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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

BONNIE J. JOHNSON

ON BEHALF OF

ESCHELON TELECOM, INC.

June 29, 2007

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1 **I. INTRODUCTION**

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

3 A. My name is Bonnie Johnson and my business address is 730 2nd Avenue South,
4 Suite 900, Minneapolis, Minnesota 55402.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Eschelon Telecom, Inc., where I currently serve as Director -
7 Carrier Relations. In that capacity, my responsibilities include managing relations
8 between Eschelon and other telecommunications carriers, including Qwest and
9 other Incumbent Local Exchange Carriers (“ILECs”) and Competitive Local
10 Exchange Carriers (“CLECs”). For example, I have a scheduled weekly call with
11 Qwest service management to discuss operational issues, including provisioning,
12 network, and billing issues, between the companies. I also participate in
13 scheduled monthly network and scheduled monthly service delivery meetings
14 with Qwest service management. I am also involved in escalation of service
15 delivery issues as needed and regularly communicate with Qwest service
16 management on day-to-day issues. I regularly participate in Qwest’s Change
17 Management Process meetings as Eschelon’s representative. For example, I was
18 personally involved in the lengthy CMP development of the Qwest jeopardy
19 process. I also participate in interconnection agreement (“ICA”) negotiations
20 with Qwest for six states. I have served in this position since September 2003.

1 Since joining Eschelon, I have held four separate positions (including my current
2 position), each with increasing responsibility. From July 2000 to November
3 2001, I held the position of Manager - Network Provisioning where I was
4 responsible for the direction of a Service Delivery team provisioning services to
5 end user customers and handling customer escalations. I held the position of
6 Senior Manager - Customer Operations Process from November 2001 to March
7 2002, where I was responsible for developing and implementing ordering and
8 provisioning processes. And from March 2002 until September 2003, I held the
9 title of Senior Manager - ILEC Relations, where I was responsible for managing
10 relations between Eschelon and other telecommunications carriers. I participated
11 in CMP activities throughout these positions.

12 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE BEFORE JOINING**
13 **ESCHELON TELECOM, INC.**

14 A. I have more than 15 years of experience in the telecommunications industry.
15 Prior to joining Eschelon Telecom, Inc., I was employed by US West/Qwest
16 (“Qwest”) in a number of different capacities. For a brief time until I joined
17 Eschelon in July of 2000, I worked in Qwest’s Wholesale Markets division as a
18 Service Manager, responsible for organizing and facilitating CLEC collocation
19 build-outs and Unbundled Network Element (“UNE”) facilities network
20 implementation. From October 1998 until May 2000, I held the position of
21 Process Analyst - Performance Measures, where I analyzed Qwest’s service
22 delivery performance and performed root cause analyses.

1 I served as a Qwest Service Delivery Coordinator in Qwest wholesale service
2 vendor services from August 1996 until October 1998, where I was responsible
3 for implementing and delivering services ordered by vendors on behalf of Qwest
4 retail end user customers and ordered by CLEC Centrex resellers. During that
5 time, Qwest selected me for President's Club honors based on my performance.
6 From January 1994 to May 1996, I was in the Qwest retail Home and Personal
7 Services ("H&PS") organization, where I assisted H&PS residential customers
8 with their service requests, including responding to ordering, billing, and other
9 Qwest retail customer issues. Before that, I worked as a directory assistance
10 operator in the Qwest Operator Services organization.

11 Prior to joining Qwest, I was employed for a number of years by Mountain Bell,
12 where I held various positions including positions addressing retail customer
13 service issues. While employed by Qwest, I participated in at least 20 separate
14 seminars and other training sessions, many of which pertained to network
15 facilities, operational processes and service delivery methods and procedures for
16 both wholesale and retail customers.

17 **Q. WHEN DESCRIBING YOUR BACKGROUND, YOU INDICATED THAT**
18 **YOU RAISE ISSUES WITH QWEST SERVICE MANAGEMENT IN**
19 **SCHEDULED WEEKLY AND MONTHLY CALLS AND THAT YOU**
20 **PARTICIPATE IN THE ICA NEGOTIATIONS WITH QWEST. IS**

1 **ESCHELON RAISING ALL OF THE UNRESOLVED ISSUES FROM**
2 **THOSE COMMUNICATIONS IN THIS ARBITRATION?**

3 A. No, not even close. I communicate regularly with Qwest service management on
4 day-to-day issues and will continue to do so. Eschelon did not raise all of these
5 types of issues in ICA negotiations, and we withdrew even some of the ones we
6 did raise to limit the number of issues.

7 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY**
8 **AGENCY?**

9 A. The only Regulatory Proceedings I have testified in are the Qwest-Eschelon
10 interconnection agreement arbitrations and one expedite-related complaint case. I
11 provided verbal and written testimony in the arbitration proceedings.¹ I also
12 provided written testimony before the Arizona Corporation Commission in
13 Eschelon’s pending complaint against Qwest regarding expedited orders, ACC
14 Docket Nos. T-03406A-06-0257 and T-01051B-06-0257. I continue to maintain
15 my full responsibilities at Eschelon, as described above, during the course of these
16 proceedings.

17 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

¹ The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”); for Colorado, 06B-497T (“Colorado arbitration”); for Minnesota, P-5340, 421/IC-06-768 (“Minnesota arbitration”); for Oregon, ARB 775 (“Oregon arbitration”); for Utah, 07-2263-03 (“Utah arbitration”); and for Washington, UT-063061 (“Washington arbitration”). Transcript (“Tr.”) pages from the arbitration hearings in Minnesota are included as Exhibit Eschelon 1.5 and in Arizona as Exhibit Eschelon 1.6 to the testimony of Mr. Starkey. Copies of the rulings of the Administrative Law Judges (ALJs) and the commission in Minnesota are included as Exhibit Eschelon 2.24 and Exhibit Eschelon 2.25 to the testimony of Mr. Denney.

1 A. This testimony was prepared on behalf of Eschelon Telecom, Inc. (“Eschelon”).

2 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

3 A. First, I identify and describe the exhibits to my testimony. Second, I address the
4 open language in Section 12 of the proposed ICA by subject matter number,²
5 except for Issue 12-67 (Expedited Orders) which Mr. Denney addresses in his
6 testimony. Section 12 is entitled “Access to Operational Support Systems
7 (OSS).” It “describes Qwest’s OSS interfaces, as well as manual processes, that
8 Qwest shall provide to CLEC to support Pre-Ordering, Ordering, Provisioning,
9 Maintenance and Repair and Billing.”³

10 **II. EXHIBITS**

11 **Q. YOU SAID THAT YOU HAVE TESTIFIED IN QWEST-ESCHELON**
12 **ARBITRATION PROCEEDINGS IN OTHER STATES. ARE THE**
13 **EXHIBITS THAT YOU SUBMIT WITH THIS DIRECT TESTIMONY**
14 **THE SAME DOCUMENTS AS USED IN EXHIBITS SUBMITTED IN**
15 **THOSE PROCEEDINGS?**

16 A. Yes. With the exception of three exhibits containing additional documents and/or
17 updated information (Exhibit Eschelon 3.34, Exhibit Eschelon 3.66, and Exhibit
18 Eschelon 3.78), all of the documents that are included in my Utah direct

² The subject matter numbers correspond to those in the Issues by Subject Matter List that is attached to the testimony of Mr. Starkey as Exhibit Eschelon 1.2.

³ Section 12.1.1 of proposed ICA (closed language).

1 testimony as exhibits were submitted in other states, with direct, rebuttal, or
2 surrebuttal testimony or were introduced at a hearing. To allow for additional
3 grouping of documents by primary subject matter and consecutive numbering, I
4 have included more exhibits in direct testimony (as opposed to rebuttal or
5 surrebuttal) in Utah. This also allows Qwest even more opportunity to respond to
6 the information in these exhibits (with which Qwest is familiar such as because
7 the exhibits have been used in other states and/or because they are Qwest-
8 prepared documents).

9 **Q. PLEASE IDENTIFY THE EXHIBITS TO YOUR TESTIMONY.**

10 A. As part of my testimony, I have included the following exhibits:

- 11 • Exhibit Eschelon 3.1: CMP/ICA: Different ICA Provisions - Terms Relating to
12 Collocation Space Option Reservation
- 13 • Exhibit Eschelon 3.2: CMP/ICA: Closed Language and Associated CMP Activity,
14 if Any, Matrix
- 15 • Exhibit Eschelon 3.3: CMP/ICA: Draft Eschelon Section 12 (March 18, 2004),
16 Annotated
- 17 • Exhibit Eschelon 3.4: CMP/ICA: Different ICA Provisions - Pages from Covad-
18 Qwest ICA on Testing and Collocation
- 19 • Exhibit Eschelon 3.5: CMP/ICA: Oversight Committee Meeting Minutes - List of
20 Minutes Posted On Qwest's Wholesale Website
- 21 • Exhibit Eschelon 3.6: CMP/ICA: Summary and excerpts from supporting
22 documentation showing that contract language was discussed in prior CLEC
23 Forum meetings & list of Forums from Qwest wholesale calendar
- 24 • Exhibit Eschelon 3.7: CMP/ICA: Withdrawn Qwest Product and Process Change
25 Requests
- 26 • Exhibit Eschelon 3.8: CMP/ICA: Qwest Negotiations Template Input –
27 Qwest/Eschelon Exchange
- 28 • Exhibit Eschelon 3.9: CMP/ICA: Multiple CLEC Negotiations – Qwest/Eschelon
29 Exchange

- 1 • Exhibit Eschelon 3.10: CMP/ICA: CMP Document
- 2 • Exhibit Eschelon 3.11: CMP/ICA/Scope: Excerpt from CMP Redesign Meeting
- 3 Minutes (Jan 02 & Apr 02)
- 4 • Exhibit Eschelon 3.12: CMP/ICA: Excerpt from CMP Redesign Meeting Minutes
- 5 (Oct 01)
- 6 • Exhibit Eschelon 3.13: CMP/CRUNEC: DS1 CRUNEC Chronology
- 7 • Exhibit Eschelon 3.14: CMP/CRUNEC: CRUNEC Level 3 Notice
- 8 • Exhibit Eschelon 3.15: CMP/CRUNEC: CRUNEC Qwest-Eschelon Email
- 9 exchange
- 10 • Exhibit Eschelon 3.16: CMP/TRRO: Secret TRRO PCAT Chronology
- 11 • Exhibit Eschelon 3.17: CMP/TRRO: Covad Escalation of Qwest CR PC102704-
- 12 1ES
- 13 • Exhibit Eschelon 3.18: CMP/TRRO: Qwest Response to escalation of Qwest CR
- 14 PC102704-1ES
- 15 • Exhibit Eschelon 3.19: CMP/TRRO: Redline of CR Detail for PC10270401ES
- 16 • Exhibit Eschelon 3.20: CMP/TRRO: Non-CMP TRRO Notices, Qwest/Eschelon
- 17 Exchange
- 18 • Exhibit Eschelon 3.21: CMP/TRRO: Non-CMP TRRO PCAT Reclassification of
- 19 Terminations (APOT), Qwest/Eschelon Exchanges
- 20 • Exhibit Eschelon 3.22: CMP/TRRO: SGAT Unavailability: Excerpt from Qwest
- 21 Minnesota Testimony
- 22 • Exhibit Eschelon 3.23: CMP/TRRO: SGAT Unavailability: Qwest Notices
- 23 • Exhibit Eschelon 3.24: CMP/TRRO: SGAT Unavailability: Screen Shots of
- 24 Qwest's Website
- 25 • Exhibit Eschelon 3.25: CMP/TRRO: CR SCR102704-1RG
- 26 • Exhibit Eschelon 3.26: CMP/TRRO: CR SCR083005-01
- 27 • Exhibit Eschelon 3.27: CMP/TRRO: January 4th, 2005 Oversight meeting
- 28 minutes
- 29 • Exhibit Eschelon 3.28: CMP/TRRO: January 10th, 2005 oversight meeting
- 30 minutes.
- 31 • Exhibit Eschelon 3.29: CMP/TRRO: Qwest CR PC102704-1ES
- 32 • Exhibit Eschelon 3.30: CMP/TRRO: Qwest CR PC102704-1ES2
- 33 • Exhibit Eschelon 3.31: CMP/TRRO: Eschelon 2/5/07 Email on Qwest's "buckets"
- 34 matrix

- 1 • Exhibit Eschelon 3.32: CMP/TRRO: Eschelon response to Qwest's question as to
2 which items on Qwest's chart are subject to litigation/arbitration February 5, 2007
3 (enclosed in 2/5/07 Email to Qwest)
- 4 • Exhibit Eschelon 3.33: CMP/TRRO: Qwest matrix (letters and numbers added for
5 ease of reference)
- 6 • Exhibit Eschelon 3.34: CMP/TRRO: TRRO PCAT URLs reflecting recent
7 versions
- 8 • Exhibit Eschelon 3.35: CMP/TRRO: Qwest letter regarding "policy" decision
- 9 • Exhibit Eschelon 3.36: CMP/EXAMPLE: No Build Held Order (Delayed Order)
10 Chronology
- 11 • Exhibit Eschelon 3.37: CMP/EXAMPLE: Optional Testing - Qwest CR
12 PC100101-5ES
- 13 • Exhibit Eschelon 3.38: CMP/EXAMPLE: Optional Testing - CLECs' escalation
- 14 • Exhibit Eschelon 3.39: CMP/EXAMPLE: Optional Testing - Qwest response to
15 escalation
- 16 • Exhibit Eschelon 3.40: CMP/EXAMPLE: Optional Testing - CLEC response to
17 Qwest. *Note Qwest did not respond.*
- 18 • Exhibit Eschelon 3.41: CMP/EXAMPLE: Oversight Committee Meeting Request:
19 Meeting Minutes Example
- 20 • Exhibit Eschelon 3.42: CMP/EXAMPLE: Maintenance and Repair and Dispatch
21 PCAT changes: CMP Ad Hoc Meeting Minutes (Oct. 10, 2006); Level 3
22 Notification (Dec. 1, 2006); Eschelon's Comments (Dec. 15, 2006); Level 3
23 Notification (Dec. 19, 2006); Eschelon-Qwest Email Exchange (Jan. 2007);
24 Excerpt from Monthly CMP Meeting Minutes (Feb. 21, 2007); Wholesale
25 Calendar Entry (showing ad hoc meeting on Feb. 19, 2007)
- 26 • Exhibit Eschelon 3.43: NETWORK MAINTENANCE AND
27 MODERNIZATION: Qwest/Eschelon exchanges on dB loss
- 28 • Exhibit Eschelon 3.44: ACKNOWLEDGEMENT/ROOT CAUSE: Summary Of
29 Examples For Issues 12-64, 12-65 and 12-66
- 30 • Exhibit Eschelon 3.45: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest Retail
31 Letter to Eschelon End User Customer
- 32 • Exhibit Eschelon 3.46: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest-
33 Eschelon Email exchange
- 34 • Exhibit Eschelon 3.47: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest Retail
35 letter chronology

