q. WHAT IS ESCHELON’S THIRD VERSION OF ITS ALTERNATIVE**
37 **PROPOSAL TO ESTABLISH A PRODUCT WITHDRAWAL PROCESS?**

38 A. Eschelon's third version of its alternative proposes to add the following new
39 Section:

1 1.7.3 If Qwest desires to phase out or otherwise cease offering a product,
2 service, element, or functionality on a wholesale basis that it has
3 previously made available pursuant to Section 251 of the Act, Qwest must
4 first obtain an order from the Commission adopting a process for doing so.
5 Once that process in place, Qwest may use that process as ordered by the
6 Commission.

7 1.7.3.1 Unless and until a process is approved by the Commission
8 as described in Section 1.7.3, Qwest must continue to offer such
9 products, services, elements, or functionalities on a
10 nondiscriminatory basis, such that Qwest may not refuse to make
11 an offering available to CLEC on the same terms as it is available
12 to other CLECs through their ICAs or the SGAT on the grounds
13 that Qwest, although it has not yet amended those agreements,
14 indicates that it intends to cease offering that product (such as due
15 to lack of demand). If the Commission does not adopt a process as
16 described in Section 1.7.3 or Qwest chooses not to use that
17 process, Qwest may cease a wholesale offering by promptly
18 amending all ICAs containing that offering to remove it.

19 **Q. WHAT CONCERNS DOES QWEST HAVE CONCERNING ESCHELON'S**
20 **PROPOSAL TO REQUIRE QWEST TO GO THROUGH A**
21 **REGULATORY APPROVAL PROCESS BEFORE IT CAN STOP**
22 **OFFERING A PRODUCT?**

23 A. For multiple reasons, Qwest strongly opposes each of Eschelon's proposals.
24 Under Eschelon's approach, if Qwest desires to discontinue an "offering on a
25 wholesale basis to any Competitive Local Exchange Carrier," it would have to
26 obtain approval from the Commission and give the CLEC "and other potentially
27 affected carriers" the opportunity to contest the discontinuance of the product "in
28 a generic Commission proceeding."⁸

⁸ The proposal apparently exempts from this process product discontinuances resulting from changes of law through the following language: "If the basis for Qwest's request is that Qwest is no longer required to provide the product or service pursuant to a legally binding modification or change of the Existing Rules, in the cases of conflict, the pertinent legal ruling and the terms of Section 2.2 of this Agreement govern notwithstanding anything in this Section 1.7.3."

1 Qwest's first objection is that the proposal improperly attempts to regulate through
2 the Qwest-Eschelon ICA Qwest's relationships with other CLECs. Specifically,
3 the "generic proceeding" required under Eschelon's first version of its alternative
4 proposal would be triggered by Qwest's decision to stop offering a wholesale
5 product or service to "any" CLEC, not just Eschelon. For example, even if
6 another CLEC did not object to the exclusion of a product from its ICA that
7 Qwest is not offering, Qwest would have to go through Eschelon's proposed
8 process to stop offering the product to that CLEC. The ICA between Eschelon
9 and Qwest should not be used to regulate Qwest's relationships with other CLECs
10 and potentially to interfere with the ICAs Qwest has with other CLECs.

11 **Q. IS A SINGLE ARBITRATION BETWEEN TWO CARRIERS THE**
12 **PROPER FORUM IN WHICH TO CONSIDER THE TYPE OF FAR-**
13 **REACHING REGULATORY PROCEEDING THAT ESCHELON IS**
14 **PROPOSING?**

15 A. No. It would not be appropriate in an interconnection arbitration between one
16 CLEC and one ILEC to adopt and include in an ICA a broad, generic process that
17 would apply to all local exchange carriers in Utah. The proper forum in which to
18 consider an issue with this type of far-reaching effect is one in which all interested
19 Utah local exchange carriers can provide input concerning the necessity and
20 contours of such a process. If the Commission were to adopt such a process, the
21 proper method for doing so would be through a generic order that applies to all
22 carriers, not through a single arbitration and ICA between Qwest and Eschelon.

23 **Q. SHOULD A REGULATORY PROCEEDING AND COMMISSION**
24 **APPROVAL BE REQUIRED FOR QWEST TO STOP OFFERING**
25 **PRODUCTS AND SERVICES FOR WHICH THERE IS NO DEMAND**
26 **AND NO UNDERLYING LEGAL OBLIGATION?**

27 A. No. It would be neither logical nor efficient to require a time-consuming,
28 resource-intensive generic docket relating to product withdrawals in response to

1 Qwest's attempt to stop offering products that no CLEC is ordering and for which
2 there is no foreseeable demand. The fact that there is no demand at all for a
3 product, such as the cross-connect offering, and no legal obligation to provide it,
4 should provide a sufficient basis for Qwest to stop offering the product. It should
5 not be necessary for Qwest to go through a time-consuming generic docket to
6 reach this logical and seemingly inevitable outcome.

7 **Q. WHY SHOULD THE COMMISSION REJECT ESCHELON'S PROPOSAL**
8 **AND ADOPT QWEST'S LANGUAGE?**

9 A. If in the highly unlikely event that Qwest provisions UCCRE to another CLEC
10 (pursuant to an interconnection agreement previously negotiated), Qwest cannot
11 reasonably be expected to notify Eschelon that the product has been provisioned.
12 Qwest has no processes or systems in place that would permit it to provide this
13 type of notification. However, Eschelon will have notice of any future UCCRE
14 offerings provided for in any ICAs or amendments that Qwest enters into, since
15 ICAs and amendments are publicly filed with the Commission. Eschelon can
16 easily review all filed ICA agreements and amendments on its own to determine if
17 new CLECs are receiving UCCRE.

18 In addition, there is no reasonable basis for requiring Qwest to maintain external
19 and internal documentation, pricing and ordering information for a service that
20 has never been ordered.

21 **Q. IF ESCHELON DESIRES UCCRE FUNCTIONALITY IN THE FUTURE,**
22 **CAN IT OBTAIN THE PRODUCT THROUGH OTHER MEANS?**

23 A. Yes. In the unlikely event that Eschelon will have a need for a UCCRE service, it
24 can obtain the product through Qwest's retail Command-A- Link tariff.

25

1 **Q. ESCHELON SUGGESTS THAT QWEST'S WITHDRAWAL OF UCCRE,**
2 **ON A GOING-FORWARD BASIS, AMOUNTS TO DISCRIMINATION,**
3 **DO YOU AGREE?**

4 A. No. The individual ICA negotiation process was clearly contemplated by the
5 Telecommunications Act. Specifically, the Act requires that ILECs negotiate
6 individually with CLECs and reach agreements that are tailored to each carrier's
7 needs. While this approach, mandated by the Act, results in terms and conditions
8 that may be different from one CLEC to another, those differences are not an
9 illegal or prohibited form of discrimination.

10 **Q. IN THE TELECOMMUNICATION INDUSTRY, IS THERE A**
11 **TRADITION OF ALLOWING EXISTING CUSTOMERS TO RETAIN A**
12 **SERVICE, WHILE NOT ALLOWING NEW CUSTOMERS TO ORDER**
13 **THE SAME SERVICE?**

14 A. Yes. It is standard in the industry that when products, services and/or feature
15 packages are phased out, existing customers are "grandfathered" and can continue
16 to use the service. Qwest's language is consistent with this standard industry
17 practice.

18 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE**
19 **CERTAIN PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED**
20 **THAT THERE MAY BE A PERIOD OF TIME DURING WHICH A**
21 **PRODUCT OR ELEMENT WILL CONTINUE TO BE AVAILABLE TO**
22 **SOME CARRIERS WHILE NOT BEING AVAILABLE TO OTHER**
23 **CARRIERS?**

24 A. Yes. The FCC has used the concept of "grandfathered" service to give carriers
25 that have relied on a product or service time to adjust to the elimination of the
26 product or service. In these circumstances, the FCC has adopted transitional
27 phase-outs for carriers that have previously relied on the product or service, while
28 making the product or service immediately unavailable to carriers that did not
29 previously rely on it. For example, while the FCC eliminated the high frequency

1 portion of the loop ("HFPL") as a UNE in the *TRO*, it permitted CLECs with
2 existing "line sharing arrangements" to continue obtaining the HFPL at whatever
3 rate the ILEC was charging prior to the *TRO*. *TRO* at ¶ 264. However, those pre-
4 *TRO* rates were no longer available for CLECs that did not have "grandfathered"
5 line sharing arrangements. Those CLECs were required to pay different rates that
6 the FCC established as part of its phase-out of the HFPL as a UNE. *TRO* at
7 ¶ 265.

8 As this example shows, the FCC recognizes that there will be timing differences
9 among CLECs in the implementation of its network unbundling orders. These
10 differences do not result in a form of discrimination prohibited by the Act;
11 instead, they are the result of necessary and often unavoidable differences in the
12 timing of implementation of the FCC's orders.

13 **Q. GIVEN THAT THE FCC HAS DIRECTED ILECS AND CLECS TO RELY**
14 **ON THE ICA NEGOTIATION PROCESS TO IMPLEMENT CHANGES**
15 **IN UNBUNDLING REQUIREMENTS, IS IT INEVITABLE THAT THE**
16 **TIMING OF NEGOTIATIONS WILL VARY TO SOME EXTENT FROM**
17 **ONE CLEC TO ANOTHER?**

18 A. Yes. Qwest, of course, cannot renegotiate ICAs with all CLECs at precisely the
19 same time. As a result, it is unavoidable that changes in the FCC's unbundling
20 requirements will be implemented sooner for some CLECs than for others. For
21 example, if Qwest and a CLEC mutually agree upon all the provisions of a re-
22 negotiated ICA implementing the *TRO* and *TRRO*, that agreement likely can be
23 completed and approved in a matter of a few months. By contrast, if Qwest and a
24 CLEC do not agree on the provisions required to implement the *TRO* and the
25 *TRRO* and are required to arbitrate, it will take much longer to complete and have
26 the agreement approved. As a result, for some period of time, one CLEC is likely
27 to have an ICA with different unbundling requirements than are in another
28 CLEC's ICA. The differences in the ICAs are not the result of discrimination, as

1 Eschelon would suggest, but are instead the result of inevitable differences in
2 timing.

3 **Q. WHAT ADDITIONAL CONCERN DOES QWEST HAVE ABOUT**
4 **ESCHELON'S ALTERNATIVE PROPOSALS?**

5 A. Eschelon's alternative proposals would improperly require Qwest to update its
6 SGAT to reflect the results of any generic product withdrawal proceeding. Qwest
7 and CLECs typically do not rely any longer on Qwest's SGAT. CLECs now have
8 multiple other options available to them, including other carriers' ICAs that
9 CLECs are able to opt into and also Qwest's multi-state "Template Agreement."
10 Because of the effectiveness and utility of the Template Agreement, Qwest
11 stopped updating its SGATs and has not made any updates to incorporate changes
12 in law since 2004. Accordingly, there would be no utility in requiring Qwest to
13 update its SGAT to reflect withdrawals of network element and other product
14 offerings.

15 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE**
16 **RELATING TO THIS ISSUE?**

17 A. Qwest has no legal obligation to provide UCCRE to Eschelon pursuant to a *TRO*
18 change of law as described above, and Eschelon's claims regarding discrimination
19 are unfounded, and frequently products or unique combinations of feature
20 packages are grandfathered for existing customers and are unavailable for new
21 customers.

22

1 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE**
2 **CERTAIN PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED**
3 **THAT THERE MAY BE A PERIOD OF TIME DURING WHICH A**
4 **PRODUCT OR ELEMENT WILL CONTINUE TO BE AVAILABLE TO**
5 **SOME CARRIERS WHILE NOT BEING AVAILABLE TO OTHER**
6 **CARRIERS?**

7 A. Yes. As I discuss above in connection with Issue 9-50 and cross-connects, the
8 FCC has used the concept of "grandfathered" service to give carriers that have
9 relied on a product or service time to adjust to the elimination of the product or
10 service. In these circumstances, the FCC has adopted transitional phase-outs for
11 carriers that have previously relied on the product or service, while making the
12 product or service immediately unavailable to carriers that did not previously rely
13 on it. The FCC thus recognizes that there will be timing differences among
14 CLECs in the implementation of its network unbundling orders. These
15 differences do not result in a form of discrimination prohibited by the Act;
16 instead, they are the result of necessary and often unavoidable differences in the
17 timing of implementation of the FCC's orders.

18 **Q. WOULD ESCHELON'S PROPOSAL OF A GENERIC PROCEEDING**
19 **FOR COMMISSION APPROVAL OF PRODUCT WITHDRAWALS**
20 **APPLY TO UCCRE?**

21 A. Yes. Eschelon's alternative proposals for Issue 9-53 would require Qwest to go
22 through a generic regulatory proceeding to obtain approval to stop providing
23 UCCRE. This would be so even though the FCC has eliminated UCCRE from its
24 network unbundling rules. Qwest should not have to seek Commission approval
25 to stop offering a product or service that the FCC has removed from its
26 unbundling rules. In fact, state commissions likely do not have authority to
27 require an ILEC to continue offering a service or product that the FCC has
28 determined ILECs are no longer required to provide. Eschelon's attempt to
29 impose this requirement in this circumstance further demonstrates the
30 unreasonableness of its proposal.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

2 A. The Commission should reject Eschelon's attempt to impose unnecessary
3 administrative and notice requirements for a product that Qwest has no legal
4 obligation to offer and for which CLECs, including Eschelon, have shown no
5 demand. The Commission should approve the Qwest language "9.9 Intentionally
6 Left Blank." Further, the Commission should reject Eschelon's attempt to impose
7 a generic product withdrawal process.

8 **Issue 9-55 - Combinations of Loops and Transport**

9 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTES**
10 **ENCOMPASSED BY ISSUE 9-55.**

11 A. While Issue 9-55 encompasses multiple provisions of the ICA, there are a small
12 number of fundamental differences in the parties' positions that account for the
13 differences in the parties' proposed ICA language for these provisions. Generally,
14 Qwest's proposed Section 9.23.4 describes the terms and conditions for Enhanced
15 Extended Loops ("EELs"), Commingled EELs and High Capacity EELs. The
16 Qwest EEL product offering consists of a combination of an Unbundled Loop and
17 Unbundled Dedicated Interoffice Transport ("UDIT"). However, in response to
18 Eschelon's proposal, Qwest agreed to remove the terms and conditions associated
19 with commingling (*i.e.*, the combining of a UNE and non-UNE network circuit)
20 from Section 9.23 and to create a new ICA Section 24 dedicated to commingling.
21 This change in structure has challenged both parties to make sure that the
22 necessary terms and conditions are described in each section, while also ensuring
23 that these sections of the ICA do not include inappropriate redundancy.

24 Each issue that I discuss below in this section of my testimony identifies all the
25 ICA sections implicated by the issue. Because some ICA sections are implicated
26 by more than one issue, I discuss or refer to some sections in connection with
27 multiple issues. I attempt to target the portion of the section under dispute in each
28 issue in order to reduce the duplication of sections in the testimony.

1 Eschelon's proposal is particularly troubling given that Eschelon's definition of
2 Loop-Transport Combinations includes commingled arrangements where UNE
3 and non-UNE circuits are combined. The rates and provisioning processes that
4 apply to UNE "loop-transport" combinations, which are combinations of UNEs,
5 are different from those that apply to commingled arrangements, which are
6 comprised of a UNE commingled (or connected) with a tariffed private line
7 circuit arrangement. By combining UNE combinations and commingled
8 arrangements into a single description, Eschelon's language would effectively
9 eliminate all of the critical distinctions between the two types of arrangements.

10 **Q. PLEASE PROVIDE AN EXAMPLE OF A COMMINGLED**
11 **ARRANGEMENT AND THE TERMS AND CONDITIONS THAT WOULD**
12 **APPLY TO SUCH AN ARRANGEMENT.**

13 A. A typical commingled arrangement would be an EEL loop connected to a private
14 line transport circuit. Consistent with governing FCC rules relating to
15 commingled arrangements, the UNE terms and conditions set forth in the
16 interconnection agreement would apply to the UNE (*i.e.*, the EEL Loop) circuit,
17 while the provisions of the tariff (or price list as appropriate) would dictate the
18 terms and conditions that would apply to the private line transport circuit in the
19 arrangement. Specifically, the FCC notes this application of rates, terms and
20 conditions in the *Triennial Review Order* at footnote 1796:

21 For example, a competitive LEC connecting a UNE loop to special
22 access interoffice transport facilities would pay UNE rates for the
23 unbundled loops and tariffed rates for the special access service . . .

24 **Q. WHAT IS QWEST'S PROPOSAL RELATING TO ISSUE 9-55?**

25 A. The term "Loop-Transport Combination" should be deleted from each product
26 section of the ICA. The sections from which this term should be excluded include
27 Sections 9.23.4 (general terms and conditions for EELs), 9.23.4.4. and 9.23.4.4.1
28 (Additional Terms for EELs), 9.23.4.5 and 9.23.4.5.4 (Ordering Process for
29 EELs), and 9.23.4.6 (Rate Elements for EELs).

1 Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S
2 LANGUAGE?

3 A. Eschelon proposes the underlined changes to the EEL product offering set forth
4 below. These are the sections in which the term "Loop-Transport Combination"
5 should be eliminated:

6 9.23.4 Loop-Transport Combinations: Enhanced Extended Links
7 (EELs), Commingled EELs, and High Capacity EELs.

8 Loop-Transport Combination –For purposes of this
9 Agreement, “Loop-Transport Combination” is a Loop in
10 combination, or Commingled, with a Dedicated Transport
11 facility or service (with or without multiplexing capabilities),
12 together with any facilities, equipment, or functions necessary
13 to combine those facilities. At least as of the Effective Date of
14 this Agreement “Loop-Transport Combination” is not the
15 name of a particular Qwest product. “Loop-Transport
16 Combination” includes Enhanced Extended Links (“EELs”),
17 Commingled EELs, and High Capacity EELs. If no
18 component of the Loop-transport Combination is a UNE,
19 however, the Loop-Transport Combination is not addressed in
20 this Agreement. The UNE components of any Loop-Transport
21 Combinations are governed by this Agreement.

22

23 Commingled EEL – If CLEC obtains at UNE pricing part (but not
24 all) of a Loop-Transport Combination, the arrangement is a
25 Commingled EEL. (Regarding Commingling, see Section 24.)

26

27 High Capacity EEL – “High Capacity EEL” is a Loop-Transport
28 Combination (either EEL or Commingled EEL) when the Loop or
29 transport is of DS1 or DS3 capacity. High Capacity EELs may
30 also be referred to as “DS1 EEL” or “DS3 EEL,” depending on
31 capacity level.

32 9.23.4.4 Additional Terms for ~~EEL~~ UNE Components of Loop
33 Transport Combinations

34

1 9.23.4.4.1 EELs and Commingled EELs may consist of loops and
2 interoffice transport of the same bandwidth (Point-to-Point).
3 When multiplexing is requested, EELs and Commingled EELs
4 may consist of loops and interoffice transport of different
5 bandwidths (Multiplexed). CLEC may also order combinations of
6 interoffice transport, concentration capability and DS0 loops.

7 9.23.4.5 Ordering Process for ~~EEL~~ **UNE Components of Loop**
8 **Transport Combinations**

9 9.23.4.5.4 . . .Qwest may require two (2) service requests when
10 CLEC orders Multiplexed **Loop Transport Combinations** (which
11 are not Point-to-Point) and EEL loops (as part of a multiplexed
12 EEL). Regarding Commingling see Section 24.

13 9.23.4.6 Rate Elements for ~~EEL~~ **UNE Components of Loop Transport**
14 **Combinations**

15 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE**
16 **ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE**
17 **CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-**
18 **TRANSPORT UMBRELLA TERM?**

19 A. The net result that Eschelon is seeking is to have terms and conditions in the ICA
20 govern Qwest's special access and private line circuit offerings. This is improper
21 because ICAs must, as a matter of law, be limited to terms and conditions relating
22 to the services and elements required by Sections 251(b) and (c). Special access
23 and private line circuits are not within Section 251 and are therefore governed by
24 tariffs, not ICAs.

25 Moreover, Eschelon's demands that commingled arrangements be put in place or
26 ordered through a single local service request ("LSR") and be billed through the
27 billing system that Qwest uses for UNEs (the "CRIS" system) is a direct attempt
28 by Eschelon to have this Commission (via an ICA arbitration) force Qwest to
29 change its special access and private line service order process and billing
30 arrangements. In eliminating the pre-existing restriction on commingling in the
31 *TRO*, the FCC modified its rules to permit CLECs to commingle UNEs and

1 combinations of UNEs with services (*e.g.*, switched, special access and private
2 line services offered pursuant to tariff) that a requesting carrier has obtained at
3 wholesale from an ILEC pursuant to any method other than unbundling under
4 section 251(c)(3) of the Act.

5 However, wholesale services such as switched and special access services have
6 always been separate and distinct products from those UNE products provided to
7 CLECs under the terms and conditions of their Section 252 ICAs. Each of these
8 products, whether the product is tariffed or a Section 251 UNE, has its own
9 established ordering, provisioning, and billing systems and methods. The FCC
10 did not require combined processes, systems, and methods for the distinct
11 components of commingled arrangements when it eliminated the restriction on
12 commingling. Nowhere in the *TRO* or *TRRO* does the FCC require ILECs to
13 modify the rates, terms and conditions of their special access and private lines
14 services, beyond removing any commingling with UNE restrictions. The FCC
15 only required the ILECs to perform the necessary functions to effectuate such
16 commingling upon request. Qwest has established provisioning processes and
17 methods for all commingled arrangements to meet that requirement. Qwest's
18 processes properly provide for billing of the UNE rates to the UNE circuit and the
19 appropriate special access and/or private line tariff rates to the tariffed circuit.

20 **Q. DOES QWEST COMMIT IN THE ICA THAT THE UNE CIRCUIT WILL**
21 **BE GOVERNED BY THE TERMS AND CONDITIONS IN THE ICA?**

22 A. Yes. In fact, in agreed ICA language Qwest commits as follows:

23 24.1.2.1 The UNE component(s) of any Commingled arrangement
24 is governed by the applicable terms of this Agreement. The other
25 component(s) of any Commingled arrangement is governed by the
26 terms of the alternative service arrangement pursuant to which that
27 component is offered (*e.g.*, Qwest's applicable Tariffs, price lists,
28 catalogs, or commercial agreements). Performance measurements
29 and/or remedies under this Agreement apply only to the UNE
30 component(s) of any Commingled arrangement. Qwest is not

1 relieved from those measurements and remedies by virtue of the
2 fact that the UNE is part of a Commingled arrangement.

3 Qwest has been clear that when two circuits are commingled, each circuit retains
4 the appropriate terms and conditions. As I stated above, it is Eschelon's proposed
5 melding of EELs, Commingled EEL circuits and High Capacity EELs into a
6 single umbrella product that creates the confusion regarding this issue.

7 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S PROPOSAL AND**
8 **REJECT ESCHELON'S USE OF THE TERM "LOOP-TRANSPORT**
9 **COMBINATIONS"?**

10 A. The FCC uses the term "loop-transport" to generally describe varieties of EELs,
11 not to establish an unbundled product separate from EELs. By contrast, Eschelon
12 uses "loop-transport" as a defined term that applies equally to high-capacity and
13 commingled EELs. Although "loop-transport" is not a Qwest product, Eschelon
14 improperly proposes to assign product attributes to it. *See, e.g.*, §§ 9.23.4.4.3.1
15 (intervals); 9.23.4.5.1.1. (Billing); 9.23.4.6.6. (BANS).