- 1 • Exhibit Eschelon 3.48: ACKNOWLEDGEMENT/ROOT CAUSE: Recent Qwest
2 Retail Letter to Eschelon's End User Customer.
- 3 • Exhibit Eschelon 3.49: ACKNOWLEDGEMENT/ROOT CAUSE: Eschelon June
4 4, 2007 Email to Qwest.
- 5 • Exhibit Eschelon 3.50: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest Service
6 Management 8-31-06 E-mail Regarding Qwest Retail Letter
- 7 • Exhibit Eschelon 3.51: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest Service
8 Center and Manager Roles in Relation to CMP
- 9 • Exhibit Eschelon 3.52: ACKNOWLEDGEMENT/ROOT CAUSE: Qwest-
10 prepared documentation from the CMP Redesign meetings showing that Qwest
11 developed and documented Qwest Service Center and Management Roles in
12 Relation to CMP in CMP Redesign in response to CLEC concerns.
- 13 • Exhibit Eschelon 3.53: EXPEDITES: Chronology of Qwest CMP Changes
14 Relating to Expedites
- 15 • Exhibit Eschelon 3.54: EXPEDITES: Documented Facts Matrix Relating to
16 Expedites
- 17 • Exhibit Eschelon 3.55: EXPEDITES: Excerpt from Qwest Resale Product
18 Database ("RPD")
- 19 • Exhibit Eschelon 3.56: EXPEDITES: September 2001 product
20 notification/documenting existing process
- 21 • Exhibit Eschelon 3.57: EXPEDITES: October 19, 2005 Version 30 announcement
- 22 • Exhibit Eschelon 3.58: EXPEDITES: November 18, 2005 CLEC comments to
23 version 30 change and Qwest's response to comments
- 24 • Exhibit Eschelon 3.59: EXPEDITES: InfoBuddy and Resale Product Database
25 ("RPD"): Qwest 6/27/01 Email Re. InfoBuddy
- 26 • Exhibit Eschelon 3.60: EXPEDITES: InfoBuddy and Resale Product Database
27 ("RPD"): 3/29/06 CMP Notice of RPD Retirement; Eschelon objection and
28 Qwest response
- 29 • Exhibit Eschelon 3.61: EXPEDITES: Documentation relating to Qwest PCAT
30 Expedites & Escalations Overview: Version 6
- 31 • Exhibit Eschelon 3.62: EXPEDITES: Documentation relating to Qwest PCAT
32 Expedites & Escalation Overview: Version 11.
- 33 • Exhibit Eschelon 3.63: EXPEDITES: Documentation relating to Qwest PCAT
34 Expedites & Escalations Overview: Version 27
- 35 • Exhibit Eschelon 3.64: EXPEDITES: Documentation relating to Qwest PCAT
36 Expedites & Escalations Overview: Version 30

- 1 • Exhibit Eschelon 3.65: EXPEDITES: Documentation relating to Qwest PCAT
2 Expedites & Escalations Overview: Version 47
- 3 • Exhibit Eschelon 3.66: EXPEDITES: Documentation relating to Qwest PCAT
4 Expedites & Escalations Overview: Proposed Version 47 (Eschelon comments
5 included)
- 6 • Exhibit Eschelon 3.67: EXPEDITES: Documentation relating to Qwest PCAT
7 Expedites & Escalations Overview: CMP status history/detail for Covad's Change
8 Request entitled "Enhancement to the existing Expedite Process for
9 Provisioning."
- 10 • Exhibit Eschelon 3.68: EXPEDITES: Expedites: Examples of Expedite Requests
11 Approved by Qwest for Unbundled Loop Orders
- 12 • Exhibit Eschelon 3.69: EXPEDITES: Annotated pages from Qwest Process
13 Notifications for Versions 11, 22, 27 and 30 of the Qwest Expedites and
14 Escalations Overview PCAT (showing that Qwest indicated Versions 11 and 22
15 were associated with the Covad change request and Versions 27 and 30 were not
16 associated with the Covad or any change request)
- 17 • Exhibit Eschelon 3.70: EXPEDITES: Arizona 6/6/06 Procedural Order –
18 Expedites Interim Relief
- 19 • Exhibit Eschelon 3.71: JEOPARDY: Jeopardy Classification and Firm Order
20 Confirmation Chronology
- 21 • Exhibit Eschelon 3.72: JEOPARDY: CR Detail for PC081403-1
- 22 • Exhibit Eschelon 3.73: JEOPARDY: CR Detail for PC072303-1
- 23 • Exhibit Eschelon 3.74: JEOPARDY: 2/26/04 CMP meeting notice & Meeting
24 materials dated 2/25/04
- 25 • Exhibit Eschelon 3.75: JEOPARDY: Examples: No FOC After Qwest Facility
26 Jeopardy yet Eschelon Accepts Circuit
- 27 • Exhibit Eschelon 3.76: JEOPARDY: Jeopardies Classification and Firm Order
28 Confirmation: Examples of Qwest's Failure to Provide an FOC or a Timely FOC
29 (including Eschelon's review of Qwest Colorado Exhibit RA-25)
- 30 • Exhibit Eschelon 3.77: JEOPARDY: Jeopardy Change Requests Information
31 from Qwest's Archive
- 32 • Exhibit Eschelon 3.78: JEOPARDY: Jeopardies/FOCs/Delayed Order
33 Compliance: Qwest Recent Refusal to Review and Root Cause Data,
34 Qwest/Eschelon Exchanges
- 35 • Exhibit Eschelon 3.79: JEOPARDY: Examples of Qwest position that it will not
36 provide requested documentation

- 1 • Exhibit Eschelon 3.80: CONTROLLED PRODUCTION: Implementation
2 Guidelines - CMP Redesign Action Item Log for #143
- 3 • Exhibit Eschelon 3.81: CONTROLLED PRODUCTION: Gap Analysis for #142
4 Regarding EDI Implementation Guidelines and Scope of CMP
- 5 • Exhibit Eschelon 3.82: CONTROLLED PRODUCTION: Non-CMP Notification
6 of Revisions to the EDI Implementation Guidelines (9/15/06)
- 7 • Exhibit Eschelon 3.83: CONTROLLED PRODUCTION: Implementation
8 Guidelines – Excerpts from Release 21.0, Release 20.0 and Release 19.2
9 Guidelines
- 10 • Exhibit Eschelon 3.84: INTERVALS: Qwest April 27, 2007 notice (Effective
11 April 30, 2007) communicating changes to its Negotiation Template Agreement
12 including removing section 1.7.1; Qwest-prepared May 23, 2007 notice (Effective
13 May 24, 2007) announcing Qwest was removing Exhibits L and M from its
14 Negotiations Template Agreement.
- 15 • Exhibit Eschelon 3.85: ACCESS TO UNEs: Qwest initiated Change Request
16 PC013007-3; Qwest-prepared March 22, 2007 notice of red line changes to the
17 Provisioning and Installation Overview PCAT; Excerpts of that PCAT showing
18 Qwest’s proposed changes; and Eschelon comments and Qwest’s response to
19 those changes.

20 **Q. DID YOU PREPARE THESE EXHIBITS OR HAVE THEM PREPARED**
21 **UNDER YOUR DIRECTION?**

22 A. Yes, with respect to the chronologies and summaries in Exhibit Eschelon 3.2,
23 Exhibit Eschelon 3.3, Exhibit Eschelon 3.6, Exhibit Eschelon 3.7, Exhibit
24 Eschelon 3.13, Exhibit Eschelon 3.34 Exhibit Eschelon 3.36, Exhibit Eschelon
25 3.44, Exhibit Eschelon 3.47, Exhibit Eschelon 3.53, Exhibit Eschelon 3.54,
26 Exhibit Eschelon 3.68, Exhibit Eschelon 3.71, Exhibit Eschelon 3.75, Exhibit
27 Eschelon 3.76 and Exhibit Eschelon 3.77 I have personal knowledge of these
28 facts. With respect to Exhibit Eschelon 3.8, 3.9, Exhibit Eschelon 3.15, Exhibit
29 Eschelon 3.20, Exhibit Eschelon 3.21, Exhibit Eschelon 3.31, Exhibit Eschelon

1 3.32, Exhibit Eschelon 3.41 (portions), Exhibit Eschelon 3.42 (portions), Exhibit
2 Eschelon 3.43, Exhibit Eschelon 3.46, Exhibit Eschelon 3.46, Exhibit Eschelon
3 3.50, Exhibit Eschelon 3.59, Exhibit Eschelon 3.66 (portions), Exhibit Eschelon
4 3.78 and Exhibit Eschelon 3.79 (email exchanges), as well as the email exchanges
5 described or included in the chronologies, I was personally involved and in many
6 cases copied on these emails. The facts set forth in these Exhibits to my
7 testimony are true to the best of my knowledge. The documents contained in
8 Exhibit Eschelon 3.5, Exhibit Eschelon 3.10, Exhibit Eschelon 3.11, Exhibit
9 Eschelon 3.12, Exhibit Eschelon 3.14, Exhibit Eschelon 3.17, Exhibit Eschelon
10 3.18, Exhibit Eschelon 3.19, Exhibit Eschelon 3.23 through Exhibit Eschelon
11 3.30, Exhibit Eschelon 3.33, Exhibit Eschelon 3.37, Exhibit Eschelon 3.38,
12 through Exhibit Eschelon 3.40, Exhibit Eschelon 3.41 (portions), Exhibit
13 Eschelon 3.42 (portions), Exhibit Eschelon 3.45, Exhibit Eschelon 3.48, Exhibit
14 Eschelon 3.51, Exhibit Eschelon 3.52, Exhibit Eschelon 3.55⁴ through Exhibit
15 Eschelon 3.58, Exhibit Eschelon 3.60 through Exhibit Eschelon 3.65, Exhibit
16 Eschelon 3.66 (portions), Exhibit Eschelon 3.67, Exhibit Eschelon 3.69⁵, Exhibit
17 Eschelon 3.72 through Exhibit Eschelon 3.74 and Exhibit Eschelon 3.80 through
18 Exhibit Eschelon 3.85 were prepared by Qwest and all or part are posted on
19 Qwest's web site. Exhibit Eschelon 3.13 is a summary prepared under the

⁴ Qwest retired the RPD database in April of 2006. As a result, these excerpts may no longer be available on Qwest's web site.

⁵ With respect to Exhibit Eschelon 3.69, these CMP notifications (without the annotations) were prepared by Qwest and are posted on the Qwest web site. Eschelon annotated the notices by circling pertinent information related to whether the notice is associated with a change request ("CR") (*i.e.*, a Level 4 change).

1 direction of Mr. Denney. I participated in the preparation of this exhibit. Exhibit
2 Eschelon 3.4 contains pages from a publicly available interconnection agreement
3 (“ICA”). These are true and correct copies. Exhibit Eschelon 3.22 is an excerpt
4 from the Rebuttal Testimony of Qwest witness Karen Stewart in the Minnesota
5 Qwest-Eschelon arbitration (MN PUC Docket No. P-5340, 421/IC-06-768), p. 3.
6 It is a true and correct copy. Exhibit Eschelon 3.70 is a true and correct copy of an
7 order issued by the Arizona Corporation commission. Exhibit Eschelon 3.35
8 includes an exchange of letters between Qwest and Eschelon (Qwest’s 10/16/06
9 letter and Eschelon’s 10/17/06 response letter). These are true and correct copies.

10 **Q. MR. STARKEY REFERS IN HIS TESTIMONY TO YOUR TESTIMONY**
11 **INCLUDING ITS EXHIBITS. HAVE YOU REVIEWED THAT**
12 **TESTIMONY, AND IF SO, DID MR. STARKEY TAKE ANY**
13 **STATEMENT OR EVENT OUT OF CONTEXT?**

14 A. I have reviewed that testimony and, no, Mr. Starkey did not take any statement or
15 event out of context.

16 **Q. MR. DENNEY REFERS IN HIS TESTIMONY TO YOUR TESTIMONY**
17 **INCLUDING ITS EXHIBITS. HAVE YOU REVIEWED THAT**
18 **TESTIMONY, AND IF SO, DID MR. DENNEY TAKE ANY STATEMENT**
19 **OR EVENT OUT OF CONTEXT?**

20 A. I have reviewed that testimony and, no, Mr. Denney did not take any statement or
21 event out of context.

1 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.1 RELATED TO**
2 **COLLOCATION SPACE OPTION RESERVATION.**

3 A. My direct testimony is Eschelon 3.0, so Exhibit Eschelon 3.1 is the first exhibit to
4 my direct testimony. Exhibit Eschelon 3.1 contains terms and conditions
5 associated with collocation space reservations contained in different documents
6 including Qwest's SGATs, Qwest's negotiation templates and Qwest's ICAs with
7 various CLECs. This exhibit provides an example of contract provisions on the
8 same subject with different terms that did not go through CMP but are part of
9 interconnection agreements. Mr. Starkey refers to this Exhibit in his discussion of
10 the ICA and the need for contractual certainty.