16 Qwest has developed and implemented separate and distinct systems, procedures
17 and provisioning intervals for EELs, UNEs and tariffed services and is under no
18 legal requirement to implement costly modifications to provide Eschelon's
19 proposed "loop-transport" product. In addition, even if Qwest had an obligation
20 to make the multiple changes that would be needed to support this proposed
21 product, my understanding is that Eschelon has not agreed to compensate Qwest
22 for the costs of making the changes. Under Section 252(d)(1) of the Act, Qwest
23 would have a right to recover those costs through charges imposed on Eschelon.
24 Eschelon's apparent unwillingness to compensate Qwest for these costs provides
25 an additional reason for rejecting the proposal.

26

1 **Issues 9-56 and 9-56a – Service Eligibility Criteria Audits**

2 **Q. WHAT IS THE NATURE OF THE DISPUTE BETWEEN THE PARTIES**
3 **RELATING TO ISSUES 9-56 AND 9-56A?**

4 A. These two issues involve disputes relating to the audits that Qwest is permitted to
5 conduct, as contemplated by FCC rules, to determine whether Eschelon is
6 complying with the FCC's service eligibility criteria that apply to orders for high-
7 capacity EELs. The parties agree such audits are permitted. However, the dispute
8 encompassed by Issue 9-56 concerns whether Qwest should be allowed to
9 conduct audits without cause. Issue 9-56a involves the information that Qwest
10 must provide to Eschelon in requesting an audit, including whether the notice of
11 an audit must set forth a cause for the audit.

12 **Q. WHAT ARE THE "SERVICE ELIGIBILITY CRITERIA" FOR HIGH-**
13 **CAPACITY EELS?**

14 A. In the *TRO*, the FCC established service eligibility criteria for high-capacity EELs
15 that are designed to ensure access to these facilities for bona fide providers of
16 "qualifying services," while also protecting against the potential for "gaming" by
17 providers. By "gaming," the FCC was referring to the practice of providers that
18 obtain access to UNE facilities even though the services they provide do not
19 qualify for use with UNEs. Through this practice, carriers attempt to obtain
20 favorable UNE rates when they are not entitled to them or otherwise engage in
21 regulatory rate arbitrage.

22 To protect against gaming, the FCC adopted the following service eligibility
23 criteria for high-capacity EELs at paragraph 597 of the *TRO*: (1) the requesting
24 carrier must have a state certification of authority to provide local voice service;
25 (2) the requesting carrier must have at least one local number assigned to each
26 circuit and must provide 911 or E911 capability to each circuit; and (3) the
27 requesting carrier must have certain "circuit-specific architectural safeguards" in

1 place to prevent gaming. The FCC describes these specific "architectural
2 safeguards" in paragraph 597.

3 **Q. WHAT RIGHTS DO ILECS HAVE TO CONDUCT AUDITS TO**
4 **DETERMINE IF CLECS ARE COMPLYING WITH THESE**
5 **ELIGIBILITY REQUIREMENTS?**

6 A. In paragraphs 625-629 of the *TRO*, the FCC describes the rights that ILECs have
7 to conduct audits of CLECs to determine whether they are complying with the
8 service eligibility criteria. As described in paragraph 626 of the *TRO*, an ILEC is
9 permitted to "obtain and pay for an independent auditor to audit, on an annual
10 basis, compliance with the qualifying service eligibility criteria." The auditor
11 must issue an opinion regarding the requesting carrier's compliance with the
12 criteria. If the auditor determines that the CLEC is not in compliance, the CLEC
13 must make true-up payments, convert non-complying circuits to the appropriate
14 service, and may have to pay the costs of the independent auditor. If the auditor
15 concludes that the CLEC is complying with the criteria, the ILEC must reimburse
16 the CLEC for the costs associated with the audit. As described by the FCC in
17 paragraph 628 of the *TRO*, the intent of this reimbursement requirement for
18 ILECs is to "eliminate the potential for abusive or unfounded audits."

19 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
20 **TO ISSUE 9-56?**

21 A. Qwest's proposed language is as follows:

22 9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance
23 with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to
24 ascertain whether those High Capacity EELs comply with the Service
25 Eligibility Criteria set forth in Section 9.23.4.1.2.

26 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
27 **LANGUAGE?**

28 A. Eschelon proposes the following underlined addition to the Qwest language:

1 9.23.4.3.1.1 After CLEC has obtained High Capacity EELs in accordance
2 with Section 9.23.4.1.2, Qwest may conduct a Service Eligibility Audit to
3 ascertain whether those High Capacity EELs comply with the Service
4 Eligibility Criteria set forth in Section 9.23.4.1.2, **when Qwest has a**
5 **concern that CLEC has not met the Service Eligibility Criteria.**

6 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

7 A. As I describe above, the *TRO* gives ILECs the right to conduct audits of CLECs to
8 ensure compliance with the FCC established Service Eligibility Criteria for high-
9 capacity EELs. There is no support in the *TRO* or FCC rules for Eschelon's
10 proposal that would limit Qwest's rights to conduct an audit to only when Qwest
11 states it has "cause" to believe Eschelon has not met the Service Eligibility
12 Criteria." Eschelon's proposal impermissibly interferes with and weakens the
13 audit rights that the FCC granted in the *TRO*. If the FCC had intended to limit
14 audits to situations where there is demonstrable cause, it would have said so. It
15 did not do so, however, and, instead, established a compensation and
16 reimbursement scheme that provides CLECs with incentives to comply with the
17 service eligibility criteria and provides ILECs with incentives not to conduct
18 wasteful audits.

19 Qwest recommends the Commission strike the Eschelon proposed addition to
20 9.23.4.3.1.1, allowing Qwest to retain the audit rights contemplated by the FCC.

21 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
22 **TO ESCHELON'S ISSUE 9-56(a)?**

23 A. Eschelon also has proposed a new section 9.23.4.3.1.1.1.1 that further undermines
24 Qwest rights to conduct proper audits. Qwest proposes that section
25 9.23.4.3.1.1.1.1. be deleted.

26 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
27 **LANGUAGE?**

28 A. Eschelon proposes the following new section in the ICA:

1 **9.23.4.3.1.1.1.1 The written notice shall include the cause upon which**
2 **Qwest has a concern that CLEC has not met the Service Eligibility**
3 **Criteria. Upon request, Qwest shall provide to CLEC a list of circuits**
4 **that Qwest has identified as of that date, if any, for which Qwest**
5 **alleges non-compliance or which otherwise supports Qwest's concern.**

6
7 **Q. PLEASE DESCRIBE FURTHER THE AUDIT RIGHTS THAT THE FCC**
8 **GRANTED ILECS IN THE *TRO* FOR DETERMINING CLEC**
9 **COMPLIANCE WITH THE SERVICE ELIGIBILITY CRITERIA.**

10 A. Again, contrary to Eschelon's assertions, the FCC did not condition ILEC audit
11 rights on a demonstration of "good cause" to believe that a CLEC is violating the
12 service eligibility criteria. Instead, as described in paragraph 626 of the *TRO*, an
13 ILEC is permitted to "obtain and pay for an independent auditor to audit, on an
14 annual basis, compliance with the qualifying service eligibility criteria." The
15 auditor must issue an opinion regarding the requesting carrier's compliance with
16 the criteria. If the auditor determines that the CLEC is not in compliance, the
17 CLEC must make true-up payments, convert non-complying circuits to the
18 appropriate service, and may have to pay the costs of the independent auditor. If
19 the auditor concludes that the CLEC is complying with the criteria, the ILEC must
20 reimburse the CLEC for the costs associated with the audit. Nowhere in this
21 description of ILEC audit rights does the FCC refer to or impose a "good cause"
22 requirement.

23 **Q. SINCE THE FCC DID NOT IMPOSE A "GOOD CAUSE"**
24 **REQUIREMENT FOR SERVICE ELIGIBILITY AUDITS, DOES THE**
25 **FCC TAKE STEPS TO MAKE SURE ILECS DO NOT ABUSE THE**
26 **PROCESS?**

27 A. Yes. While the FCC did not impose a "good cause" requirement, it did take steps
28 to ensure that ILECs would not abuse the audit process. Specifically, as I
29 describe above, the FCC established that if an auditor concludes that the CLEC is
30 complying with the service eligibility criteria, the ILEC must reimburse the CLEC

1 for the costs associated with the audit. This reimbursement obligation gives
2 ILECs a strong incentive not to conduct abusive audits. Indeed, the FCC stated in
3 paragraph 628 of the *TRO* that the intent of this reimbursement requirement for
4 ILECs is to "eliminate the potential for abusive or unfounded audits." In addition,
5 the *TRO* establishes that ILECs are permitted to conduct audits only "on an annual
6 basis," which further prevents ILECs from conducting abusive audits. It is
7 through this reimbursement scheme and the annual limit on audits, not through a
8 "good cause" requirement, that the FCC eliminated the potential for abusive
9 audits.

10 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S POSITION ON**
11 **ISSUE 9-56(a)?**

12 A. There is no support in FCC rules for Eschelon's proposal that would permit Qwest
13 to conduct an audit only if Qwest states and explains the "cause upon which
14 Qwest has a concern that [Eschelon] has not met the Service Eligibility Criteria."
15 In addition, Eschelon's proposal improperly would require Qwest to identify
16 specific Eschelon circuits that Qwest believes do not comply with the service
17 eligibility criteria. There is no requirement in the *TRO* or FCC rules for Qwest to
18 identify non-complying circuits as a condition to conducting an audit. Eschelon's
19 proposal impermissibly interferes with and weakens the audit rights that Qwest is
20 granted in the *TRO*.

21 Qwest recommends that the Commission reject Eschelon's proposed section
22 9.23.4.3.1.1.1.1 on the grounds that is both overreaching and not consistent with
23 the audit rights granted by the FCC. Adoption of the notice requirement that
24 Eschelon proposes would raise the distinct possibility of Eschelon using the form
25 of notice as a basis for objecting to proper audits that are contemplated by the
26 *TRO*.

27

1 **Issues 9-58 (ALL A, B, C, D, E) Ordering, Billing, and Circuit ID for**
2 **Commingled Arrangements.**

3
4 **Q. PLEASE PROVIDE AN OVERVIEW OF THIS ISSUE.**

5 A. Issue 9-58 and the related sub-issues (a, b, c, d, e) involve process-related disputes
6 between the parties. When a CLEC orders either an EEL loop or EEL transport
7 commingled with a private line transport circuit or a channel termination circuit, it
8 is necessary to order, provision and bill each circuit out of the appropriate Qwest
9 service order systems, and to follow the established processes that Qwest has for
10 these products. For example, when a CLEC orders an EEL Loop commingled
11 with a private line transport circuit, the design of Qwest's systems and processes
12 requires that the CLEC order the EEL loop by submitting a local service request
13 ("LSR"). Qwest bills the CLEC for this network element through its "CRIS"
14 system. By contrast, the design of Qwest's systems and processes requires that
15 the CLEC order the private line transport circuit by submitting an access service
16 request ("ASR"), and Qwest bills the CLEC for this circuit through a different
17 billing system referred to as the "IABS system." Each circuit is separate and is
18 assigned its own circuit identification number ("circuit ID"). Moreover, the EEL
19 loop is provided pursuant to terms and conditions that are specific to that facility,
20 and the private line transport circuit is provided based on specifically-defined
21 terms and conditions set forth in tariffs.

22 This dispute arises because of Eschelon's demands that Qwest modify its systems
23 and processes so that commingled EELs are provisioned and processed as though
24 they are a single, unified element instead of a combination of two very distinct
25 circuits with distinct characteristics and provisioning requirements. Eschelon's
26 proposals in this regard would require very substantial changes to Qwest's
27 systems and processes at a very substantial cost. In addition to the fact that Qwest
28 has no obligation to make such changes, Eschelon apparently is not proposing to
29 compensate Qwest for the substantial costs that such changes would impose.