11 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.2 RELATING TO CLOSED**
12 **LANGUAGE AND CMP ACTIVITY, IF ANY.**

13 A. Exhibit Eschelon 3.2 contains a matrix of some of the ICA language that has
14 closed since the Qwest-Eschelon arbitrations began (with the filing of the
15 Minnesota arbitration in May of 2006) for issues for which Qwest has argued at
16 some point that the language is inappropriate for inclusion in an ICA and should
17 be dealt with in CMP or elsewhere. The matrix contains the following columns:
18 (1) Issue Number & Closed Language, (2) Qwest Argument; (3) PCAT language,
19 if any? (4) Is the closed language substantively different from PCAT? and (5)
20 Was there CMP activity near in time or after the closure? Mr. Starkey refers to
21 Exhibit Eschelon 3.2 in his discussion of the ICA and need for contractual
22 certainty (the first topic of his direct testimony).

1 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.3 RELATING TO**
2 **ESCHELON'S DRAFT OF SECTION 12 OF THE ICA AND EXHIBIT**
3 **ESCHELON 3.6 REGARDING CLEC FORUMS.**

4 A. Exhibit Eschelon 3.3 contains an annotated version of Eschelon's March 18, 2004
5 draft proposal for Section 12. The first page is a key to the annotations that
6 Eschelon added to the March 18, 2004 proposal when preparing Exhibit Eschelon
7 3.3; the key describes the various types of text that are used to show the source of
8 the language. For example, if the source is the Qwest template, the language is in
9 black text, and if the source is Qwest's wholesale web site, the language is in bold
10 text. The black text indicates, for example, that Qwest template language was
11 used in Eschelon's negotiation proposal. For language derived from Qwest's
12 wholesale web site, footnotes have also been added to the draft to indicate the
13 location on the web site of the associated language. The document, without the
14 described annotations, is the Section 12 proposal that Eschelon sent to Qwest on
15 March 18, 2004. The second page of Exhibit Eschelon 3.3 is the cover email that
16 was sent with the draft on March 18, 2004.

17 In each Qwest-Eschelon arbitration to date, Qwest witness Ms. Albersheim, in
18 Qwest's "Introduction to Section 12 Issues," has testified that "Qwest's standard
19 negotiations template" was not used for the negotiation of Section 12 of the
20 interconnection agreement.⁶ She has attached a Qwest exhibit that she describes

⁶ Albersheim Direct (Arizona arbitration, p. 45, lines 2-4), (Colorado arbitration, p. 36, lines 16-19), (Minnesota arbitration, p. 39, lines 7-10), (Oregon arbitration, p. 49, lines 3-6) and (Washington arbitration, p. 39, lines 18-21).

1 as “Eschelon’s rewrite”⁷ of Qwest’s template language. As reflected in the
2 different font styles in Exhibit Eschelon 3.6, various sources were used in the
3 negotiations. With respect to Qwest’s template proposals, Qwest previously held
4 collaborative sessions and CMP CLEC Forums during which some contract
5 language changes were discussed with CLECs.⁸ Exhibit Eschelon 3.6 contains
6 excerpts from meeting minutes documenting that contract language was discussed
7 in these sessions. These minutes were prepared by Qwest and are posted on
8 Qwest’s own web site (*see* URLs provided in Exhibit Eschelon 3.6). Qwest has
9 not held any CLEC Forum since June of 2003.⁹ Exhibit Eschelon 3.6 also
10 contains a list of forums offered by Qwest, taken from the wholesale calendar on

⁷ Albersheim Direct (Arizona arbitration, p. 45, line 7), (Colorado arbitration, p. 36, line 22), (Minnesota arbitration, p. 39, line 13), (Oregon arbitration, p. 49, lines 8-9) and (Washington arbitration, p. 39, line 24).

⁸ See, *e.g.*, Exhibit Eschelon 3.6 (excerpts from CLEC Forum meeting minutes showing discussion of contract language changes).

⁹ *See* June 16, 2003 Forum

(<http://www.qwest.com/wholesale/calendar/eventDetails/1,1456,86,00.html>); *see also* Dec. 2003 CMP meeting minutes in which Eschelon asked when the next CLEC Forum would be (<http://www.qwest.com/wholesale/downloads/2004/040116/CMPDistPkg01-21-04.pdf>); Jan. 2003 CMP meeting minutes in which Qwest closed this action item without scheduling another CLEC Forum (<http://www.qwest.com/wholesale/downloads/2004/040119/JanuaryCMPSysDistributionPackage.pdf>). Qwest held two identical telephone conference calls (whereas the CLEC Forums were in person) in the Summer of 2005 called "Qwest Wholesale Provisioning Forum." However, these sessions were “how to” training sessions designed to “convey information” from Qwest to CLECs. The 47-page Powerpoint tutorial entitled “CLEC Conference Call Series: Focusing on Calls to Qwest” included the following stated purpose (on page 1): “These calls are designed to convey information and insights related to the local service request provisioning process and the calls into the Qwest Call Handling Centers. They are intended for those who perform the work to assist them in their day-to-day work activities. Our hope is to share information that can be beneficial to your company.” They were not the back and forth discussions of broader issues that were supposed to be collaborative in the CLEC Forums. Consistent with this, Qwest did not label the Provisioning training session as a “CLEC Forum” on its website. *See* Exhibit Eschelon 3.6 (page 22). The only other more recent forums listed on the Qwest web page are inapplicable “wireless” forums. *See id.*

1 Qwest's website, that shows the last "CLEC Forum" as having been held in June
2 of 2003. (*See*, Exhibit Eschelon 3.6, pages 22-23).

3 Although the Qwest template was not the single base document for Qwest-
4 Eschelon negotiations, language from the Qwest template (including some
5 template language that is the same as SGAT), was used in negotiations proposals
6 (and some appears now in closed ICA language). Although Eschelon had
7 proposed using the existing Qwest-Eschelon ICA as a starting point,¹⁰ Qwest did
8 not agree to that approach. Mr. Starkey refers to Exhibit Eschelon 3.3 and Exhibit
9 Eschelon 3.6 in his discussion of CMP and the need for contractual certainty (the
10 first topic in his direct testimony).

11 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.4 RELATED TO MR.**
12 **STARKEY'S DISCUSSION OF DIFFERENCES BETWEEN THE ICA**
13 **PROVISIONS OF DIFFERENT CLECS.**

14 A. Exhibit Eschelon 3.4 contains pages from the Covad-Qwest ICA relating to
15 charges for repeat troubles (12.3.4.4). I have compared these provisions to the
16 Qwest-Eschelon proposed ICA, and there are differences in the language, but
17 there are relatively few of them. I am familiar with these provisions through the
18 ICA negotiations. There was no CMP activity associated with the Covad-Qwest
19 agreement to that language. Eschelon's proposed modifications to the Covad-
20 Qwest language for Issue 12-80 (now closed) reflected Eschelon's own product

¹⁰ *See, e.g.*, Exhibit Eschelon 3.8, p. 1 (Feb. 4, 2003 email) ["Early on, Eschelon had asked Qwest to use Eschelon's existing contract (the early AT&T contract) as a base for negotiations. . ."].

1 set and Eschelon's ability and desire to use remote testing in some cases when
2 trouble can be isolated with such testing. Exhibit Eschelon 3.4 also contains
3 pages from the Covad-Qwest ICA relating to CLEC-to-CLEC connections
4 (8.2.1.23 and subparts). I have compared these provisions to the Qwest-Eschelon
5 proposed ICA, and there are differences in the language. I am also familiar with
6 this language through the ICA negotiations. In the case of the CLEC-to-CLEC
7 connections language, Qwest and Eschelon agreed upon modified language. This
8 exhibit is referenced in Mr. Starkey's testimony regarding CMP/ICA.

9 The Covad provisions in Exhibit Eschelon 3.4 are an example of ICA provisions
10 that differ for different CLECs. Qwest provides notices of various amendment or
11 agreement terms that it offers to CLECs and sometimes updates that language
12 over time. They are available for some CLECs to sign or not (such as the
13 expedite amendment that Qwest says other CLECs have signed, but Eschelon has
14 not). Examples of different agreement or amendment terms that Qwest has
15 offered to CLECs include collocation available inventory, collocation transfer of
16 responsibility, CLEC Requested UNE Construction ("CRUNEC") and
17 TRO/TRRO terms.¹¹ A CLEC with the signed amendment would have different
18 ICA terms from a CLEC without the signed amendment.

19 In addition, the Qwest amendment or agreement language may change over time,

¹¹ These Qwest "products" are not identified in the SGAT, though they are in Qwest's 14 state negotiations template. Qwest has its own ICA proposed language for these products. Not all CLECs sign Qwest's proposed amendments for these products. Qwest representatives, therefore, must keep straight to which CLECs the terms apply or not.

1 and different CLECs could then sign different versions of the language depending
2 on when they signed them. Eschelon has received announcements of changes to
3 Qwest's TRO and TRRO language over time, for example. Qwest's
4 announcements suggest that some CLECs, unlike Eschelon, have signed the
5 TRRO Amendment, and therefore have different terms from Eschelon.¹² There is
6 closed language in Eschelon's ICA different from the Qwest template
7 TRO/TRRO agreement/amendment. Eschelon is also unaware of any other
8 CLEC having the Bridge Agreement (Exhibit Eschelon 2.23) that has been
9 approved for Qwest-Eschelon.

10 McLeodUSA commented in CMP that a change to Qwest PCAT language on the
11 DC Power Application is different from the language in McLeodUSA's signed
12 interconnection agreement with Qwest.¹³ Qwest responded that:

13 The definition for DC Power Capacity has been documented in the
14 PCATs since sometime in 2003. Your ICA is valid and will not be

¹² The recent APOT notice discussed by Mr. Starkey with respect to Issues 9-43 and 9-44, for example, states: "This document is provided for customers who *have signed* the Triennial Review Remand Order (TRRO) compliant agreement/amendment." PROS.08.31.06.F.04152.TRRO_Reclass_UNE_Conv_V2; "TRRO Reclassification of Terminations; V2.0." (emphasis added); <http://www.qwest.com/wholesale/cnla/uploads/PROS%2E08%2E31%2E06%2EF%2E04152%2ETRRO%5FReclass%5FUN%5FConv%5FV2%2Edoc>.

¹³ McLeodUSA's August 29, 2006 CMP Comment said: "Power Capacity and Usage Charges" changed from my ICA that was signed. The document we signed stated "DC Power Usage and AC Usage Charges" The Definition for "DC Power Usage" as now been replaced with "Capacity". This completely changes the interpretation of this section and the charge that are applied. Please explain when this section changed or if this section changed on this iteration. This change is not acceptable to McLeod."

http://www.qwest.com/wholesale/downloads/2006/060920/1857_Qwest_Resp_to_Comment_PROS_09_20_06_F_04181_FNL_DC_Power_New_Applicat_.doc.

1 changed. If you have further questions, please contact your
2 Collocation Service Manager.¹⁴

3 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.5 AND EXHIBIT**
4 **ESCHELON 3.41 RELATING TO THE CMP OVERSIGHT REVIEW**
5 **PROCESS.**

6 A. Section 18.0 of the CMP Document (Exhibit Eschelon 3.10) describes the CMP
7 Oversight Review Process.¹⁵ Exhibit Eschelon 3.5 contains a list of CMP
8 Oversight Committee Meeting Minutes posted on Qwest’s wholesale website
9 along with URLs that can be used to access the meeting minutes. Exhibit
10 Eschelon 3.5 shows that several matters have been handled through Section 18.0
11 (“Oversight Review Process”) of the CMP Document.

12 Exhibit Eschelon 3.41 includes excerpts from Qwest-prepared CMP Redesign
13 Meeting Minutes, as well as excerpts from the CMP Document (Exhibit Eschelon
14 3.10). It also includes URLs to the complete documents from which the excerpts

¹⁴ See *id.* (same URL).

¹⁵ Section 18.0 of Exhibit Eschelon 3.10, p. 111 provides: “Qwest or a CLEC may identify issues with this CMP using the Oversight Review Process. Issues submitted through this process may include:

- Improper notification under CMP
- No notification under CMP
- Issues regarding scope of CMP
- Failures to adhere to CMP
- Interpretations of CMP
- Gaps in CMP

This Oversight Review Process is optional. It will not be used when one or more processes documented in this CMP are available to obtain the resolution the submitter desires. The submitter is expected to use such available processes.”

1 were taken. Following the excerpts, there is an Eschelon-Qwest email exchange
2 in which, despite Qwest's documented July 2001 commitment in CMP Redesign
3 "to provide minutes from each CICMP meeting and ad hoc meetings/calls,"¹⁶
4 Qwest said in its later email "Qwest believes that minutes for ad hoc
5 meetings associated with a change to disposition request are not required under
6 the current CMP Document."¹⁷ The Eschelon-Qwest email exchange also
7 includes Eschelon's request for Oversight Committee review. Additional
8 communications have taken place between Eschelon and Qwest since that email
9 exchange, but the issue of Qwest providing minutes and allowing for review of
10 minutes per the terms established in CMP Redesign (as reflected in the CMP
11 Document and the CMP Redesign minutes) are not resolved. Therefore, Eschelon
12 is continuing to pursue Oversight Committee review to obtain minutes and review
13 of minutes consistent with the CMP Document's requirements.

14 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.7 RELATING TO**
15 **WITHDRAWN QWEST PRODUCT AND PROCESS CHANGE**
16 **REQUESTS.**

17 A. Exhibit Eschelon 3.7 contains a description of the product and process change
18 requests withdrawn by Qwest since at least 2001 (*i.e.*, all those posted in Qwest's
19 CMP product and process archive on its web site).