1 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE**
2 **ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE**
3 **CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-**
4 **TRANSPORT UMBRELLA TERM?**

5 A. Qwest is concerned that Eschelon is seeking to have Qwest's special access and
6 private line circuit's terms and conditions be governed by the ICA. This is
7 improper because these are tariffed services that Qwest does not provide pursuant
8 to Section 251 of the Act, and, therefore, ICA terms and conditions do not apply
9 to them. Moreover, the combination of Eschelon's demands that commingled
10 arrangements be put in place with a single LSR and be billed in CRIS is a direct
11 attempt to have this Commission (via an ICA arbitration) force Qwest to change
12 its special access and private line service order process and billing arrangements.

13 By eliminating the prior restriction on commingling in the *TRO*, the FCC
14 modified its rules to permit CLECs to commingle UNEs and combinations of
15 UNEs with services (*e.g.*, switched, special access and private line services
16 offered pursuant to tariff) that a requesting carrier has obtained at wholesale from
17 an ILEC pursuant to any method other than unbundling under section 251(c)(3) of
18 the Act. As I discuss above in connection with Issue 9-55, wholesale services
19 such as switched and special access services have always been separate and
20 distinct products from those UNE products provided to CLECs under the terms
21 and conditions of their ICAs. Each of these products, whether the product is
22 tariffed or a UNE, has its own established ordering, provisioning, and billing
23 systems and methods. The FCC's elimination of the commingling restriction did
24 not change this.

25 **Q. DO OTHER TYPES OF TRANSPORT-LOOP COMBINATIONS ALSO**
26 **REQUIRE MULTIPLE ORDERS AND CIRCUIT IDS?**

27 A. Yes. Numerous UNEs, access and private line network arrangements require
28 CLECs to place more than one order and to use more than one circuit ID. Even
29 Eschelon acknowledges with its language at Section 9.23.4.5.4 that multiplexed

1 facilities require at least two service orders and multiple circuits IDs, and indeed,
2 the typical arrangement of 28 DS1s multiplexed on to a DS3 facility may involve
3 as many as 29 different circuit IDs. This is true in the UNE EEL, special access
4 and private line arena. Eschelon has not suggested that Qwest commingle two
5 separate facilities of different bandwidth/capacity into one order, one bill, and one
6 circuit ID.

7 **Q. DOES THIS MEAN THAT NOT ONLY IS QWEST'S USE OF TWO**
8 **SERVICE ORDERS AND TWO CIRCUIT IDS UNDER DISPUTE AS A**
9 **SUB-SECTION OF EELS, BUT ALSO AS A SUB-SECTION OF SAME**
10 **BANDWIDTH EELS?**

11 A. Yes. When available, a CLEC will select the all UNE EEL option, so Eschelon's
12 dramatic statements about potentially exiting the Utah marketplace because of
13 having to manage one additional circuit ID and one additional service order per
14 EEL revolve around a very narrow application -- that of a single-bandwidth
15 Commingled EEL when the all UNE loop and transport EEL is not available.

16 **Q. WHEN WOULD YOU TYPICALLY SEE A SINGLE BANDWIDTH**
17 **COMMINGLED EEL UTILIZED BY A CLEC?**

18 A. Generally, a CLEC's first choice will be to use UNE transport and UNE loops
19 (when available) to make a UNE EEL. In the event one or the other is not
20 available, then a CLEC will use a special access or private line circuit with a UNE
21 circuit in a commingled arrangement (*i.e.*, a Commingled EEL). Qwest believes
22 that a typical need for a same bandwidth Commingled EEL is when the transport
23 is between non-impaired wire centers, but a UNE loop is still available.

24 **Q. WHAT IS THE SPECIFIC DISPUTE ENCOMPASSED BY ISSUE 9-58?**

25 A. Issue 9-58 involves Eschelon's attempt to require Qwest to overhaul its systems
26 and processes to make them capable of handling a single service order request --
27 instead of an LSR and a separate ASR -- when Eschelon orders its so-called
28 "Loop-Transport Combination" product (which, as defined by Eschelon, could be

1 a commingled arrangement). *See* Echelon’s proposed language for sections
2 9.23.4.5.1, 9.23.4.5.1.1 and 9.23.4.5.4.

3 The Commission should reject Eschelon’s attempt to force Qwest to modify its
4 systems and processes to accommodate Eschelon's proposed and improper “Loop-
5 Transport Combination” product. Under Eschelon's proposal, Qwest would be
6 required to (1) create an entirely new and unique hybrid service, (2) combine a
7 tariffed service and a UNE into one circuit, (3) permit Eschelon to submit one
8 order for this hybrid service, and (4) issue just one bill, not two, even though the
9 product would be comprised of separate elements. The requirement of separate
10 orders, bills, and circuit IDs is not a new concept. Indeed, this requirement
11 applies whenever a CLEC orders separate, distinct services or requests that the
12 services be connected to one another. Qwest’s existing ordering, provisioning,
13 and billing processes already provide the ability to commingle tariffed and UNE
14 services. The Commission should allow this section to remain as proposed by
15 Qwest and be consistent with the current Qwest's method and procedures for
16 processing not only EEL services commingled with tariffed services, but all
17 commingling requests. Qwest’s commingling processes are no different from
18 those that other ILECs use.

19 **Q. COULD YOU PLEASE PROVIDE ADDITIONAL DETAIL ABOUT WHY**
20 **YOU BELIEVE THE QWEST PROCESS FOR COMMINGLED**
21 **ARRANGEMENTS IS CONSISTENT WITH AT LEAST ONE OTHER**
22 **ILEC?**

23 A. Yes. Qwest Exhibit 3.1, attached to my testimony, contains a copy of SBC’s
24 Commingling policy and general ordering information for commingled
25 arrangements. SBC clearly requires that each circuit in the commingled
26 arrangement be ordered separately.

27

1 Q. ARE OTHER CLECS USING QWEST'S EXISTING SYSTEMS AND
2 PROCESSES TO ORDER COMMINGLED EELS?

3 A. Yes. Qwest is successfully provisioning other CLEC's requests for commingled
4 EELs based on the process outlined by Qwest in its proposed Section 9.23.4.5.

5 Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S
6 LANGUAGE?

7 A. Eschelon proposes the following deletions and underlined additions:

8 9.23.4.5.1 CLEC will submit orders for ~~EELs~~ Loop Transport
9 Combinations using the LSR process. Submission of LSRs is described
10 in Section 12.

11 9.23.4.5.1.1 If any component of the Loop-Transport
12 Combination is not a UNE (i.e., not a component to which UNE
13 pricing applies), CLEC will indicate on the LSR that the
14 component is not a UNE (e.g., CLEC is ordering the
15 component as an alternate service such as special access).
16 CLEC will indicate this information in the Remarks section of
17 the LSR, unless the Parties agree otherwise.

18 9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point
19 EELs and Point-to-Point Commingled EELs. . . .

20

21 Q. WHAT IS YOUR RESPONSE TO ESCHELON'S PROPOSAL THAT THE
22 COMMINGLED EEL BE IMPLEMENTED ON A SINGLE LSR?

23 A. The Eschelon proposal of using the remarks section of the LSR to convey that a
24 UNE circuit commingled with a private line circuit is not reasonable or feasible
25 with the current Qwest provisioning systems. The remarks section can be utilized
26 to convey information at the time of ordering or repair. However, once the initial
27 activity has been completed, Qwest's systems do not retain, much less read, the
28 remarks section of the original LSR. This is even more critical, as I discuss later
29 in this section, in connection with Eschelon's request for a single circuit ID.

1 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SYSTEM THAT CANNOT**
2 **READ THE REMARKS SECTION?**

3 A. Yes. UNEs are subject to specific performance indicator measurements ("PIDs")
4 and potential payments. Special access and private line arrangements are not
5 subject to the same performance indicator measurements and potential payments.
6 If Qwest were required to create a hybrid product (such as would result if all of
7 Eschelon's proposals in Issue Nos. 9-58 a, b, c, d, and e were adopted by this
8 Commission) that was a mix of both the UNE circuit and private line facilities, it
9 would be inappropriate to subject Qwest to UNE-specific PIDs and potential
10 payments on this hybrid product.

11 If a single LSR and single circuit ID (as Eschelon proposes in Issue No. 58a) were
12 utilized, Qwest's systems could not recognize, for example, what part of the
13 hybrid circuit had an installation and/or repair issue, and thus Qwest could not
14 know if specific performance indicator measurements and potential payments
15 applied. In addition, Qwest's systems used to track these measurements do not
16 read and filter results by the remarks section of the LSR. While Eschelon's
17 proposals in connection with Issues 9-58 a, b, c, d, e should be rejected in their
18 entirety, at a minimum, the Commission would need to exclude such hybrid
19 products from the Utah UNE-specific performance indicator measurements.

20 **Q. DOES QWEST COMMIT IN THE ICA THAT THE UNE CIRCUIT**
21 **COMMINGLED WITH A PRIVATE LINE CIRCUIT (COMMINGLED**
22 **EEL) WILL BE PROPERLY MEASURED BY PIDS, AND IF**
23 **APPROPRIATE, THAT PAP PAYMENTS WILL BE MADE IF THERE IS**
24 **A PERFORMANCE ISSUE WITH UNE?**

25 A. Yes. Qwest has made that commitment in the ICA at 24.1.2.1:

26 24.1.2.1 The UNE component(s) of any Commingled arrangement
27 is governed by the applicable terms of this Agreement. The other
28 component(s) of any Commingled arrangement is governed by the
29 terms of the alternative service arrangement pursuant to which that
30 component is offered (e.g., Qwest's applicable Tariffs, price lists,

1 catalogs, or commercial agreements). Performance measurements
2 and/or remedies under this Agreement apply only to the UNE
3 component(s) of any Commingled arrangement. Qwest is not
4 relieved from those measurements and remedies by virtue of the
5 fact that the UNE is part of a Commingled arrangement.

6 The Qwest process for Commingled EELs allows for application of the correct
7 performance measurements for UNE circuits.

8 **Q. HAS ESCHELON OFFERED TO REIMBURSE QWEST FOR ANY**
9 **ADDITIONAL COSTS THAT ITS PROPOSAL WOULD CAUSE QWEST**
10 **TO INCUR?**

11 A. No. I am not aware that Eschelon has made any offer to reimburse Qwest for the
12 unique service ordering process costs that its single LSR demand would create.

13 **Q. DOES QWEST BELIEVE THIS ARBITRATION IS THE CORRECT**
14 **FORUM FOR DISCUSSING DETAILED OPERATIONAL SUPPORT**
15 **SYSTEMS ("OSS") RELATED CHANGES SUCH AS ESCHELON'S**
16 **SINGLE LSR REQUEST?**

17 A. No. Qwest has developed and implemented OSS-related procedures and intervals
18 for UNE EELs, and UNEs commingled with special access circuits and is under
19 no legal requirement to modify these systems to support Eschelon's proposed
20 "Loop-Transport Combination" single-umbrella OSS process concept. The
21 modifications that Eschelon would impose on Qwest through its proposals
22 encompassed by Issue 9-58 would require Qwest to incur significant OSS-related
23 costs that it is entitled to recover under the Act.

24 Further, the Change Management Process ("CMP") was approved as part of
25 Section 271 proceedings by both this Commission and the FCC for the purpose of
26 providing a vehicle to address the types of changes in OSS-related processes and
27 systems changes that impact UNEs. From a CLEC's perspective, the purpose of
28 CMP is to provide CLECs with a meaningful opportunity to modify OSS-related
29 systems, processes and procedures. CMP also allows CLECs collectively to

1 prioritize what changes should be made to OSS related systems. This stands in
2 contrast to Eschelon's attempt here to circumvent the CMP process and to have
3 this arbitration redefine OSS-related service order changes without the
4 prioritization input from other CLECs. In summary, even if the changes to the
5 LSR ordering process that Eschelon is proposing were appropriate – which they
6 are not – the CMP is the proper forum for raising any concerns with UNEs. For
7 more detail regarding CMP, please see the testimony of Qwest witness Renee
8 Albersheim.

9 **Q. HAS A CMP REVIEW ALREADY BEEN CONDUCTED FOR**
10 **COMMINGLED EELS?**

11 A. No. Commingling is a requirement that resulted from the *TRO* and *TRRO*
12 proceedings that required ILECs to provide commingled arrangements between
13 UNEs and special access and private lines. Therefore, CMP is the appropriate
14 forum for potential *TRO*- and *TRRO*-generated systems changes. Because CLECs
15 have agreed that certain legal issues relating to implementation of the *TRRO* must
16 still be resolved, the CMP change request ("CR") intended to complete *TRRO*-
17 related systems work has been deferred pending completion of the *TRRO* wire
18 center dockets in Qwest's states. However, Qwest has recently announced its
19 intent to re-activate the CR and to have the *TRO*- and *TRRO*-related systems
20 changes to be reviewed and addressed in CMP. For more detail regarding CMP
21 and *TRRO*-related changes, please see the testimony of Qwest witness Renee
22 Albersheim.

23 **Issue 9-58(a)**

24
25 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S LANGUAGE?**

26 A. As I described earlier, the FCC uses the term "loop-transport" to describe varieties
27 of EELs, not to establish an unbundled product separate from EELs. By contrast,
28 Eschelon uses "loop-transport" as a defined term that applies equally to high-
29 capacity and commingled EELs. Qwest has developed and implemented systems,

1 procedures and intervals for EELs, UNEs and tariffed services and is under no
2 legal requirement to modify these systems to provide Eschelon's proposed "Loop-
3 Transport" product. Such modifications would require Qwest to incur significant
4 costs that it is entitled to recover under the Act. Further, the CMP was approved
5 as part of Section 271 proceedings by both this Commission and the FCC for the
6 purpose of providing a vehicle to address the types of changes in processes and
7 systems that Eschelon is proposing. From a CLEC's perspective, the purpose of
8 CMP is to provide CLECs with a meaningful opportunity to modify systems,
9 processes and procedures. Even if the changes that Eschelon is proposing were
10 appropriate – which they are not – the CMP is the proper forum for raising them.
11 For more detail regarding CMP, please see the testimony of Qwest witness Renee
12 Albersheim.

13 Moreover, UNEs are subject to specific performance indicator measurements and
14 potential payments that would be inappropriate to subject Qwest to when the
15 "Loop-Transport combination" contains a private line circuit that is not subject to
16 these requirements.

17 **Q. WHAT IS THE SPECIFIC DISPUTE IN ISSUE 9-58(a) AND QWEST'S**
18 **PROPOSED CONTRACT LANGUAGE?**

19 A. Issue 9-58(a) involves Eschelon's attempt to require Qwest to change its processes
20 by assigning a single circuit ID to Eschelon's proposed "Loop-Transport
21 Combination" product and to commingled EELs.

22 **Q. IS IT NECESSARY FOR QWEST TO HAVE SEPARATE CIRCUIT IDS**
23 **FOR THE DIFFERENT COMPONENTS THAT COMPRISE A**
24 **COMMINGLED EEL?**

25 A. Yes. Eschelon's demand that Qwest use a single circuit ID for commingled EELs
26 instead of separate identification numbers for the UNE and non-UNE circuits is
27 improper for several reasons. First, circuit IDs often include product-specific
28 information that Qwest relies upon for proper processing, monitoring of

1 performance indicator measurements and billing of products. Using a circuit ID
2 assigned to a UNE for a tariffed service may result in mis-identification of the
3 service and lead to billing and other errors. Second, there is no legal requirement
4 for Qwest to change its systems for this purpose; indeed, Qwest uses separate
5 circuit ID numbers for other CLECs, so adoption of that approach for Eschelon
6 will not result in unequal treatment. Third, it would be very costly for Qwest to
7 modify its operation systems to meet Eschelon's demand for use of the same
8 circuit ID number after a conversion. As far as I am aware, Eschelon is not
9 proposing to compensate Qwest for the costs to implement this very substantial
10 change.

11 **Q. WHY IS CMP, NOT THIS ARBITRATION, THE CORRECT FORUM**
12 **FOR ESCHELON TO SEEK THE USE OF A SINGLE CIRCUIT ID FOR**
13 **COMMINGLED ARRANGEMENTS?**

14 A. Eschelon's demand for a single circuit ID involves processes that affect all
15 CLECs, not just Eschelon. This demand should therefore be addressed through
16 the CMP, not through an arbitration involving a single CLEC.

17 **Q. YOU MENTIONED THE CIRCUIT ID CONTAINS INFORMATION**
18 **ABOUT THE SPECIFIC CIRCUIT. COULD YOU PLEASE PROVIDE**
19 **EXAMPLES OF THE TYPE OF INFORMATION?**

20 A. Yes. By way of illustration, set forth below is the Circuit ID of an unbundled DS-
21 1 loop and a Private Line DS-1 channel termination (the closest equivalent to a
22 DS1 unbundled loop) service, along with an indicator of what each character
23 means:

24 DS-1 Private Line Service: 15/HCGS/147426/NW

25 DS-1 Unbundled Loop: 3/HCFU/105228/NW

26 The first two characters or in this case numbers (15 and 3) are the prefix
27 and they indicate the LATA and the type of circuit. For this instance:

1 **Q. IS THERE ANY MERIT TO ESCHELON'S CLAIM THAT THE USE OF**
2 **SEPARATE CIRCUIT IDS FOR COMMINGLED ARRANGEMENTS**
3 **WILL LEAD TO DIFFICULTIES IN COMPLETING REPAIRS FOR**
4 **ESCHELON'S CUSTOMERS?**

5 A. No. Qwest provides CLECs with the circuit IDs for commingled EELs, which
6 should eliminate any repair-related concerns. If Eschelon properly updates its
7 own records to reflect the circuit IDs that apply to these arrangements, the use of
8 two circuit IDs should not result in any difficulties in completing repairs.

9 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
10 **LANGUAGE?**

11 A. Eschelon proposes the following underlined additions to this section:

12 9.23.4.5.4 One (1) LSR is required when CLEC orders Point-to-Point
13 EELs. **and Point-to-Point Commingled EELs. For such Point-to-Point**
14 **Loop-Transport Combinations, Qwest will assign a single circuit**
15 **identification (ID) number for such combination.** Qwest may require
16 two (2) service requests when CLEC orders Multiplexed **Loop-Transport**
17 **Combinations** (which are not Point-to-Point) and EEL loops (as part of a
18 multiplexed EEL). Regarding Commingling see Section 24.

19

20 **Q. HAS ESCHELON PROPOSED ANY ALTERNATIVE LANGUAGE FOR**
21 **THIS SECTION?**

22 A. Yes. For Eschelon's alternative proposal (if single circuit ID is rejected), please
23 see Issue 9-58 (c) below, specifically subpart Section 9.23.4.7.

24 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-58(A)?**

25 A. For the reasons I describe above, the Commission should adopt Qwest's proposed
26 language for Section 9.23.4.5.4 and reject Eschelon's language that would require
27 the use of a single circuit ID for commingled EELs and so-called "Loop-
28 Transport Combinations."

1

Issue 9-58(b)

2

3 **Q. PLEASE DESCRIBE THE DISPUTE RELATING TO ISSUE 9-58(B).**

4 A. This issue arises because of Eschelon's demand that for each so-called "Loop-
5 Transport Combination," Qwest should use a single billing account number
6 ("BAN") – or issue a single bill – for the different elements that comprise the
7 combination. Eschelon presents this demand in its proposed language for Section
8 9.23.4.6.6. Because Qwest opposes this improper demand, it recommends the
9 Eschelon's proposed Section 9.23.4.6.6 should be excluded from the ICA.

10 **Q. WHY IS ESCHELON'S DEMAND FOR USE OF A SINGLE BILLING**
11 **ACCOUNT NUMBER IMPROPER?**

12 A. Eschelon's demand that Qwest use a single BAN for the elements comprising a
13 commingled EEL or for Eschelon's proposed "Loop-Transport Combination" fails
14 to recognize that BANs contain essential product-specific information that affects
15 the proper billing for products. This information affects, for example, whether a
16 product is billed at a UNE-based rate or at a tariffed rate. Without separate BANs
17 for the distinct products that comprise commingled arrangements, billing errors
18 would be inevitable.

19 **Q. WOULD IT BE COSTLY FOR QWEST TO MODIFY ITS SYSTEMS AND**
20 **PROCESSES TO PERMIT THE USE OF A SINGLE BILLING ACCOUNT**
21 **NUMBERS FOR A COMMINGLED ARRANGEMENT?**

22 A. Yes. Eschelon's demand for a single BAN would impose very substantial costs
23 on Qwest because of the systems changes that would be required. Qwest has no
24 legal obligation to make those changes, and, moreover, Eschelon apparently is not
25 offering to compensate Qwest for the costs of performing them. Qwest has
26 developed and implemented systems, procedures and intervals for EELs, UNEs
27 and tariffed services and is under no legal requirement to modify these systems to
28 provide Eschelon's proposed "Loop-Transport Combination" product.

Issue 9-58(c)

1
2
3 **Q. HAS ESCHELON PROPOSED ANY ALTERNATIVE LANGUAGE FOR**
4 **ITS PROPOSED SECTION 9.23.4.6.6 RELATING TO A SINGLE**
5 **BILLING ACCOUNT NUMBER?**

6 A. Yes. Issue 9-58(c) involves Eschelon's alternative proposal for Section
7 9.23.4.6.6, which Eschelon apparently advocates if the Commission rejects its
8 improper request for single BANs with commingled arrangements. Eschelon's
9 alternative proposal is as follows:

10 **9.23.4.6.6 For each Point-to-Point Commingled EEL (see Section**
11 **9.23.4.5.4), so long as Qwest does not provide all chargeable rate**
12 **elements for such EEL on the same Billing Account Number (BAN),**
13 **Qwest will identify and relate the components of the Commingled**
14 **EEL on the bills and the Customer Service Records. Unless the**
15 **Parties agree in writing upon a different method(s), Qwest will relate**
16 **the components of the Commingled EEL by taking at least the**
17 **following steps:**

18 **9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each**
19 **month, the circuit identification (“circuit ID”) for the non-**
20 **UNE component of the Commingled EEL in the sub-account**
21 **for the related UNE component of that Commingled EEL;**

22 **9.23.4.6.6.2 Qwest will assign a separate account type to**
23 **Commingled EELs so that Commingled EELs appear on an**
24 **account separate from other services (such as special**
25 **access/private line);**

26 **9.23.4.6.6.3 Each month, Qwest will provide the summary BAN**
27 **and sub-account number for the UNE component of the**
28 **Commingled EEL in a field (e.g., the Reference Billing Account**
29 **Number, or RBAN, field) of the bill for the non-UNE**
30 **component; and**

31 **9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on**
32 **all associated Customer Service Records the circuit ID for the**
33 **UNE component; the RBAN for the non-UNE component; and**
34 **the circuit ID for the non-UNE component.**

1 **Q. IS ESCHELON'S ALTERNATIVE OR BACK-UP VERSION OF SECTION**
2 **9.23.4.6.6 APPROPRIATE?**

3 A. No. Eschelon's back-up version of Section 9.23.4.6.6 suffers from most of the
4 same flaws that characterize its original version. Most significantly, this version,
5 like the original version, would require major changes to Qwest's systems and
6 processes. Under Eschelon's back-up version of Section 9.23.4.6.6, Qwest would
7 be required, at a minimum to: (1) modify its systems and processes to include on
8 bills for the UNE component of commingled EELs the circuit ID of the non-UNE
9 component; (2) create an entirely separate account type within its billing systems
10 for commingled EELs; (3) modify its systems and processes to include on bills for
11 the non-UNE component of commingled EELs "the summary BAN and sub-
12 account number for the UNE component;" and (4) modify its systems and
13 processes to include on all customer service records for commingled EELs "the
14 circuit ID for the UNE component; the RBAN for the non-UNE component; and
15 the circuit ID for the non-UNE component."