20 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.8 AND EXHIBIT**

¹⁶ Exhibit Eschelon 3.41, p. 1.

1 **ESCHELON 3.9 RELATING TO ESCHELON'S REQUEST AND**
2 **QWEST'S RESPONSE REGARDING AN OPPORTUNITY FOR INPUT**
3 **FROM MULTIPLE CLECS.**

4 A. Exhibit Eschelon 3.8 contains a 2003 email exchange between Qwest and
5 Eschelon in which Eschelon asked Qwest to allow CLECs to have input into the
6 development of Qwest's 14-state ICA negotiations template and for Qwest to
7 provide status information to CLECs about Qwest's new template in CMP.
8 Exhibit Eschelon 3.8 shows that Qwest declined Eschelon's request. Likewise,
9 3.9 contains a 2003 letter exchange between Qwest and Eschelon in which
10 Eschelon asked Qwest to involve other CLECs in the negotiations and
11 implementation of *TRO* provisions, but Qwest declined to facilitate
12 communications among multiple CLECs.

13 **Q. EXHIBIT ESCHELON 3.10 IS THE CMP DOCUMENT. ARE YOU**
14 **FAMILIAR WITH QWEST'S CMP, AND WHAT IS THE CMP**
15 **DOCUMENT?**

16 A. Yes, I am familiar with CMP. Mr. Starkey describes CMP accurately in his
17 testimony. As described with respect to my background above, I have
18 participated in Qwest's CMP on behalf of Eschelon since at least 2001.
19 Currently, I am the lead participant for Eschelon.

¹⁷ Exhibit Eschelon 3.41, p. 6.

1 The “CMP Document” (Exhibit Eschelon 3.10) outlines the rules and procedures
2 governing conduct of Qwest’s CMP. It is available on Qwest’s website. It is also
3 Exhibit G to the proposed ICA and to the SGAT (both of which provide that they
4 include the most recent version of the CMP Document).¹⁸ I have consulted the
5 CMP Document in the course of my participation in CMP.

6 Qwest has described the CMP Document and the CMP development team (the
7 CMP “Redesign” team) as follows:

8 Q. HOW WAS THE CMP CREATED?

9 A. The current CMP was designed by a joint group that included Qwest
10 and a number of CLECs. Eschelon was an active participant in this
11 process. Extensive negotiations took place in meetings from the fall of
12 2001 to the fall of 2002. The end result was the Wholesale Change
13 Management Process Document that governs the CMP today.¹⁹

14 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.11 AND EXHIBIT**
15 **ESCHELON 3.12 RELATING TO CMP REDESIGN MEETING**
16 **MINUTES.**

17 A. Exhibit Eschelon 3.11 and Exhibit Eschelon 3.12 contain excerpts from the
18 meeting minutes of three CMP Redesign meetings held on January 22-24, 2002;
19 April 2-4, 2002; and October 2-3, 2001, respectively. These Qwest-prepared
20 minutes are posted on Qwest’s web site.

¹⁸ See Section 12.1.6.1.3 of the proposed ICA (closed language).

¹⁹ Minnesota arbitration, Albersheim Direct, p. 5, lines 5-10; Oregon arbitration, Albersheim Direct, p. 5, lines 1-6 (same); Washington arbitration Albersheim Direct, p. 4, lines 15-20 (same).

1 Exhibit Eschelon 3.11 is an excerpt from the April 2002 CMP Redesign meetings.
2 It states that the ICA information (Attachment 12) could be inserted into the
3 Scope section of the CMP Document, and that Gap Analysis #150 and action item
4 #227 were closed. Exhibit Eschelon 3.11 includes an excerpt from the CMP
5 Redesign “Gap Analysis Matrix” with respect to Gap Analysis #150. In this
6 posted CMP Redesign document, Eschelon said, for example, that “Qwest needs
7 to establish and document a process to account for individual interconnection
8 agreements (“ICAs”) when implementing changes and using the Change
9 Management Process (“CMP”).” Mr. Starkey discusses the scope of CMP in his
10 testimony.

11 Exhibit Eschelon 3.12 is an excerpt from the October 2001 CMP Redesign
12 meeting minutes and lists (a) CMP Redesign Action Item #72 (stating that a
13 CLEC is to use the escalation and dispute process if a CLEC does not agree with
14 Qwest’s response or rejection of a CLEC-initiated Change Request); (b) Action
15 Item # 83 (stating that an issue does not have to go through the CMP escalation
16 process before it goes to dispute resolution); and (c) Action Item #86 (stating that
17 Qwest “will probably never use” the CMP dispute resolution process). Mr.
18 Starkey discusses the dispute resolution process in his testimony.

19 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.13, EXHIBIT ESCHELON**
20 **3.14 AND EXHIBIT ESCHELON 3.15 RELATING TO CRUNEC.**

1 A. Exhibit Eschelon 3.13 to my testimony is the DS1 CRUNEC Chronology.
2 Exhibit Eschelon 3.14 is the CRUNEC Level 3 notice. Exhibit Eschelon 3.15 is a
3 CRUNEC Qwest-Eschelon email exchange. Mr. Starkey summarizes these
4 events in his testimony in his discussion of the ICA and the need for contractual
5 certainty. This is the first of the four examples he provides on that topic.

6 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.16 THROUGH EXHIBIT**
7 **ESCHELON 3.35 ALL RELATING TO SECRET TRRO PCATS.**

8 A. Mr. Starkey summarized events relating to the Secret TRRO PCATs in his
9 discussion of the ICA and the need for contractual certainty. This is the fourth of
10 the four examples he provides on that topic.

11 Exhibit Eschelon 3.16 to my testimony is the Secret PCAT TRRO Chronology
12 and Exhibits.

13 Exhibit Eschelon 3.17 and Exhibit Eschelon 3.18 are Covad's escalation of Qwest
14 Change Request PC102704-1ES and Qwest's response to Covad's escalation.

15 Exhibit Eschelon 3.19 is a Redline of Change Request Detail for PC10270401ES.

16 Exhibit Eschelon 3.20 contains three examples of Qwest responses to Eschelon
17 objections to non-CMP "TRRO" notices. The first example relates to a recent
18 Enhanced Extended Link ("EEL") loop-multiplexing combination DS1 capable
19 loop non-CMP "TRRO" notice, and Qwest's CMP response indicating that the
20 issue would not be handled in CMP at this time. The second example relates to a

1 non-CMP “TRRO” notice about a Qwest organizational change, and Qwest
2 service management response indicating that the issue would not be handled in
3 CMP at this time. The third example relates to Qwest’s first password protected
4 non-CMP “TRRO” PCATs (including for Commingled EELs), and Qwest’s CMP
5 response that because this was a “non CMP notice,” Eschelon should contact
6 Qwest service management with any questions.

7 Exhibit Eschelon 3.21 contains two Qwest-Eschelon exchanges regarding
8 Qwest’s non-CMP notices: one notice which was sent on 7/21/06²⁰ entitled
9 “TRRO – Reclassification of Terminations for Unbundled Network Element
10 (UNE) Conversions – V1.0,” with an effective date of 7/28/2006, and the other
11 notice which was sent on August 31, 2006 with an effective date of September 7,
12 2006.²¹ The first Qwest-Eschelon exchange is between Eschelon and Qwest ICA
13 negotiations team, Qwest’s CMP manager (Mr. Coyne), and Qwest service
14 management (Ms. Novak and Mr. Nielsen). The second Qwest-Eschelon
15 exchange (the last page of Exhibit Eschelon 3.21) is between Eschelon and CMP.

²⁰ Document No. PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1 (Qwest Wholesale Notification – not CMP notice);

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E07%2E21%2E06%2EF%2E04074%2ETRRO%5FReclass%5FTermin%5FV1%2Edoc>

²¹ PROS.08.31.06.F.04152.TRRO_Reclass_UNE_Conv_V2; “TRRO Reclassification of Terminations; V2.0.”

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E08%2E31%2E06%2EF%2E04152%2ETRRO%5FReclass%5FUNE%5FConv%5FV2%2Edoc>

1 . Exhibit Eschelon 3.22 is an excerpt from Qwest's Minnesota testimony (Ms.
2 Karen Stewart) stating that Qwest stopped updating SGATs in 2003 and therefore
3 considers SGATs as outdated documents.

4 Exhibit Eschelon 3.23 are notices distributed by Qwest indicating SGATs are
5 unavailable for opt in.

6 Exhibit Eschelon 3.24 are screen shots taken from Qwest's website showing that
7 Qwest has changed the link on its website to the SGATs so it takes the user to
8 Qwest's Negotiation Template Agreements, where there is a separate link to the
9 SGATs (in PDF), which Qwest indicates are for reference purposes only.²²

10 Exhibit Eschelon 3.25 is a Qwest-initiated change request SCR102704-1RG, in
11 which Qwest provided a list of products that would no longer be available to
12 CLECs.

13 Exhibit Eschelon 3.26 is Qwest-initiated change request SCR83005-01, in which
14 Qwest sought to implement an edit in IMA to block orders for central offices that
15 Qwest unilaterally declared non impaired.

16 Exhibit Eschelon 3.27 are Oversight Committee meeting minutes from January 4,
17 2005 regarding a Covad request described in the minutes as "Qwest inappropriate
18 use of CMP to drive legal interpretation of the Law, and the desired resolution;
19 the proposed changes (PC102704-1ES) be withdrawn until Qwest can properly

1 follow the CMP governing document.”

2 Exhibit Eschelon 3.28 includes the Oversight Committee meeting minutes from
3 January 10, 2005 regarding revisions to Change Request PC102704-1ES.

4 Exhibit Eschelon 3.29 is the Change Request detail for PC102704-1ES.

5 Exhibit Eschelon 3.30 is Qwest’s additional change request (CR PC10274-1ES2).
6 Although this should be part of the same change request (Exhibit Eschelon 3.29),
7 per Qwest, Qwest created the new Change Request PC10274-1ES2 as a
8 continuation of PC10274-1ES because the original Change Request reached its
9 character limitation.

10 Exhibit Eschelon 3.31, Exhibit Eschelon 3.32 and Exhibit Eschelon 3.33 contain
11 documentation exchanged regarding issues identified by Qwest in CMP and
12 whether those issues were subject to litigation.

13 Exhibit Eschelon 3.34 is a list of Qwest Non-CMP “TRRO” PCATs and reflects
14 the versions of the PCATs as of April 13, 2007.²³

15 Exhibit Eschelon 3.35 contains an exchange of correspondence between Qwest
16 and Eschelon regarding what Qwest described as its policy decision to review

²² Compare to Exhibit Eschelon 3.16 (containing excerpts from 6/30/05, 3/29/06, and 4/6/06 Qwest communications in which Qwest committed to update and then file the updated SGATs).

²³ In this list, for each Qwest non-CMP TRRO PCAT, the first URL refers to the PCAT. The other URL is the link to the history log for the PCAT (which shows the number of versions/changes to the PCAT made by non-CMP notifications). As seen from this list, there are 12 Qwest non-CMP TRRO PCATs, and 103 versions of the PCATs (counting the number of versions issued per PCAT) made by non-CMP notifications.

1 issues in CMP that Qwest had previously handled through non-CMP TRRO
2 PCATs.

3 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.36 RELATING TO HELD**
4 **ORDERS.**

5 A. Exhibit Eschelon 3.36 to my testimony is the No Build Held Order (Delayed
6 Order) Chronology. Mr. Starkey refers to this example in his testimony in his
7 discussion of CMP and the need for contractual certainty.

8 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.37 THROUGH EXHIBIT**
9 **ESCHELON 3.40 RELATING TO CMP DOCUMENTATION**
10 **REGARDING OPTIONAL TESTING CHARGES.**

11 A. Exhibit Eschelon 3.37 through Exhibit Eschelon 3.40 contains four documents
12 that are posted on the Qwest CMP web site related to Qwest-initiated Change
13 Request number PC100101-5 entitled "Clarification of Additional Testing
14 Process." Exhibit Eschelon 3.37 is the Qwest Change Request "Detail," including
15 Status History. Exhibit Eschelon 3.38 is the joint escalation of Eschelon, Covad
16 Communications, and Allegiance Telecom. Exhibit Eschelon 3.39 is Qwest's
17 Response to the joint CLEC CMP escalation and, Exhibit Eschelon 3.40 is the
18 joint CLEC reply to Qwest's response. Qwest did not respond. Mr. Starkey
19 references this Exhibit in his testimony in his discussion of the ICA and the need
20 for contractual certainty.

1 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.42 RELATING TO QWEST**
2 **MAINTENANCE AND REPAIR AND DISPATCH PCATS.**

3 A. Exhibit Eschelon 3.42 contains the following documents:

4 CMP Ad Hoc Meeting Minutes (Oct. 10, 2006) (pages 1-7)

5 Level 3 Notification (Dec. 1, 2006) (pages 8-10)

6 Eschelon's Comments (Dec. 15, 2006) (pages 11-12)

7 Level 3 Notification (Dec. 19, 2006) (pages 13-14)

8 Eschelon-Qwest Email Exchange (Jan. 2007) (pages 15-16)

9 Excerpt from Monthly CMP Meeting Minutes (Feb. 21, 2007) (pages 17-
10 18)

11 Wholesale Calendar Entry (showing ad hoc meeting on Feb. 19, 2007)
12 (page 19)

13 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.43 RELATED TO THE DB**
14 **LOSS EXAMPLE DISCUSSED IN CONNECTION WITH ISSUES 9-33**
15 **AND 9-34 (NETWORK MAINTENANCE AND MODERNIZATION).**

16 A. Exhibit Eschelon 3.43 contains an email exchange between Eschelon and Qwest
17 regarding a dB loss issue. Though the particular problems Eschelon brought to
18 Qwest's attention at that time concerned DS1s not working at the time of install,
19 in the course of investigating the cause of this problem, Qwest revealed its
20 maintenance and modernization plan to proactively reset dB levels at -7.5 during
21 repairs in a September 29, 2004 letter from Qwest's VP Wholesale Markets to
22 Eschelon about the dB loss issue, which is also part of Exhibit Eschelon 3.43. Mr.
23 Starkey references Exhibit Eschelon 3.43 in his testimony regarding Issues 9-33

1 and 9-34 (network maintenance and modernization).