16 These major changes to Qwest's billing systems and processes, which Qwest
17 would be implementing solely in response to Eschelon's request, would impose
18 upon Qwest very substantial costs. Qwest has no legal obligation to modify its
19 systems and processes in this way, and, moreover, Eschelon has no legitimate
20 business justification for these far-reaching modifications.

21 **Q. DO OTHER CLECS OBTAIN COMMINGLED EELS FROM QWEST**
22 **WITHOUT THE SPECIFICALLY TAILORED BILLING FORMAT THAT**
23 **ESCHELON IS REQUESTING?**

24 A. Yes. Other CLECs successfully obtain and are billed for commingled EELs
25 without receiving the tailored billing information Eschelon is requesting. Qwest's
26 successful experiences with other CLECs that have obtained commingled EELs
27 confirms that there is no legitimate business justification for the major changes
28 that Eschelon is proposing.

1 **Q. HAS ESCHELON AGREED TO COMPENSATE QWEST FOR THE**
2 **COSTS THAT QWEST WOULD INCUR TO IMPLEMENT THE**
3 **SYSTEMS AND PROCESS CHANGES THAT ESCHELON IS**
4 **PROPOSING?**

5 A. To my knowledge, Eschelon is requesting that Qwest implement these major
6 changes on its behalf without agreeing or offering to compensate Qwest for them.
7 While Qwest has no legal obligation to make these changes, Eschelon's refusal to
8 compensate Qwest for the changes is an additional major flaw in both its initial
9 and alternative proposals. As I have described earlier, the Act gives Qwest a
10 basic right to recover the costs that it incurs to provide interconnection and access
11 to UNEs; Eschelon's apparent refusal to compensate Qwest for the improper
12 systems and process changes that Eschelon is demanding violates Qwest's right of
13 cost recovery.

14 **Q. WHAT DOES QWEST RECOMMEND WITH RESPECT TO BOTH**
15 **ISSUES 9-58(B) AND (C)?**

16 A. For the reasons I describe above, the Commission should reject both of Eschelon's
17 BAN proposals and not include in the ICA any of the language Eschelon proposes
18 for Section 9.23.4.6.6 and its sub-parts.

19 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE 9-58(D).**

20 A. Issue 9-58(d) relates directly to Eschelon's demands described above involving
21 single LSRs, single circuit IDs, and single BANs for commingled EELs. In its
22 proposed Sections 9.1.1.1.1 and 9.1.1.1.1.2, Eschelon sets forth these same
23 proposals for what it refers to as "Other Arrangements." By "other
24 arrangements," Eschelon is apparently referring to commingled arrangements
25 other than commingled EELs. More specifically, Eschelon is apparently
26 proposing the use of single LSRs, single circuit IDs, and single BANs for the non-
27 existent so-called "Loop-Transport Combination" product that it is attempting to
28 impose on Qwest.

1 Q. WHAT IS ESCHELON SPECIFICALLY PROPOSING FOR THESE
2 "OTHER ARRANGEMENTS," INCLUDING "LOOP-TRANSPORT
3 COMBINATIONS?"

4 A. Even though the "Loop-Transport Combination" product does not exist, Eschelon
5 is nevertheless proposing the following specific requirements for this non-existent
6 product and, potentially, for undefined "other arrangements":

7 **9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any**
8 **other Commingled arrangement, the following terms apply, in**
9 **addition to the general terms described in Section 24:**

10 **9.1.1.1.1.2 When a UNE or UNE Combination is connected or**
11 **attached with a non-UNE wholesale service, unless it is not**
12 **Technically Feasible or the Parties agree otherwise, CLEC**
13 **may order the arrangement on a single service request; if a**
14 **circuit ID is required, there will be a single circuit ID; and all**
15 **chargeable rate elements for the Commingled service will**
16 **appear on the same BAN. If ordering on a single service**
17 **request, using a single identifier, and including all chargeable**
18 **rate elements on the same BAN is not Technically Feasible,**
19 **Qwest will identify and relate the elements of the arrangement**
20 **on the bill and include in the Customer Service Record for**
21 **each component a cross reference to the other component, with**
22 **its billing number, unless the Parties agree otherwise.**

23 Q. IS ESCHELON'S PROPOSAL APPROPRIATE?

24 A. No. As I described earlier, FCC uses the term "loop-transport" to describe
25 varieties of EELs, not to establish an unbundled product separate from EELs.
26 Accordingly, there is no legal basis for Eschelon's attempt to impose upon Qwest
27 the duty to create other commingled products that would be encompassed by
28 Eschelon's use of the terms "Loop-Transport Combinations" or "Other
29 Arrangements." For this reason alone, it is improper for Eschelon to be proposing
30 terms and conditions for these non-existent products. In addition, even if these
31 products existed or if Qwest had a legal obligation to provide them, for the
32 reasons I describe above, Eschelon's demand for a single LSR, single circuits ID,
33 and single BAN for commingled arrangements comprised of both UNE and non-
34 UNE circuits is improper.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 9-58(D)?**

2 A. The Commission should reject Eschelon's billing proposals for non-existent
3 products and exclude Eschelon's proposed Sections 9.1.1.11 and 9.1.1.1.1.2 from
4 the ICA.

5 **Issue 9-58(e)**

6
7 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE 9-58(E).**

8 A. This dispute is a continuation of Eschelon's attempt to eliminate the basic
9 differences between the UNE and non-UNE components of commingled EELs
10 and to impose upon Qwest ordering, billing, and provisioning processes that
11 ignore those differences. The dispute also is a continuation of Eschelon's demand
12 for Qwest to make major, costly changes to its systems and processes without
13 compensation. In this particular case, Eschelon is seeking to eliminate the
14 separate and distinct provisioning intervals that apply to the UNE and non-UNE
15 components of commingled EELs. "Provisioning intervals" refer to the period of
16 time between Qwest's receipt of an order from a CLEC and Qwest's installation or
17 provisioning of the service or facility the CLEC ordered. Instead of maintaining
18 the separate intervals for these distinct components, Eschelon would have the
19 Commission impose one interval that would be the longer of the two intervals for
20 either component. Eschelon's specific proposal is as follows:

21 **9.23.4.4.3.1 When any component of the Loop-Transport**
22 **Combination is not a UNE, the service interval for the combination**
23 **will be the longer interval of the two facilities being Commingled. See**
24 **Section 24.1.2.1.**

25 **24.3.2 See Section 9.23.4.4.3.1 regarding intervals for Commingled**
26 **EELs.**

27 **9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any**
28 **other Commingled arrangement, the following terms apply, in**
29 **addition to the general terms described in Section 24:**

1 **9.1.1.1.1 When a UNE and another service are Commingled,**
2 **the service interval for the Commingled arrangement will be**
3 **the longer interval of the two facilities being Commingled.**

4 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE 9-58(E)?**

5 A. Qwest's proposal preserves the necessary distinctions between the UNE and non-
6 UNE components of commingled EELs and properly recognizes that different and
7 separate provisioning intervals are required for each component. Qwest's
8 proposal is as follows:

9 24.3.2 The service interval for Commingled EELs will be as follows. For
10 the UNE component of the EEL see Exhibit C. For the tariffed component
11 of the EEL see the applicable Tariff.

12 **Q. DOES QWEST HAVE A LEGITIMATE NEED TO USE DIFFERENT AND**
13 **SEPARATE PROVISIONING INTERVALS FOR THE UNE AND NON-**
14 **UNE COMPONENTS OF COMMINGLED EELS?**

15 A. Yes. For engineering and legal reasons, it is essential for Qwest to use and
16 preserve the different provisioning intervals that apply to the UNE and non-UNE
17 components of commingled EELs. First, from an engineering perspective, Qwest
18 must install the tariffed circuit and the UNE circuit separately from each other. In
19 addition, the service orders for each circuit must be complete before Qwest can
20 install either circuit. For these reasons, it is essential from an installation and
21 engineering perspective to have separate provisioning intervals for the UNE and
22 non-UNE circuits, and to preserve Qwest's potential need to add these intervals
23 together to determine the total time required for installation of commingled EELs.

24 From a legal perspective, the terms and conditions for the non-UNE components
25 of commingled EELs are typically set forth in interstate and intrastate tariffs that
26 include provisioning intervals. As the Commission is well aware, tariffs are
27 binding and Qwest does not have discretion to deviate from them. Because
28 Eschelon's proposal for the use of single provisioning intervals for commingled
29 EELs could force Qwest to deviate from tariffed provisions, the proposal is
30 legally improper.

1 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

2 A. Qwest's language for Section 24.3.2 properly recognizes and maintains the
3 necessary distinctions between the provisioning intervals for the UNE and the
4 non-UNE components of commingled EELs. Accordingly, the Commission
5 should adopt Qwest's proposal and reject each of Eschelon's proposals described
6 above that would impose single provisioning intervals.

7 **Issue 9-59 - Eschelon Alternate Commingled EEL Repair Language.**

8 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE ENCOMPASSED**
9 **BY ISSUE 9-59.**

10 A. This dispute also involves commingled EELs. If the Commission rejects
11 Eschelon's demand relating to a single circuit ID for commingled EELs, as it
12 should, Eschelon is proposing alternative language in connection with Issue 9-59
13 that would require Qwest to make significant modifications to the systems and
14 processes it uses for carrying out repairs associated with the individual circuits
15 that are included in commingled EELs. Eschelon's specific proposal is as follows:

16 9.23.4.7 Maintenance and Repair for UNE Component of Commingled
17 EELs

18 **9.23.4.7.1 When CLEC reports a trouble through any of the**
19 **means described in Section 12.4.2.2, so long as Qwest provides**
20 **more than one circuit ID per Commingled EEL, CLEC may**
21 **provide all circuit IDs associated with the Commingled EEL in**
22 **a single trouble report (i.e., Qwest shall not require CLEC to**
23 **submit separate and/or consecutive trouble reports for the**
24 **different circuit IDs associated with the single Commingled**
25 **EEL). If CLEC is using CEMR to submit the trouble report,**
26 **for example, CLEC may report one circuit ID and include the**
27 **other circuit ID in the remarks section (unless the Parties agree**
28 **to a different method). Qwest will communicate a single**
29 **trouble report tracking number (i.e., the "ticket" number)**
30 **(described in Section 12.1.3.3.1.1) for the Commingled EEL**
31 **to CLEC at the time the trouble is reported.**

32 **9.23.4.7.1.1 If any circuit ID is missing from any**
33 **Customer Service Record associated with the**

1 arrangements. Frequently, for both UNE EELs and Private Line Access repair
2 situations, a second ticket is required. For example, if a repair is called in on the
3 loop portion of a UNE EEL, or channel termination (private line loop) and the
4 trouble is found on the high-capacity transport instead, a second repair ticket
5 becomes necessary and is opened. This allows for proper tracking, and future
6 references for repair history. In some cases, there may need to be an additional
7 repair center involved than would deal with a loop-only related failure.

8 Qwest would agree to modify its process as follows:

9 First, the CLEC would do isolation testing to the Qwest network, and the
10 CLEC must provide overall test results across both circuits or authorize
11 optional testing for the UNE circuit before opening a trouble ticket.
12 Charges for Qwest performing testing on behalf of the CLEC are found in
13 Exhibit A of the ICA.

14 Second, the CLEC would submit a repair ticket following the normal
15 process, on the specific Commingled circuit that the CLEC has reason to
16 believe has the failure. For illustrative purposes, let's assume it is the
17 UNE Loop.