2 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.44 THROUGH EXHIBIT**
3 **ESCHELON 3.51.**

4 A. Exhibit Eschelon 3.44 through Exhibit Eschelon 3.51 relate to Subject Matter 29
5 (Root Cause and Acknowledgement of Mistakes). I will discuss these exhibits in
6 more detail below regarding Subject Matter 29 (Issues 12-64 through 12-66).

7 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.53 THROUGH EXHIBIT**
8 **ESCHELON 3.70 ALL RELATING TO EXPEDITED ORDERS.**

9 A. Exhibit Eschelon 3.53 through Exhibit Eschelon 3.70 relate to Subject Matter 31
10 (Expedited Orders). Mr. Denney discusses Subject Matter 31 and references
11 these exhibits in his testimony.

12 Exhibit Eschelon 3.53 to my testimony is the Chronology of Qwest CMP
13 Changes.

14 Exhibit Eschelon 3.54 is the Documented Facts Matrix. In Exhibit Eschelon 3.54,
15 facts outlined in the chronology in Exhibit Eschelon 3.53 are listed in the “Fact”
16 column and, in the corresponding “Documentation” column, documentation
17 supporting that fact or event is identified. As an example, in Exhibit Eschelon
18 3.53 (chronology), under the heading “7. CLEC Objections, Qwest Denials, and
19 Dispute Resolution,” Eschelon states:

20 Although the CMP Document is not part of Eschelon’s ICA with
21 Qwest, Eschelon voluntarily followed the CMP objection,
22 escalation, and dispute resolution processes to attempt to resolve

1 this matter. Eschelon also complied with the ICA’s dispute
2 resolution provisions before bringing this matter to the
3 Commission.

4 Documents supporting this statement in Exhibit Eschelon 3.53 are listed in rows
5 2-14 of Exhibit Eschelon 3.54. For example, in support of the statement that
6 Eschelon followed the “escalation” and “objection” CMP processes, the content
7 of the escalation (by McLeodUSA) is quoted in row 2 of Exhibit Eschelon 3.54,
8 and an email from Qwest’s then CMP Process Manager indicating that Eschelon
9 joined that McLeodUSA escalation is quoted in row 3 of Exhibit Eschelon 3.54.
10 Row 9 of Exhibit Eschelon 3.54 contains a quotation from Eschelon’s objection in
11 CMP stating that the “change Qwest is proposing is discriminatory to CLECs and
12 their customers.” Eschelon provides the URL to Eschelon’s CMP comments in
13 row 9, so the entire comments (including those of other CLECs) can be found as
14 well.

15 Exhibit Eschelon 3.55 includes excerpts from the Qwest Resale Product Database
16 – or RPD.

17 Exhibit Eschelon 3.56 is a 9/21/01 Qwest Product Notification.

18 Exhibit Eschelon 3.57 is Qwest’s Version 30 Announcement relating to changes
19 to expedites.

20 Exhibit Eschelon 3.58 is Qwest’s 11/18/05 Response to CLEC Comments of the
21 Version 30 Announcement.

1 Together, Exhibit Eschelon 3.53 through Exhibit Eschelon 3.58 are intended to
2 readily identify documents supporting facts in the chronology of events. For
3 many of the facts, the supporting documentation is posted on Qwest's website and
4 a URL is provided.

5 Exhibit Eschelon 3.59 consists of a Qwest email dated June 27, 2001 regarding
6 InfoBuddy.

7 Exhibit Eschelon 3.60 is Qwest's March 29, 2006 Notice regarding RPD
8 retirement, Eschelon's objection to the retirement of RPD and Qwest's response.

9 Exhibit Eschelon 3.61 through Exhibit Eschelon 3.65 are comprised of
10 documentation relating to Qwest PCAT Expedites & Escalations Overview,
11 Versions 6, 11, 27, 30, and 44.

12 Exhibit Eschelon 3.61, regarding Version 6 (effective May 27, 2003), contains the
13 Qwest Level 2 CMP announcement in which Qwest states that Version 6 is
14 "Documentation concerning existing process not previously documented: add
15 Expedite reason – medical emergency." It also includes a page from the
16 accompanying Qwest redline showing this change (adding the phrase "Medical
17 emergency" to the documented list of "valid expedite" conditions). It also
18 includes the CLEC comments and Qwest's Response regarding Version 6. AT&T
19 states: "We have had several meetings with Qwest to outline the specifics of the
20 medical expedite process, and none of that information is contained in this PCAT,
21 not the disclosure document for EDI, not other PCATs for ordering and

1 provisioning. It has taken AT&T approximately 5 and a half months to get the
2 information we have been requesting, and still it is not documented.” Qwest’s
3 Version 6 Response confirms that, at this time, expedites were provided at no
4 additional charge for medical emergencies, and Qwest was only documenting this
5 fact:

6 The current process for Expedites will not change. “Medical
7 emergency” is a valid Expedite reason that was not previously
8 documented. The PCAT updates were clarifying updates only in
9 order to provide an additional valid reason to request an expedite”
10 and “Based on the comments received, the PCAT updates were
11 clarifying updates only in order to provide additional information.
12 The current process for Expedites will not change. “Medical
13 emergency” is a valid Expedite reason that was not previously
14 documented. The PCAT is being updated to clarify the actions for
15 Expedite situations along with a link to the field entry requirements
16 in the Local Service Ordering Guide (LSOG). Qwest accepts this
17 comment.

18 Exhibit Eschelon 3.63 is Version 27 of Qwest’s Expedites & Escalations
19 Overview PCAT (effective October 27, 2005), Exhibit Eschelon 3.63 includes (1)
20 the Qwest September 12, 2005 Level 3 notification; (2) the pages of the
21 accompanying redlines that refer to expedites (showing that Qwest deleted the
22 phrase “all except 2w/4w analog” and inserted the phrase “Port In/Port Within
23 associated with any of the applicable designed products listed above” in the list of
24 products to which Qwest indicates the fee-added Pre-Approved Expedite process
25 applies);²⁴ (3) the October 12, 2005 CLEC Comment and Qwest Response; (4)
26 McLeodUSA’s Escalation; (5) Qwest’s November 4, 2005 Response to

²⁴ See, e.g., Exhibit Eschelon 3.53, pp. 8 and 9.

1 McLeodUSA's escalation; and (6) a March 28, 2006 Qwest-Eschelon email
2 exchange in which Qwest confirms that "we do show that Eschelon did join the
3 escalation."²⁵

4 Exhibit Eschelon 3.64 is Version 30 of Qwest's Expedites & Escalations
5 Overview PCAT (effective January 3, 2006), Exhibit Eschelon 3.64 includes (1)
6 Qwest's October 19, 2005 Level 3 notification; (2) the accompanying redline
7 showing that Qwest made the following changes from the previous version to
8 Version 30 of its PCAT to deny the capability to a CLEC with expedite "language
9 in [its] Interconnection Agreement (ICA)" to expedite any product (including all
10 loops) on Qwest's expanded Pre-Approved Expedite product list, even when the
11 Original Conditions are met, and to instead require that the ICA "must contain" a
12 "per day" expedite rate:²⁶

13 Requesting an expedite follows one of two processes, depending
14 on the product being requested. If the request being expedited is
15 for a product contained in the "Pre-Approved Expedites" section
16 below your ICA must contain language supporting expedited
17 requests with a "per day" expedite rate. If the request being
18 expedited is for a product that is not on the defined list, then the
19 expedited request follows the process defined in the "Expedites
20 Requiring Approval" section below.

21 and (3) Qwest November 18, 2005 Final Notice and accompanying Qwest
22 Response to CLEC Comment (with CLEC comments and Qwest Response).

²⁵ See, e.g., Exhibit Eschelon 3.53, pp. 12 and 13.

²⁶ See, e.g., Exhibit Eschelon 3.53, pp. 10-12 & 13-16.

1 Exhibit Eschelon 3.65 is Version 47 of Qwest's Expedites & Escalations
2 Overview PCAT.

3 Exhibit Eschelon 3.66 is documentation relating to Version 45 of Qwest's
4 Expedites & Escalations Overview PCAT.

5 Exhibit Eschelon 3.67 includes a copy of the CMP status history/detail for
6 Covad's Level 4 CLEC-initiated Change Request entitled "Enhancement to the
7 existing Expedite Process for Provisioning." This is discussed in connection with
8 Version 11 of Qwest's Expedites & Escalations Overview PCAT (effective July
9 31, 2004).²⁷

10 Exhibit Eschelon 3.68 contains a list of examples of expedite orders that were
11 approved by Qwest for unbundled loop orders using the *emergency-based*
12 expedite process and provided at no additional charge, including during the time
13 period after Qwest implemented the additional, optional fee-added expedite
14 process. None of these examples are expedites under the fee-added expedite
15 process. These examples show that Qwest continued to approve expedites for
16 unbundled loop orders using the emergency-based expedite process under the
17 existing interconnection agreement without amendment after the date on which it
18 implemented the fee-added Pre-approved Expedites process.

²⁷ See, e.g., Exhibit Eschelon 3.53, pp. 6-8.

1 Exhibit Eschelon 3.69 contains annotated pages from Qwest Process Notifications
2 for Versions 11, 22, 27 and 30 of the Qwest Expedites and Escalations Overview
3 PCAT. Eschelon annotated the notices to circle pertinent information related to
4 whether the notice is associated with a change request (“CR”) (*i.e.*, a Level 4
5 change). There is a space on Qwest’s form where Qwest indicates whether a
6 noticed change is “associated with” a change request or not. Exhibit Eschelon
7 3.69 shows that Qwest indicated Versions 11 and 22 were associated with the
8 Covad change request and Versions 27 and 30 were not associated with the Covad
9 or any other change request.

10 Exhibit Eschelon 3.70 consists of an Arizona Corporation Commission order
11 dated June 6, 2006 in Docket No. T-03406A-06-0257/T-04051B-06-0257, which
12 adopted Eschelon’s proposed interim process that allows Eschelon to continue to
13 have access to expedited orders for unbundled loops. The Order said on page two
14 that Eschelon’s proposal for the interim process is a “good compromise,
15 preserving Eschelon’s ability to obtain no-cost emergency expedites but providing
16 for payment to Qwest for non-emergency expedites.”

17 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.76 – EXHIBIT ESCHELON**
18 **3.79 RELATING TO JEOPARDIES.**

19 A. Exhibit Eschelon 3.76 through Exhibit Eschelon 3.79 relate to Subject Matter 33
20 (Jeopardies). I will discuss these exhibits in more detail below regarding Subject
21 Matter 33 (Issues 12-71 through 12-73). One of these exhibits in particular

1 (Exhibit Eschelon 3.76) requires additional explanation because it includes
2 several components requiring explanation, so I will also describe Eschelon/115
3 further here.

4 Exhibit Eschelon 3.76 to my testimony includes twenty-two examples of
5 situations when Eschelon was unable to accept delivery of the circuit when Qwest
6 tried to deliver the circuit because Qwest sent no FOC or an untimely FOC and
7 yet Qwest erroneously classified this situation as “Customer Not Ready. Exhibit
8 Eschelon 3.76 has five components: (1) Data provided by Eschelon to Qwest to
9 identify examples when no FOC or an untimely FOC was sent after a Qwest
10 facility jeopardy;²⁸ (2) Qwest’s review (performed during the Minnesota Qwest-
11 Eschelon ICA arbitration) of that data, in which Qwest provides its technicians’
12 notes associated with each example,²⁹ (3) Eschelon’s reply to Qwest’s review;³⁰
13 (4) Qwest’s Response to Eschelon’s review conducted in the Colorado arbitration
14 proceeding;³¹ and (5) Eschelon’s review of Qwest’s Colorado Exhibit RA-25.³²

15 **Q. PLEASE ELABORATE ON THE KEY AND SUMMARY INFORMATION**
16 **PROVIDED AT THE BEGINNING OF EXHIBIT ESCHELON 3.76**
17 **REGARDING JEOPARDIES.**

²⁸ See Exhibit Eschelon 3.76 (first four columns – “Eschelon Data”).

²⁹ See Exhibit Eschelon 3.76 (fifth and sixth columns – “Qwest Review”).

³⁰ See Exhibit Eschelon 3.76 (column 7 – “Eschelon Review”).

³¹ Exhibit Eschelon 3.76 (columns 8 and 9 – “From RA-25”).

³² Exhibit Eschelon 3.76 (final column – “Eschelon review of RA-25”).

1 A. The information in the key (pages i – ii of Exhibit Eschelon 3.76) summarizes the
2 examples by categories (“A” – “C”), with total numbers for each category, and it
3 helps identify areas of agreement and disagreement between the companies. If
4 the disagreements are set aside, there is one fact on which the companies clearly
5 agree: The companies agree that Qwest sent *no FOC* at all after the Qwest
6 facility jeopardy was cleared but before delivery or attempted delivery of the
7 circuit for twelve (12) of the examples. (These twelve examples are identified in
8 the key and the pertinent rows as part of category “A.”)

9 When no FOC is sent (as in category “A”), the most recent information available
10 to Eschelon from the jeopardy and FOC status notices is that Eschelon should not
11 expect circuit delivery, because Qwest has a facility problem to resolve before it
12 can deliver the circuit.³³

13 **Q. PLEASE DESCRIBE CATEGORY “B” IN EXHIBIT ESCHELON 3.76.**

14 A. Category “B” identifies examples for which the companies agree that Qwest sent
15 an FOC, but they disagree as to whether the FOC was sent sufficiently in advance
16 of the due date to allow Eschelon to prepare to accept delivery of the circuit (such
17 as by scheduling personnel and/or arranging premise access with the customer).
18 For example, one of the examples in category “B” is the situation in which Qwest

³³ See footnote 5 to Exhibit Eschelon 3.76. See my discussion below regarding Issue 12-72 and Qwest’s recent inaccurate claim that, despite this documented process, CLECs should prepare for delivery of the circuit even if no FOC is provided after the jeopardy notice but before attempted delivery of the circuit.

1 provided an FOC *nine minutes before* attempting to deliver the circuit.³⁴
2 Eschelon’s proposed ICA language states that Qwest will provide an FOC “at
3 least the day before” Qwest attempts to deliver the circuit.³⁵ In Exhibit Eschelon
4 3.76 Eschelon identifies examples for which Qwest, after a facility jeopardy
5 cleared, provided an FOC less than the day before delivery of the circuit as
6 “invalid” CNR jeopardies. These are the Category “B” examples.

7 Qwest includes eight examples in Category “B,” while Eschelon agrees with only
8 five of these. For the other two examples (Row Numbers 9 and 13), a pertinent
9 FOC was not sent, as described above and in end note (i) to Exhibit Eschelon 3.76
10 at Johnson/2, so Eschelon believes these two examples should be excluded from
11 Category “B” (which is supposed to be examples when a pertinent FOC *was* sent).

12 Qwest now denies that its process is to provide the FOC at least the day before the
13 due date.³⁶ Therefore, these examples are placed in a separate category (“B”)
14 from the examples in which Qwest agrees that it is part of its process to send the
15 FOC but Qwest failed to do so (“A”).

16 **Q. PLEASE DESCRIBE CATEGORY “C” IN EXHIBIT ESCHELON 3.76.**

³⁴ Exhibit Eschelon 3.76, p. 14, Row No. 11.

³⁵ Eschelon proposal for ICA Section 12.2.7.2.4.4.1.

³⁶ Minnesota arbitration Transcript, Vol. 1, p. 37, lines 16-23 (testimony of Renee Albersheim) (discussed below regarding Issue 12-72). Qwest claims that Eschelon’s proposed phrase “at least the day before” is not part of Qwest’s current process. *See id.* p. 37, lines 11-19. Other than that phrase, however, Qwest admits that the remainder of Eschelon’s proposed language reflects Qwest’s current process. *See id.* p. 37, lines 16-23.

1 A. Category “C” is the only one of the three categories for which Qwest agrees with
2 the original purpose of the exhibit: to show examples of when Qwest incorrectly
3 classified a jeopardy as Eschelon-caused (CNR). There are only three examples
4 in Category C. For these three examples, the companies agree both that no FOC
5 was sent and that Qwest’s assignment of a jeopardy as Eschelon-caused (CNR)
6 was inappropriate. Unlike Qwest, Eschelon considers the absence of the FOC
7 sufficient reason to not assign CNR. It appears from the information provided by
8 Qwest that Qwest has singled out these three examples because there was an
9 additional Qwest facility jeopardy. So, Qwest should have sent another Qwest
10 facility jeopardy notice instead of a CNR jeopardy. (In other words, there was an
11 additional reason, besides Qwest’s failure to send an FOC, upon which Qwest
12 relies for agreeing that its classification was incorrect.) This could happen, for
13 example, if Qwest clears a first Qwest jeopardy based on pairs that then turn out
14 to be bad. Qwest’s process is to send another Qwest facility jeopardy (for the bad
15 pairs).

16 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.80 THROUGH EXHIBIT**
17 **ESCHELON 3.83.**

18 A. Exhibit Eschelon 3.80 through Exhibit Eschelon 3.83 relate to Subject Matter 43
19 (Controlled Production). I will discuss these exhibits in more detail below
20 regarding Subject Matter 43 (Issue 12-87).

1 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.84 RELATED TO**
2 **INTERVALS.**

3 A. Exhibit Eschelon 3.84 contains two Qwest notices. In the first notice, Qwest
4 announces several changes to its Negotiations Template Agreement. The changes
5 include Qwest removing section 1.7.1, relating to Exhibits L and M. In the second
6 notice, Qwest announces it is removing Exhibits L and M from the Negotiations
7 Template Agreement. Both notices are non-CMP notices that are effective the
8 next business day. Therefore, there is no opportunity to comment on these
9 changes. Mr. Starkey refers to Exhibit Eschelon 3.84 in his discussion of Issue 1-
10 1 (Intervals).

11 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3.85 RELATING TO**
12 **NONDISCRIMATORY ACCESS TO UNES.**

13 A. Exhibit Eschelon 3.85 is comprised of 4 separate Qwest-prepared documents. The
14 first document is Qwest initiated Change Request (“CR”) Number PC013007-3,
15 which Qwest proposes limiting Connecting Facility Assignment (“CFA”) same
16 day pair changes to one per circuit. The detail of the CR describes Eschelon’s
17 concern that Eschelon had to make CFA changes on the due date even if a Qwest
18 caused problem is creating the need to change the CFA. The second document is
19 Qwest’s March 22, 2007 announcement of changes Qwest made to its
20 Provisioning and Installation PCAT. The third document is excerpts showing the
21 Qwest red lined changes to that PCAT. The fourth document contains Eschelon’s
22 objections and Qwest’s response to the objection. Qwest implemented the change

1 over Eschelon's objection. Mr. Starkey refers to Exhibit Eschelon 3.85 in his
2 discussion of Issue 9-31 (Nondiscriminatory Access to UNEs).

3 **III. OPEN SECTION 12 ISSUES: SUBJECT MATTERS 29, 31, 33, AND 43**

4 **A. SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**
5 **ACKNOWLEDGEMENT OF MISTAKES**

6 *Issues Nos. 12-64, 12-64(a) and 12-64(b): ICA Section 12.1.4 and subparts*

7 **Q. PLEASE DESCRIBE ESCHELON'S BUSINESS NEED REGARDING**
8 **ROOT CAUSE AND ACKNOWLEDGEMENT OF MISTAKES**
9 **REFLECTED IN ISSUE NUMBERS 12-64, 12-64(a) AND 12-64(b).**

10 A. In its role as a wholesale provider to Eschelon, Qwest performs activities, such as
11 installing and repairing unbundled loops on Eschelon's behalf. Qwest's role is
12 unique in this respect, as Eschelon does not perform installation and repair
13 activities on a wholesale basis on behalf of Qwest. If Qwest makes an error in the
14 course of these activities that impacts Eschelon's Customer, that Customer may
15 attribute fault to Eschelon, rather than Qwest. Indeed, this may occur because the
16 Customer does not fully understand the wholesale relationship between its
17 provider (Eschelon) and Qwest. Or, Qwest may even tell the End User Customer
18 that the error was caused by Eschelon despite the fact that Qwest caused the

1 service impacting error.³⁷ In either situation, it is important that Qwest
2 acknowledge its mistake in a form that allows Eschelon to pass this
3 acknowledgement to the End User Customer, if necessary, so that Eschelon does
4 not lose its Customers and suffer harm to its reputation in the marketplace.

5 Root-cause analyses are necessary to the correct attribution of mistakes and to
6 developing procedures to attempt to avoid similar mistakes in the future. A
7 requirement to perform a root cause analysis, when necessary to establish which
8 carrier caused an error, is implicit in a requirement that Qwest acknowledge its
9 mistakes. In other words, “to acknowledge a mistake, Qwest has to determine
10 that one was made and why.”³⁸ In many instances, a root cause analysis is
11 essential to getting to the heart of the error, and hopefully preventing further
12 similar mistakes.

13 **Q. HAS ANY STATE COMMISSION RECOGNIZED THESE NEEDS AND**
14 **ORDERED INCLUSION OF LANGUAGE IN A QWEST ICA TO**
15 **ADDRESS THESE NEEDS?**

16 A. Yes. In a case discussed further by Mr. Starkey (in the “Minnesota 616” example
17 in his CMP discussion), the Minnesota Commission recognized this need and
18 ordered Qwest to create procedures for acknowledging mistakes related to

³⁷ This happened in the Minnesota 616 case discussed below (and also discussed by Mr. Starkey in his testimony with respect to CMP).

³⁸ Exhibit Eschelon 2.24, p. 51 (Minnesota Arbitrators’ Report ¶208).

1 Qwest's errors that affect CLEC's End User Customers.³⁹ Since then, in the
2 Minnesota Qwest-Eschelon arbitration, the Minnesota commission adopted
3 Eschelon's proposed language for Issue 12-64 and subparts (including alternative
4 #2 for Section 12.1.4.1) regarding root cause and acknowledgement of mistakes.⁴⁰

5 **Q. BRIEFLY DESCRIBE THE FACTS WHICH LED TO THE MINNESOTA**
6 **616 ORDER REQUIRING QWEST'S ACKNOWLEDGEMENT OF**
7 **MISTAKES.**

8 A. A large business End User Customer selected Eschelon as its carrier of choice,
9 and Eschelon initiated the conversion process. Almost two weeks before the
10 requested due date (the date Eschelon requested that Qwest convert the service),
11 many of the Customer's telephone numbers went out of service. Eschelon later
12 learned that a Qwest employee made an error by typing an incorrect due date
13 within its internal service order associated with this conversion – and the Qwest
14 error brought down the Customer's service two weeks earlier than the conversion
15 date. Naturally, the End User Customer was upset. Moreover, Qwest worsened
16 the situation by actually telling Eschelon's Customer that the outage was
17 Eschelon's fault. The End User Customer was so upset about the outage that the
18 Customer asked Eschelon to cancel the order and stop the Customer's conversion

³⁹ Order Finding Service Inadequate and Requiring Compliance Filing, In the Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures, MN PUC Docket No. P-421/C-03-616. July 30, 2003, p. 9 ["MN 616 Order"], see Exhibit Eschelon 1.4, p. 14.

⁴⁰ Exhibit Eschelon 1.2, Exhibit Eschelon 2.25, p. 23 [MN PUC Arbitration Order, p. 23, ¶4 (Topic 27)].

1 to Eschelon. Qwest was successful, therefore, in preventing a Customer from
2 switching to Eschelon.

3 The situation was further aggravated by the fact that, when Eschelon submitted its
4 request to cancel the wholesale orders associated with Customer's conversion as
5 the Customer had requested, Qwest rejected Eschelon's request to cancel the
6 order.⁴¹ After Eschelon's escalation, the order was eventually cancelled. Further,
7 Eschelon learned that Qwest's *Wholesale* group alerted Qwest's *Retail* group of
8 the situation with this End User Customer (an outage caused by Qwest's
9 Wholesale group) so that Qwest's Retail group could turn its own company's
10 error into an opportunity to win back the unhappy Customer, even though
11 Qwest's error made that Customer unhappy.⁴²

12 Eschelon also learned that Qwest Retail's group e-mail to the End User Customer
13 told the Customer in a "misleading" manner that it would lose service again
14 unless Eschelon took specific action to cancel the service transfer order.⁴³ As
15 may happen in such a "he said, she said" situation, *the End User Customer*
16 *demand*ed that Eschelon provide a written statement from Qwest stating clearly
17 *that Qwest made the error causing the outage, and that Eschelon had complied*

⁴¹ The rejection was due to the way Qwest's systems treat an order for which some of Qwest's internal service orders have already been completed.

⁴² This conduct was captured in an e-mail that Qwest's *Retail* sent directly to Eschelon's Customer. In the e-mail, the Qwest Retail representative specifically said: "*I was contacted by our wholesale group. . .*" See Exhibit Eschelon 3.47, p. 8.

⁴³ Exhibit Eschelon 1.4, p. 11. The Minnesota Commission specifically found that Qwest Retail's email to Eschelon's Customer "was misleading in at least two ways." See *id.*

1 *with the Customer's wishes.* Because Qwest had created doubt about Eschelon's
2 explanation of the problem, the Customer wanted confirmation from Qwest itself.
3 Eschelon requested such a statement from Qwest. Qwest told Eschelon that
4 Qwest's policy is that Qwest will not provide a written statement to be provided
5 to the Customer, even when the purpose of the statement is to correct Qwest
6 misinformation. Eschelon then turned to the Minnesota Commission for relief,
7 and the Commission issued the Order cited above. The Minnesota 616 case is
8 also summarized in the Minnesota Arbitrators' Report ¶¶204-208 (Eschelon/29,
9 Denney 50-52).

10 **Q. HOW DOES ESCHELON'S PROPOSAL ADDRESS THESE ISSUES?**

11 A. Eschelon proposes that the ICA contain terms regarding root cause analyses and
12 promptly acknowledging and taking responsibility for mistakes made in Qwest's
13 role as a wholesale provider for Eschelon (when Qwest makes a mistake while
14 acting on Eschelon's behalf). Eschelon proposes the following language:

15 **Issue 12-64:**

16 12.1.4 Root Cause Analysis and Acknowledgement of Mistakes

17 **Proposal #1 for 12.1.4.1:**

18 12.1.4.1 CLEC may make a written request to its Qwest Service
19 Manager for root cause analysis and/or acknowledgement of a
20 mistake relating to products and services under this Agreement.
21 The written request should include the following information,
22 when applicable and available: Purchase Order Number (PON),
23 Service Order Number, billing telephone number, a description of
24 the End User Customer impact and the ticket number associated
25 with the repair of the impacting condition. It is expected that
26 CLEC has followed usual procedures to correct a service

1 impacting condition before beginning the process of requesting
2 Qwest acknowledgement of error.
3

4 **Proposal #2 for 12.1.4.1:**

5 12.1.4.1 CLEC may make a written request to its Qwest Service
6 Manager for root cause analysis and/or acknowledgement of
7 mistake(s) in processing wholesale orders, including pre-order,
8 ordering, provisioning, maintenance and repair, and billing. The
9 written request should include the following information, when
10 applicable and available: Purchase Order Number (PON), Service
11 Order Number, billing telephone number, a description of the End
12 User Customer impact and the ticket number associated with the
13 repair of the impacting condition. It is expected that CLEC has
14 followed usual procedures to correct a service impacting condition
15 before beginning the process of requesting Qwest
16 acknowledgement of error.
17

18 12.1.4.2 When the Qwest Service Manager receives a request for
19 root cause analysis and/or acknowledgement from CLEC, an
20 investigation process will begin. When this investigation results in
21 agreement that Qwest erred, the Qwest Service Manager will
22 provide written correspondence to CLEC.