18 Third, the CLEC would reference, in the remarks field, the circuit ID of
19 the circuit that is linked (commingled) with the circuit identified as having
20 the failure. In our illustrative example; this would be the Private Line mux
21 and high-capacity transport.

22 Fourth, Qwest would process the ticket and begin the repair process on the
23 UNE Loop, and if trouble were found on the UNE Loop, Qwest would
24 make the repair and the ticket would be closed.

25 In the alternative, the UNE Loop tests clear, but Qwest finds trouble on
26 the high-capacity transport portion of the commingled circuit. Qwest
27 would close the UNE Loop repair ticket; and communicate to the CLEC

1 what was found. No maintenance of services charges would apply since
2 the trouble was isolated in the Qwest network (even if not specifically on
3 the UNE loop). The Qwest technician would contact the CLEC and they
4 would mutually agree upon which company opens the second repair ticket
5 for the high-capacity transport. If the Qwest technician were to open the
6 ticket, it would be a manual ticket and would not contain the bonded
7 automated trouble ticket advantages. If the CLEC were to open the
8 trouble ticket, it could follow the normal bonded process and enjoy all
9 automated ticket advantages.

10 Fifth, no time delay would occur regardless of whether Qwest or the
11 CLEC were to open the second ticket, and thus the repair process would
12 not be delayed. Qwest would already be using the testing information
13 gained from the first ticket to begin the repair process for the second
14 ticket.

15 Sixth, due to the fact that these are different services, the repair clock for
16 quality service measurements would start and end with the opening and
17 closing of the ticket associated with the specific circuit. In this example,
18 the UNE repair ticket would be closed with no trouble found, but no
19 maintenance of service charges would apply, since there was trouble
20 found within the Qwest network on the private line transport portion
21 circuit.

22 Qwest believes that these changes address the issues that Eschelon raises without
23 requiring such significant system changes, as proposed by Eschelon, that Qwest
24 could not reasonably implement within its existing repair systems.

25

1 **Q. IS IT REALISTIC TO ASSUME THAT A SECOND REPAIR TICKET**
2 **FOR COMMINGLED EEL ARRANGEMENTS WOULD NEVER BE**
3 **REQUIRED AS RECOMMENDED BY ESCHELON, AND COULD**
4 **QWEST MAKE THAT COMMITMENT?**

5 A. No. The intent of Qwest's agreement to modify its repair process is to eliminate
6 the need in most circumstances for Eschelon to open two repair tickets, instead of
7 one, for commingled arrangements. It is important to note, however, that repairs
8 can give rise in some situations to an unavoidable need for two repair tickets, as I
9 discuss above.

10 **Q. DOES QWEST HAVE PROPOSED ICA LANGUAGE THAT REFLECTS**
11 **THE MODIFICATIONS TO THE REPAIR PROCESS YOU DESCRIBE**
12 **ABOVE?**

13 A. Yes. Qwest proposes the following language to memorialize this commitment in
14 the ICA:

15 9.23.4.7 Maintenance and Repair for UNE Component of Commingled
16 EELs

17
18 9.23.4.7.1 When CLEC reports a trouble through any of the means
19 described in Section 12.4.2.2, CLEC may provide both circuit IDs
20 associated with the Commingled EEL in a single trouble report. If CLEC
21 is using CEMR to submit the trouble report, for example, the CLEC will
22 first report one circuit ID (the circuit it believes has the trouble) and
23 include the other circuit ID in the remarks section. Should a second repair
24 ticket be required for the circuit in the remarks section, Qwest will contact
25 CLEC, and they will mutually agree who will open the second repair
26 ticket.

27 9.23.4.7.1.1 Intentionally left blank

28 9.23.4.7.1.2 Qwest may charge a single Maintenance of
29 Service or Trouble Isolation Charge only if Qwest
30 dispatches and no trouble is found on either circuit
31 associated with the Commingled EEL.

1 The language that follows is Qwest's newly-proposed language with red-lining
2 to show how the proposal differs from Eschelon's:

3 **9.23.4.7 Maintenance and Repair for UNE Component of**
4 **Commingled EELs**

5
6 9.23.4.7.1 When CLEC reports a trouble through any of the means
7 described in Section 12.4.2.2, ~~so long as Qwest provides more than one~~
8 ~~circuit ID per Commingled EEL~~, CLEC may provide all **both** circuit IDs
9 associated with the Commingled EEL in a single trouble report. ~~(i.e.,~~
10 ~~Qwest shall not require CLEC to submit separate and/or consecutive~~
11 ~~trouble reports for the different circuit IDs associated with the single~~
12 ~~Commingled EEL).~~ If CLEC is using CEMR to submit the trouble report,
13 for example, **the** CLEC may **will first** report one circuit ID (**the circuit it**
14 **believes has the trouble**) and include the other circuit ID in the remarks
15 section. **Should a second repair ticket be required for the circuit in the**
16 **remarks section, Qwest will contact CLEC, and they will mutually**
17 **agree who will open the second repair ticket.** ~~for the Qwest will~~
18 ~~communicate a single trouble report tracking number (i.e., the “ticket”~~
19 ~~number) (described in Section 12.1.3.3.1.1) for the Commingled EEL to~~
20 ~~CLEC at the time the trouble is reported.~~

21
22 **9.23.4.7.1.1 If any circuit ID is missing from any**
23 **Customer Service Record associated with the**
24 **Commingled EEL, Qwest will provide the circuit ID**
25 **information to CLEC at the time CLEC submits the**
26 **trouble report. Intentionally left blank**

27 9.23.4.7.1.2 Qwest may charge a single Maintenance of
28 Service or Trouble Isolation Charge (~~sometimes referred~~
29 ~~to as “No Trouble Found” charge~~) only if Qwest
30 dispatches and no trouble is found on **either both** circuits
31 associated with the Commingled EEL. **If CLEC may**
32 **charge Qwest pursuant to Section 12.4.1.8, CLEC may**
33 **also charge only a single charge for both circuits**
34 **associated with the Commingled EEL.**

35

1 **Q. WHY HAS QWEST NOT ACCEPTED SECTIONS 9.23.4.7.1.1 AND**
2 **9.23.4.7.1.2 AS PROPOSED BY ESCHELON?**

3 A. Section 9.23.4.7.1.1 appears to require Qwest to add the circuit ID of the
4 Commingled EEL to the trouble ticket if it was missing from the Customer
5 Service Record. Qwest is uncertain about the context in which Eschelon believes
6 this situation could occur and, given this significant ambiguity, Qwest cannot
7 agree to the proposal. In addition, if Eschelon does not indicate the additional
8 circuit IDs that it believes may be experiencing trouble, it would not be
9 appropriate for Qwest to “assume” the identity of the circuits and to start adding
10 circuit IDs to the trouble report.

11 With respect to Section 9.23.4.7.1.2, “No Trouble Found” is not a defined term in
12 the ICA and, therefore, likely would result in ambiguity and disputes in
13 implementing the ICA. Moreover, Qwest's commitment to the potential for only
14 a single charge for Maintenance of Service or Trouble Isolation is clearly
15 conveyed through Qwest's proposed language. Finally, Section 12.4.1.8 remains
16 in dispute between the parties, and therefore, Qwest opposes a reference to that
17 section in Section 9.23.4.7.1.2.

18 **Q. WHY IS IT SOMETIMES NECESSARY FOR A CLEC TO SUBMIT A**
19 **TROUBLE REPORT FOR EACH CIRCUIT ASSOCIATED WITH A**
20 **COMMINGLED EEL?**

21 A. It is critical that Qwest maintain accurate repair history detail on each circuit.
22 These various obligations require submission of a trouble report specific to the
23 circuit where trouble was actually found. However, with appropriate trouble
24 isolation testing, the CLEC will generally know which circuit is experiencing
25 trouble. Accordingly, CLECs should be able to routinely submit their trouble
26 tickets with accurate listings of the circuit IDs. If this does not occur, as I stated
27 above, the repair process will not be delayed. Further, if no trouble is found on
28 the circuit identified in the trouble ticket, Qwest will also test the commingled
29 circuit identified in the remarks section of the ticket.

1 **Q. HAS ESCHELON AGREED TO COMPENSATE QWEST FOR THE**
2 **COSTS THAT QWEST WOULD INCUR TO IMPLEMENT THE**
3 **SYSTEMS AND PROCESS CHANGES THAT ECHELON'S PROPOSAL**
4 **RELATING TO TROUBLE REPORTS WOULD REQUIRE?**

5 A. No, once again, to my knowledge, Eschelon is requesting that Qwest implement
6 significant changes on its behalf without agreeing or offering to compensate
7 Qwest for any process-related changes. Eschelon's apparent refusal to
8 compensate Qwest for the changes is an additional, significant flaw in its
9 proposal. In contrast to Eschelon's proposal, Qwest's proposal can be reasonably
10 and efficiently implemented within Qwest's existing repair systems without costly
11 modifications.

12 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

13 A. Qwest's language for Sections 9.23.4.7.1 and 9.23.4.7.1.2 properly and
14 realistically recognizes when a second repair ticket may be necessary, yet it also
15 allows the end-to-end repair process to begin with the issuing of a single repair
16 ticket. Accordingly, the Commission should adopt Qwest's proposal and reject
17 Eschelon's proposals described above that would inflexibly require the use of a
18 single repair ticket in all situations without regard for the ability of Qwest's
19 systems to handle that requirement, or for the very substantial costs that Qwest
20 would incur just to attempt to modify its systems to meet this requirement.

21 **Issues 9-61(A, B, C) Loop-Mux Combinations**

22 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE ENCOMPASSED**
23 **BY ISSUE 9-61 AND ITS SUB-ISSUES.**

24 A. The disputes encompassed by Issue 9-61 and the related sub-issues involve an
25 element referred to as a "loop-mux combination," or "LMC." LMC is comprised
26 of an unbundled loop, as defined in Section 9.2 the Agreement (referred to in this
27 Section as an LMC Loop), combined with a DS1 or DS3 multiplexed facility
28 (with no interoffice transport) that a CLEC obtains from a tariff.

1 Qwest is under no obligation to provide a stand-alone multiplexer as a UNE. A
2 multiplexer is a piece of electronic equipment which allows two or more signals
3 to pass over a single circuit. In the example of LMC, the multiplexed facility lets
4 the traffic from several individual loops go over a single higher-bandwidth
5 facility. Accordingly, a CLEC must order the multiplexed facility used for LMCs
6 through the applicable tariff. LMC, therefore, involves the connecting of a UNE
7 Loop with a tariffed facility, and thus constitutes a commingled arrangement,
8 since commingling is, per the FCC's ruling in the *TRO*, a connection or attaching
9 of a UNE and a wholesale non-UNE. As I discussed previously, commingling is
10 properly addressed in the ICA in Section 24.

11 The first dispute between the parties (Issue 9-61) is the section of the ICA in
12 which the LMC offering should be placed. Qwest has properly included LMCs in
13 Section 24 because it is a commingling offering. Eschelon has proposed moving
14 it to the UNE Combination section in Section 9.23. Issue 9-61(a) concerns
15 Eschelon's demand that Qwest provide the stand-alone multiplexing service as a
16 UNE instead of as a tariffed facility. Issue 9-61(b) involves a dispute concerning
17 whether intervals for LMC should be in Exhibit C; and Issue 9-61(c) addresses
18 whether the rates for LMC multiplexing should be included in Exhibit A.