23 12.1.4.2.1 The letter will include a recap of sufficient pertinent
24 information to identify the issue, (e.g., PON, Service Order
25 Number, order Due Date and billing telephone number, as
26 provided in the CLEC request) and the following statement,
27 “Qwest acknowledges its mistake. The error was not made by the
28 other service provider.”

29 12.1.4.2.2 Qwest understands that time is of the essence in
30 processing such a request and that a response should be provided
31 as quickly as is possible given the particular issue raised by CLEC.

32 **Issue 12-64(a):**

33 12.1.4.2.3 Written responses acknowledging Qwest error will be
34 provided with Qwest identification, such as Qwest letterhead, logo,
35 or other indicia.

36 12.1.4.2.4 The Qwest Service Manager will provide the
37 acknowledgement to CLEC.

38 **Issue 12-64(b):**

39 12.1.4.2.5 The acknowledgment response described in Section
40 12.1.4.2.3 and provided by the Qwest Service Manager to CLEC

1 will be provided on a non-confidential basis and will not include a
2 confidentiality statement.

3 12.1.4.2.6 Qwest external documentation available to CLEC will
4 instruct CLEC to make requests for acknowledgements directly to
5 its Qwest Service Manager. Such external documentation will also
6 include instruction for accessing the Qwest Customer Contact
7 Information Tool to identify the assigned Qwest Service Manager
8 if CLEC does not know to whom its request can be sent.

9 Although in Utah Qwest *opposes* all of Eschelon’s proposed language for Issue
10 12-64 and subparts, Qwest disputed only portions in Minnesota and eventually
11 *agreed* in Minnesota to all of Eschelon’s proposed language (which is the same in
12 both states), except the one phrase shaded in gray above for Section 12.1.4.1
13 (Eschelon proposals #1 and #2). In Minnesota, the ALJs found that Eschelon’s
14 proposal #1 for Section 12.1.4.1 was “consistent with the record and in the public
15 interest.”⁴⁴ The ALJs also observed that this single phrase could be modified
16 further, and also be consistent with the public interest.⁴⁵ In response, Eschelon
17 offered proposal #2 for Section 12.1.4.1 for all six states. Eschelon’s Proposal #2
18 for Section 12.1.4.1 uses the following phrase: “mistake(s) in processing
19 wholesale orders, including pre-order, ordering, provisioning, maintenance and
20 repair, and billing.” When adopting Eschelon’s alternate proposal (Proposal #2),
21 the Minnesota Commission said: “The Commission’s concern for the
22 anticompetitive consequences of service quality lapses has never been as narrow
23 as Qwest’s language would suggest. The Commission finds it reasonable for

⁴⁴ Exhibit Eschelon 2.24, p. 52 (¶208).

⁴⁵ See *id.*

1 Qwest to acknowledge mistakes at any point in processing wholesale orders,
2 including mistakes arising during pre-ordering, ordering, provisioning,
3 maintenance and repair, and billing. In the interest of clarity, the Commission
4 will adopt the arbitrator's language as modified by Eschelon."⁴⁶

5 **Q. WHAT IS QWEST'S PROPOSAL ON THESE ISSUES?**

6 A. Qwest does not agree with any of Eschelon's proposed language, and instead
7 proposes that Section 12.1.4 and subparts be deleted and left intentionally blank.
8 Qwest argues that this language is inappropriate for an ICA.⁴⁷ Inconsistencies in
9 Qwest's position are discussed in the testimony of Mr. Starkey, relating to CMP
10 issues (and specifically his discussion of the "Minnesota 616" example).

11 **Q. GIVEN THAT QWEST PROPOSES TO EXCLUDE THE LANGUAGE**
12 **FROM THE ICA, HAVE YOU PROVIDED ANY EXAMPLE THAT**
13 **ILLUSTRATES ESCHELON'S BUSINESS NEED FOR AN ICA**

⁴⁶ Exhibit Eschelon 2.25, p. 15; *see also* Exhibit Eschelon 2.25, p. 23 [MN PUC Arbitration Order, p. 15; *see also id.* p. 23, ¶4 (Topic 27)].

⁴⁷ See Qwest's position statement on Issue 12-64 and subparts in the Joint Disputed Issues Matrix, Exhibit 3 to the Oregon Petition (10/10/06), pp. 162-167. The Utah Disputed Issues Matrix was filed as Exhibit 3 to Eschelon's Petition for Arbitration in this matter on April 30, 2007. *See* Eschelon Telecom's Petition for Arbitration of Intercarrier Negotiations with Qwest Corporation under the Telecommunications Act of 1996. *In the Matter of the Petition of Eschelon Telecom of Oregon, Inc., for Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996.* Utah PSC Docket No. 07-2263-03 ["Eschelon Petition"], Exhibit 3. A brief written narrative summarizing Eschelon's position with respect to the open issues is set forth in the Disputed Issues Matrix for each issue [*"Eschelon position statement"*]. Qwest reviewed a draft of the matrix and responded that it had no changes, so it is a joint matrix in that Qwest has reviewed it and concurred with its language. In other states, Qwest also provided its position statements, as Eschelon expected Qwest would do in Utah as well. Eschelon requested position statements from Qwest, and Qwest replied that it would review and return by COB on Wednesday (April 25, 2007). On Thursday morning (April 26, 2007), Qwest informed Eschelon that it would not provide position statements for the matrix. Qwest's position on the unresolved

1 **PROVISION THAT REQUIRES QWEST TO ACKNOWLEDGE ITS**
2 **ERRORS (ISSUE 12-64 —THE FIRST OF THREE ISSUES RELATED TO**
3 **SUBJECT MATTER 29)?**

4 A. Yes. I provide examples of errors committed by Qwest in connection with repair
5 and installation situations that impacted Eschelon’s End User Customers in
6 Exhibit Eschelon 3.44. In a particular situation involving a restaurant,⁴⁸
7 Eschelon’s End User Customer, experienced trouble with its voice line. During
8 the repair of this line, Qwest’s technician erroneously disconnected the
9 Customer’s credit card line. The next day, Qwest’s technician was again at the
10 Eschelon End User Customer’s location with Eschelon’s technician.⁴⁹ The
11 Customer told them that the restaurant had effectively given away “free food”
12 worth \$110, because of the credit card line outage. Qwest’s technician responded
13 to the Eschelon End User Customer with profanity. Following the mistake
14 resulting in the credit card line outage, this obviously upset the Customer even
15 further. After Eschelon reported this incident to Qwest, Qwest recognized that
16 this was inappropriate and said it took disciplinary action against its technician.

17 In addition, with respect to this specific restaurant example, Eschelon later
18 learned that Qwest management also visited Eschelon’s End User Customer and
19 communicated directly with the Customer, without Eschelon’s knowledge or

issues, therefore, is that Qwest does not agree. Eschelon Petition, p. 8, note 2. Therefore, Eschelon will refer to the position statements that Qwest has provided in other states.

⁴⁸ Exhibit Eschelon 3.44, p. 1 (first example).

⁴⁹ This is called a joint meet.

1 presence, about the incident. The current Qwest-Eschelon ICA, like the pending
2 ICA, provides that Eschelon is the single point of contact with Eschelon's End
3 User Customer.⁵⁰ Per this provision, Qwest should not have communicated with
4 the Eschelon Customer instead of Eschelon.⁵¹ This suggests that the ICA
5 language needs to be more explicit on this point. If Eschelon's proposed language
6 were adopted for Issues 12-64 and subparts, in conjunction with closed issues 12-
7 65, and 12-66,⁵² the ICA would be more clear in requiring that Qwest take the
8 appropriate steps to provide a written acknowledgement of its error in causing the
9 credit card line outage to Eschelon, allowing Eschelon to communicate with its
10 own Customer and pass along Qwest's written acknowledgement to its Customer,
11 if necessary.

12 **Q. ESCHELON'S PROPOSED LANGUAGE REFERS TO ROOT CAUSE**
13 **ANALYSIS. PLEASE EXPLAIN.**

14 A. As I indicated above, a root cause analysis can be essential to getting to the heart
15 of errors, and hopefully preventing further similar mistakes made when Qwest in
16 its role as a vendor is performing work for Eschelon. Eschelon expends resources
17 researching examples (which Qwest asks Eschelon to provide when problems

⁵⁰ Attachment 5, section 1.1.1.1 of the current Qwest-Eschelon ICA. This provision states "At all times, CO-PROVIDER shall be the primary (single and sole) contact and account control for all interactions with its subscribers, except as specified by CO-PROVIDER."

⁵¹ Afterwards, Qwest claimed the purpose of its return visit was to apologize to Eschelon's customer. Any apology should have been provided to Eschelon, per the ICA language. *See id.*

⁵² Issues 12-65 and 12-66 deal with Qwest's communications with Eschelon's End User Customers, and are closed.

1 occur).⁵³ Qwest benefits from root cause of these examples because Qwest gains
2 efficiencies when information learned from these mistakes is used to avoid
3 mistakes going forward. In Qwest's PCAT, Qwest acknowledges that CLECs
4 may submit requests for root cause analysis:

5 Your Qwest Service Team is prepared to assist you with:

6 ...

7 Handling maintenance and repair post mortems (root cause
8 analysis) when you submit a specific request for a post mortem on
9 an unusual repair event, e.g., event over eight hours. Your Qwest
10 Service Manager will review the logged notes regarding the event
11 and discuss the circumstances surrounding the event with the
12 Qwest Repair Center to determine the cause, the process used to
13 repair/restore service, and the process(es) implemented to prevent
14 a reoccurrence of the event. Working with Qwest's Repair
15 Center/Network Reliability Operations Center, as appropriate, your
16 Qwest Service Manager will conduct the Root Cause Analysis
17 (RCA) and provide you the complete analysis in writing.
18 Investigation and preparation of a typical postmortem takes from
19 2-10 business days depending on the complexity of the event.⁵⁴

20 Qwest provides Eschelon with root cause analysis.⁵⁵ Exhibit Eschelon 3.44
21 includes a number of examples in which Qwest provided root cause analysis. The
22 second, third, fourth, fifth, eighth, and ninth examples in that Exhibit describe
23 situations for which Qwest provided root cause analysis to Eschelon. Qwest has
24 the capability to conduct these root cause analyses and provide them to Eschelon.

⁵³ Exhibit Eschelon 3.51, p. 2 (last paragraph) ("In all above instances the reporting CLEC should be prepared to discuss the specific details and examples of the issue and all informative documentation researched.").

⁵⁴ Qwest's PCAT, *Account Team / Sales Executives and Service Managers – V10.0* available at <http://www.qwest.com/wholesale/clecs/accountmanagers.html>.

⁵⁵ Regarding Qwest's recent refusal to provide root cause analyses regarding problems with jeopardies and firm order confirmations that result in customer affecting delays, however, see my discussion below regarding Issues 12-71 through 12-73 and Exhibit Eschelon 3.78.

1 In fact, providing root cause analysis is a defined part of the Qwest's Service
2 Manager's Role. Qwest's own documentation provides that, for "Requests for
3 Information," "System Problems," "Service Order Problems," "Billing
4 Problems," "Compliance Issues," "Network Repair Problems," "Product
5 Information," "Chronic Performance Problems," and "Isolated Personnel
6 Performance Issues," the CLEC (in "*all*" of these instances) should be prepared
7 to discuss examples and "*Qwest will conduct a root cause analysis* of the
8 examples of the problem, and provide its analysis to the reporting CLEC in a
9 timely manner."⁵⁶

10 As the Qwest language discussed above shows, the process for obtaining a root
11 cause analysis is to provide examples and request root cause from the Qwest
12 Service Manager. As Qwest already assigns a Service Manager to Eschelon, and
13 the Service Manager knows how to obtain root cause analyses (as shown by these
14 two quotations), no new procedures or costly changes are needed to provide the
15 requested root cause analyses.

16 Repeat or systemic problems in Qwest's provisioning of wholesale services to
17 Eschelon adversely affect Eschelon when they occur. Therefore, Eschelon should
18 have a contract right to request root cause analyses for the purpose of helping to
19 prevent similar mistakes in the future. By proposing to exclude the term from the

⁵⁶ Exhibit Eschelon 3.51, p. 2 (last paragraph). This is Qwest documentation posted on its website which, as discussed previously, Qwest may change unilaterally and, as discussed in Exhibit Eschelon 3.78 (with respect to Qwest's refusal to provide root cause for jeopardy examples) Qwest

1 contract, Qwest is attempting to reserve the right to stop providing root cause
2 analyses during the contract term without amending the agreement. This would
3 harm Eschelon's ability to protect itself from ongoing Qwest mistakes of the
4 nature that harm Eschelon's end user customers. Including this term in the
5 contract, in contrast, will help avoid disputes that would otherwise occur if
6 troubles are not identified through root cause analyses and continue to re-occur.

7 **Q. ISSUE 12-64 INCLUDES SUBPARTS, EVEN THOUGH QWEST**
8 **OPPOSES ALL OF ESCHELON'S LANGUAGE IN UTAH. PLEASE**
9 **EXPLAIN.**

10 A. As indicated, Qwest ultimately agreed to all of Eschelon's proposed language for
11 Issue 12-64 and subparts, except the single phrase in Section 12.1.4.1 described
12 above, in Minnesota. Before that, Qwest also opposed the language dealt with in
13 Issues 12-64(a) and 12-64(b). As Qwest has made particular claims with respect
14 to Issues 12-64(a) and 12-64(b) (aside from its general argument that all of the
15 language is inappropriate for an ICA⁵⁷), Eschelon separately addresses those
16 claims with respect to Issues 12-64(a) and 12-64(b).