19 **Q. WHY SHOULD THE COMMISSION ADOPT QWEST'S POSITION**
20 **WITH RESPECT TO ISSUE 9-61?**

21 A. The first dispute in Issue 9-61, as addressed above, is where in the ICA the LMC
22 product offering should be placed. Qwest has properly placed it in Section 24,
23 which is the commingling section that Eschelon itself requested Qwest to include
24 in the ICA. By contrast, Eschelon is proposing to include LMCs in Section 9.23
25 of the ICA, which is within the ICA section that governs UNE combinations.
26 UNE combinations, as the name implies, are combinations of elements that
27 qualify as UNEs that ILECs must provide under Section 251(c)(3) of the Act.
28 However, because an LMC is a combination of a UNE and a tariffed multiplexing
29 service, it is not a UNE combination. Instead, it falls within the FCC's definition

1 of “commingling,” which is “the connecting, attaching, or otherwise linking of a
2 UNE, or a UNE combination, to one or more facilities or services that a
3 requesting carrier has obtained at wholesale from an incumbent LEC pursuant to
4 any method other than unbundling under section 251(c)(3) of the Act, or the
5 combining of a UNE or UNE combination with one or more such wholesale
6 services.”⁹ For this reason, LMCs should be addressed in Section 24 of the ICA,
7 not in Section 9.

8 **Q. WITH RESPECT TO ISSUE 9-61(A), IS ESCHELON CORRECT IN**
9 **ASSERTING THAT QWEST HAS AN OBLIGATION TO PROVIDE**
10 **MULTIPLEXING AS A STAND-ALONE UNE, NOT AS A TARIFFED**
11 **FACILITY?**

12 **A.** No. Stand-alone muxing is not a UNE that Qwest is required to provide on an
13 unbundled basis. In the paragraph 491 of the of the FCC’s Wireline Competition
14 Bureau decision in the Verizon-Virginia arbitration, paragraph 491, the Bureau
15 rejected WorldCom’s proposed language that would have established
16 multiplexing as an independent network element, stating that the FCC has never
17 ruled that multiplexing is such an element: “We thus reject WorldCom’s proposed
18 contract language because it defines the ‘Loop Concentrator/Multiplexer’ as a
19 network element, which the Commission has never done.”¹⁰

20 **Q. HAS THE FCC SPOKEN CONCERNING WHETHER UNE RATES OR**
21 **TARIFFED RATES SHOULD APPLY TO MULTIPLEXING THAT ILECS**
22 **PROVIDE FOR USE WITH COMMINGLED ARRANGEMENTS?**

23 **A.** Yes. In the *TRO*, the FCC addressed the fundamental dispute between some
24 ILECs and CLECs concerning whether ILECs have any obligation to provide

⁹ *TRO*, at ¶ 579.

¹⁰ *In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration*, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039 at ¶ 494 (FCC Wireline Competition Bureau July 17, 2002).

1 commingling at all. In paragraph 583 of the *TRO*, the FCC rejected the
2 "permanent commingling restriction" that some ILECs were proposing, and
3 established that ILECs are required to commingle UNEs and UNE combinations
4 with tariffed services. In describing this ruling, the FCC explained that
5 commingling allows a CLEC to attach a UNE to an "interstate access service."
6 Significantly, in providing an example of a tariffed "interstate access service" to
7 which a CLEC may attach a UNE, the FCC specifically referred to multiplexing:
8 "Instead, commingling allows a competitive LEC to connect or attach a UNE or
9 UNE combination with an interstate access service, *such as high-capacity*
10 *multiplexing* or transport services."¹¹ In the very next sentence, the FCC
11 emphasized that "*commingling will not enable a competitive LEC to obtain*
12 *reduced or discounted prices on tariffed special access services*"

13 **Q. WHAT IS THE SIGNIFICANCE OF THESE STATEMENTS AND**
14 **RULING BY THE FCC?**

15 A. This portion of the *TRO* directly refutes any claim by Eschelon that it is entitled to
16 multiplexing at UNE rates, terms, and conditions when it obtains multiplexing for
17 use with commingled arrangements. First, the FCC states very clearly that the
18 multiplexing used with commingling is "an interstate access service." This
19 statement directly contradicts Eschelon's claim that the multiplexing used with
20 commingling is nothing more than a feature or function of the UNE loop
21 component of a commingled arrangement. Instead, multiplexing is a separate
22 "access service." Second, the FCC states unambiguously that when a CLEC
23 obtains an access service like multiplexing for use with commingling, it is not
24 entitled to "reduced or discounted prices on [the] tariffed special access services."
25 In other words, Eschelon is required to pay the full tariffed rate for multiplexing
26 used with commingling, and is not entitled to a UNE rates or any other discounted
27 rate.

¹¹ *TRO*, at ¶ 583. (Emphasis added.)

1 Q. DO CLECS HAVE THE ABILITY TO PROVISION THEIR OWN
2 MULTIPLEXING?

3 A. Yes. CLECs are able to self-provision multiplexing within their own collocation
4 spaces.

5 Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S
6 LANGUAGE FOR ISSUE 9-61 (A)?

7 A. Eschelon's proposed modifications regarding placement of LMC in the UNE
8 Combination section are primarily section number changes. Eschelon proposed
9 modifications beyond placement of LMC in UNE Combination section are as
10 follows:

11 9.23.2 UNE Combinations Description and General Terms

12 **9.23.9 and subparts – Loop-Mux Combination**

13 **9.23.9.3.2 [24.4.3.2] LMC multiplexing is offered in DS3 to DS1 and**
14 **DS1 to DS0 configurations. LMC multiplexing is ordered with LMC**
15 **Loops. The recurring and nonrecurring rates in Exhibit A apply.**

16 **9.23.9.3.2.1 3/1 multiplexing rates are contained in Exhibit A**
17 **of this Agreement, and include the following:**

18 **a) Recurring Multiplexing Charge. The DS3**
19 **Central Office Multiplexer provides de-**
20 **multiplexing of one DS3 44.736 Mbps to 28 1.544**
21 **Mbps channels.**

22 **b) Non-recurring Multiplexing Charge. One-**
23 **time charges apply for a specific work activity**
24 **associated with installation of the multiplexing**
25 **service.**

26 Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?

27 A. Eschelon's proposed language recited above is premised on the assumption that
28 multiplexing is a stand-alone UNE. Based on that assumption, Eschelon assigns
29 UNE attributes, including UNE-based rates, to multiplexing. For the reasons I
30 describe above, Eschelon's premise is wrong. Multiplexing is not a stand-alone

1 UNE, and Eschelon's proposals based on the assumption that it is are therefore
2 flawed and should be rejected.

3 **Q. PLEASE PROVIDE AN OVERVIEW OF THIS ISSUE, AND WHAT IS**
4 **QWEST'S PROPOSED CONTRACT LANGUAGE RELATING TO**
5 **ESCHELON'S ISSUE 9-61(b).**

6 A. Issue 9-61(b) is a continuation of a portion of Issue 1-1. Specifically, the parties
7 disagree regarding how changes to intervals in Exhibit C (the Service Interval
8 Table) would occur. Qwest has proposed they can be changed via the CMP, and
9 Eschelon believes that any changes would require an amendment to the ICA.
10 Please see the Testimony of Qwest witness Renee Albersheim for the complete
11 record on Issue 1-1. In addition, 9-61(b) is an LMC product-specific dispute.
12 Since LMC is not a UNE combination and is a commingled service, the proper
13 placement of service intervals should be in the Qwest Service Interval Guide and
14 not in Exhibit C. In addition, currently the only UNE Combination in the ICA is
15 EELs, so Qwest has listed EELs specifically in the discussion of combination
16 intervals.

17 Qwest proposed language for Issue 9-61(b):

18 9.23.2 UNE Combinations Description and General Terms

19 9.23.4.4.3 Installation intervals for EEL are set forth in Exhibit C but will
20 be no longer than the respective Private Line Transport Service that Qwest
21 will maintain on the following web-site address:

22 <http://www.qwest.com/carrier/guides/sig/index.html>

23 9.23.6.2 Service intervals for each EEL are set forth in Exhibit C. For
24 UNE Combinations with appropriate retail analogues, the Provisioning
25 interval will be no longer than the interval for the equivalent retail service.
26 CLEC and Qwest can separately agree to Due Dates other than the
27 interval.

1 Section 24 (Commingling)

2 24.4.1 and subparts Loop Mux-Combination

3 24.4.4.3 Standard service intervals for LMC Loops in the Service
4 Interval Guide (SIG) available at www.qwest.com/wholesale.

5 **Q. WHAT ARE ESCHELON'S PROPOSED CHANGES TO QWEST'S**
6 **LANGUAGE?**

7 A. Eschelon proposes the following changes:

8 9.23.2 UNE Combinations Description and General Terms

9 9.23.9.4.3 **Service intervals for LMC(s) are set forth in Exhibit C. For**
10 **UNE Combinations with appropriate retail analogues, the**
11 **Provisioning interval will be no longer than the interval for the**
12 **equivalent retail service. CLEC and Qwest can separately agree to**
13 **Due Dates other than the interval.**

14 9.23.4.4.3 Installation intervals for ~~EEL~~ **UNE Combinations** are set forth
15 in Exhibit C but will be no longer than the respective Private Line
16 Transport Service that Qwest will maintain on the following web-site
17 address: <http://www.qwest.com/carrier/guides/sig/index.html>

18 9.23.6.2 Service intervals for each ~~EEL~~ **UNE Combinations** are set forth
19 in Exhibit C. For UNE Combinations with appropriate retail analogues,
20 the Provisioning interval will be no longer than the interval for the
21 equivalent retail service. CLEC and Qwest can separately agree to Due
22 Dates other than the interval.

23 Exhibit C:

24 **Loop Mux Combo (LMC)**

25 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

26 A. There is no legal requirement for ILECs to provide stand-alone multiplexing.
27 Multiplexing is not a feature or function of the loop, and Qwest is not required to
28 provide loops and multiplexing as a UNE combination.

1 **Q. WHAT IS QWEST'S PROPOSED CONTRACT LANGUAGE RELATING**
2 **TO ESCHELON'S ISSUE 9-61(c)?**

3 A. Issue 9-61(c) is the final issue of the LMC issues. Since LMC is not a UNE
4 combination, Qwest has not included rates (nor rate descriptions in Section 9.23
5 of the ICA) for LMC in Exhibit A. As discussed above, Eschelon disputes
6 Qwest's position and believes that rate descriptions for LMC should be contained
7 in ICA and rates in Exhibit A.

8 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

9 A. For the reasons that I describe above, multiplexing is not a UNE. Accordingly,
10 there is no legal basis for Eschelon to apply UNE-based rates in Exhibit A to this
11 non-UNE product. The appropriate rates are those set forth in the applicable tariff
12 for multiplexed facilities. Accordingly, the Commission should reject Eschelon's
13 proposed references to the rates for multiplexing in Exhibit A.

14 **IV. CONCLUSION**

15
16 **Q. DO YOU HAVE ANY FINAL COMMENTS?**

17 A. Yes. Although there are substantive differences in the issues that I have
18 addressed in my testimony, there are recurring themes in the manner in which
19 Qwest and Eschelon have addressed the issues through the language they have
20 proposed for the ICA. Qwest has proposed language that recognizes and
21 incorporates the FCC's rulings in the *TRO* and *TRRO* and that recognizes the need
22 for uniform systems and processes for the services that Qwest provides to all
23 CLECs.

24 By contrast, Eschelon's proposals rely on sweeping general language that is
25 intended to impose the broadest possible unbundling, and, in some cases, new
26 obligations on Qwest without regard to applicable law. Moreover, in several
27 cases, Eschelon is proposing language that is unduly broad and vague and that is

1 not susceptible to either meaningful analysis by the Commission or to precise and
2 practical implementation by the parties. If the Eschelon language is adopted, this
3 would likely result in disputes concerning implementation of the ICA, which
4 would unnecessarily require the Commission and the parties to devote limited
5 resources to resolving disputes that could be avoided through the use of the type
6 of precise ICA language that Qwest is proposing.

7 For these reasons, Qwest respectfully submits that the Commission should adopt
8 Qwest's proposed ICA language for each of the issues I have addressed.

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

10 A. Yes.