17 **Q. REGARDING ISSUE 12-64(a) (THE SECOND OF THE THREE ISSUES**
18 **RELATING TO ACKNOWLEDGEMENT OF MISTAKES), PLEASE**

is disregarding currently. These facts show that the commitment to perform root cause analysis needs to be in the interconnection agreement.

⁵⁷ See Qwest's position statement on Issue 12-64 and subparts in the Joint Disputed Issues Matrix, Exhibit 3 to Oregon Petition (10/10/06), pp. 162-167. Cf. Mr. Starkey's discussion of the "Minnesota 616" example.

1 **EXPLAIN ESCHELON’S POSITION REGARDING CARRIER**
2 **IDENTIFICATION.**

3 A. Issue 12-64(a) deals with the proper identification of Qwest as the company
4 issuing the letter of acknowledgment (in Section 12.1.4.2.3) and Eschelon as the
5 company receiving the acknowledgment (in Section 12.1.4.2.4). Eschelon’s
6 proposal for the first paragraph (Section 12.1.4.2.3) requires that the written
7 acknowledgement will be provided with Qwest identification “such as Qwest
8 letterhead, logo, or other indicia.”⁵⁸ Eschelon’s proposal is driven by the
9 business need to obtain these acknowledgements and share them with its end user
10 customers to avoid losing customers in situations when Qwest’s mistakes might
11 be incorrectly attributed to Eschelon. Eschelon’s language is a logical means of
12 demonstrating to the end user customer that the acknowledgement of error was
13 generated by Qwest. Similarly, Eschelon’s proposal for 12.1.4.2.4 is a logical
14 means of clarifying that Eschelon is the carrier requesting and receiving the
15 acknowledgement.

16 **Q. REGARDING ISSUE 12-64(b) (THE THIRD OF THE THREE ISSUES**
17 **RELATING TO SUBJECT MATTER 29), PLEASE EXPLAIN**
18 **ESCHELON’S POSITION REGARDING THE NON-CONFIDENTIAL**
19 **STATUS OF THE ACKNOWLEDGEMENT.**

⁵⁸ In the November 12, 2003 Order in Minnesota Docket No. P-421/C-03-616, the commission required that Qwest provided the acknowledgement of mistakes on Qwest’s letterhead or similar indicia. The Order stated that Qwest’s compliance filing addressing the inadequacies found by the Commission’s original July 2003 Order should include the following: “(h) Procedures for ensuring that acknowledgements appear on Qwest letterhead or other indicia to show that it is Qwest making

1 A. Issue 12-64(b) deals with whether a Qwest acknowledgment will be provided on a
2 non-confidential basis to allow Eschelon to provide it to the end user customer.
3 Eschelon's proposal requires that acknowledgements will be provided on a non-
4 confidential basis *and* will not include a confidentiality statement. The choice of
5 words in Eschelon's proposal is a safeguard against a situation in which the
6 acknowledgement letter does not include a confidentiality statement, but is still
7 provided on a confidential basis. For example, Qwest may provide the
8 acknowledgement as an enclosure to a cover e-mail containing a confidentiality
9 message.

10 **Q. DOES QWEST PROVIDE COVER E-MAILS CONTAINING**
11 **CONFIDENTIALITY PROVISIONS?**

12 A. Yes. In fact, Qwest has begun to insert a confidentiality message on its e-mails as
13 follow: "This communication is the property of Qwest and may contain
14 confidential or privileged information. Unauthorized use of this communication is
15 strictly prohibited and may be unlawful. If you have received this communication
16 in error, please immediately notify the sender by reply e-mail and destroy all
17 copies of the communication and any attachments." When Eschelon inquired
18 about this message, Qwest's service management personnel said that this message
19 "is generated on all out going e-mails from Qwest. I do not control it."⁵⁹ While
20 somewhat non-committal (as it uses the term "may"), this message is likely to

the acknowledgement." Exhibit Eschelon 1.4, p. 4.

1 cause confusion about the non-confidential status of the requested information. It
2 may deter using the information for its intended purposes – to explain the
3 situation to the end user customer and to attempt to avoid similar problems in the
4 future. Qwest’s apparently auto-generated confidentiality message will present
5 practical obstacles to sharing with the End User Customer the acknowledgement
6 of mistakes and root cause analysis (which is, of course, the primary purpose of
7 requiring that Qwest acknowledge its mistakes), if this issue is not addressed in
8 the interconnection agreement language. With such language in the
9 interconnection agreement, if Qwest desires to continue to use such auto-
10 generated messages, Qwest would need to clearly indicate that the
11 acknowledgement is not confidential to counter the confusion caused by this
12 message.

13 **Q. PLEASE SUMMARIZE ISSUES 12-64, 12-64(a) AND 12-64(b) RELATING**
14 **TO ACKNOWLEDGEMENT OF MISTAKES.**

15 A. When Eschelon’s end user customer incorrectly attributes Qwest-caused errors to
16 Eschelon, the business relationship between Eschelon and its customer is affected,
17 which can be to Qwest’s advantage. Eschelon proposes to include, in its Utah
18 ICA with Qwest, provisions that address this business need. Eschelon proposal is
19 not limited to a narrow set of issues regarding ordering wholesale activities (*i.e.*,
20 LSR and ASR orders) because Qwest errors that harm Eschelon’s customers can

⁵⁹ Qwest (Ms. Jean Novak) e-mail to Eschelon (Ms. Bonnie Johnson), May 15, 2006 (subject: “Confidential statement”).

1 occur when Qwest is performing other wholesale activities in its role as a vendor
2 to Eschelon as well. As root cause analyses can be essential to getting to the heart
3 of these errors, Qwest should be required to provide these analyses to help prevent
4 additional customer-affecting mistakes. Qwest's acknowledgement statement
5 should clearly identify Qwest as the carrier generating the statement and Eschelon
6 as the carrier receiving the statement to avoid customer confusion. The
7 interconnection agreement should prevent Qwest from using a confidentiality
8 designation in acknowledgements to ensure that Eschelon can provide the
9 acknowledgement to its end user customer.

10 **B. SUBJECT MATTER NO. 31. EXPEDITED ORDERS**

11 *Issues Nos. 12-67 and 12-67(a)-(g)*

12 **Q. WHERE IS SUBJECT MATTER 31 DISCUSSED IN ESCHELON'S**
13 **DIRECT TESTIMONY?**

14 A. Mr. Denney addresses Issue 12-67 and subparts in his direct testimony. As
15 discussed above, expedited orders are also addressed in Exhibit Eschelon 3.53 –
16 Exhibit Eschelon 3.70 to my testimony.

1 **C. SUBJECT MATTER NO. 33. JEOPARDIES**

2 Issues Nos. 12-71, 12-72, and 12-73: ICA Section 12.2.7.2.4.4 and subparts

3 **Q. WHAT IS A JEOPARDY AND A JEOPARDY NOTICE?**

4 A. When circumstances exist to suggest that a due date of service delivery will likely
5 be missed, the due date is in *jeopardy* of being missed. A jeopardy condition
6 affecting a due date may be caused by either company. A Qwest-caused jeopardy
7 may result, for example, from a lack of facilities to fill the order. A CLEC-caused
8 jeopardy may result, for example, if either the CLEC or the CLEC's customer
9 should be but is not ready to accept delivery of the circuit/service on the due date.
10 The term "Qwest jeopardy" refers to a jeopardy attributable to Qwest.⁶⁰ The term
11 "Qwest *facility* jeopardy" refers generally to a problem attributable to Qwest
12 relating to facilities in the Qwest network (such as lack of facilities, bad pairs,
13 etc.).⁶¹ A jeopardy that is attributable to the CLEC or the CLEC's customer is
14 referred to as a "Customer Not Ready" or "CNR" jeopardy.

⁶⁰ See Qwest's Provisioning and Installation Overview PCAT, stating: "Qwest is responsible for resolving all Designed jeopardy codes starting with the letters "A" through "V", with the exception of all "C" jeopardy codes, K10, and K11. We are also responsible for resolution of Non-Designed jeopardy codes CF, CL, CO, and CS. Examples include:

V25 -Qwest Equipment Center has a Plug-in Inventory Control System (PICS) problem. We will escalate to obtain the PICS equipment for installation in the Central Office in time to meet the DD.

CF - Unavailability or lack of outside plant or buried service wire."

<http://www.qwest.com/wholesale/clecs/provisioning.html>

⁶¹ See footnotes 5 and 6 to Exhibit Eschelon 3.76, pp. 3-4 regarding the different types of jeopardies and discussion of "K" jeopardies (Qwest-caused jeopardies).

1 A jeopardy *notice* is a notice that Qwest sends to inform a CLEC that a due date is
2 in jeopardy of being missed.⁶² Qwest, in its Product Catalog (“PCAT”),
3 “differentiates” categories of jeopardies and provides different direction to
4 CLECs as to whether to prepare to accept the circuit/service depending on the
5 nature of the jeopardy notice received.⁶³ For one category of jeopardies that is
6 not the subject of Eschelon’s language, Qwest tells CLECs to “disregard” the
7 jeopardy notice (meaning to keep working and plan to prepare to accept delivery
8 as though CLEC had not received a jeopardy notice).⁶⁴ For the category of
9 jeopardies covered by Eschelon’s language,⁶⁵ however, Qwest’s PCAT does *not*
10 indicate that the jeopardy notice should be disregarded and instead provides
11 Qwest “will advise” CLEC of the new due date “when the jeopardy condition has
12 been resolved.”⁶⁶ Qwest’s witness has testified the Firm Order Confirmation

⁶² See Proposed ICA Sections 12.2.7.2.4.1 & 12.2.7.2.4.2 (closed language).

⁶³ Qwest’s Provisioning and Installation Overview PCAT (Qwest Minnesota arbitration Hrg. Ex. 1 (Albersheim Dir.), RA-10, p. 11), stating: “Qwest differentiates between DD jeopardies and Critical Date jeopardies. DD jeopardies indicate that your due date is in jeopardy; however, Critical Date jeopardies indicate that a critical date prior to the DD is in jeopardy. ***Critical Date jeopardies can be ignored by you.*** Critical Date jeopardies are identified in the Jeopardy Data document (see download in the following paragraph) in the column labeled “Is Due Date in Jeopardy?” ***If the DD is not in jeopardy, this column will contain “No” and you can disregard the jeopardy notice*** sent for this condition and continue your provisioning process with the scheduled DD. ***If the column contains “Yes” and Qwest has the responsibility to resolve the jeopardy condition, we will advise you of the new DD when the jeopardy condition has been resolved.*** This is usually within 72 hours.” (emphasis added). See <http://www.qwest.com/wholesale/clecs/provisioning.html>

⁶⁴ See id.

⁶⁵ The two types of potential customer (CNR) jeopardies described in Section 12.2.7.2.4.4.1 are coded in by Qwest as CO1 and CO2, and Eschelon’s ICA language mirrors Qwest’s PCAT “User Friendly Jeopardy Description” of these two jeopardies. See Qwest’s Provisioning and Installation Overview PCAT at “Jeopardy Data” download, available at http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc

⁶⁶ Qwest’s Jeopardy Data download (quoted in above footnote).

1 (“FOC”) is “the agreed upon process by which Qwest” will advise Eschelon “of
2 the due date for a circuit.”⁶⁷

3 Qwest’s witness has also testified that the reason Qwest is supposed to send an
4 FOC after a Qwest facility jeopardy is cleared is “to let the CLEC know that the
5 CLEC should be expecting to receive the circuit” so the CLEC may have
6 personnel available and may make arrangements with the customer if access to
7 the customer premises is needed.⁶⁸ If Qwest provides an FOC but does so only a
8 few minutes before attempting to deliver a loop, for example, Qwest cannot
9 reasonably expect Eschelon to have resources available to accept that loop. Even
10 if resources happen to be available, Eschelon may not be able to accept service,
11 for example, if its End User Customer already closed its business for the day and
12 Eschelon had no reason to make other arrangements with the Customer to access
13 the Customer’s premise that day, because Qwest failed to provide an FOC
14 identifying that day as the due date.

15 **Q. CAN JEOPARDY CLASSIFICATION AFFECT WHETHER SERVICE TO**
16 **ESCHELON’S END USER CUSTOMER IS DELAYED?**

17 A. Yes. Perhaps the most important consequence of attributing a jeopardy to a
18 carrier is the effect on the due date for providing service. Timely delivery of
19 service on the requested due date is critical to meeting customer expectations and

⁶⁷ Minnesota arbitration Tr., Vol. 1, p. 38, lines 17-19(Ms. Albersheim of Qwest). *See also* ICA/SGAT Section 9.2.4.4.1.

⁶⁸ Minnesota arbitration Tr. Vol. I p. 37, line 16 – p. 38, line 6 (Ms. Albersheim).

1 remaining competitive. Whether Qwest classifies a jeopardy as Qwest-caused (a
2 “Qwest jeopardy”) or Eschelon-caused (“Customer Not Ready” or “CNR”) may
3 affect whether service to Eschelon’s customer is delayed. Jeopardy classification
4 determines which company must take action to resolve the jeopardy.

5 In the case of an Eschelon (CNR) jeopardy, when Eschelon is not ready on the
6 due date, or Qwest cannot gain access to deliver the circuit, Qwest requires
7 Eschelon to supplement its order to request a later due date.⁶⁹ When a jeopardy is
8 classified as a CLEC-caused (CNR) jeopardy for “designed” facilities including
9 unbundled loop orders, the CLEC is required to supplement its order by
10 requesting a new due date that is at least *three days after* the date of the
11 supplemental order.⁷⁰ Eschelon then needs to inform its End User Customer that
12 expected service based on the due date will be delayed at least three days.
13 Therefore, if Eschelon is not ready when it should be, Eschelon suffers the
14 consequences of its actions by having to supplement the order and request a three-
15 day delay. In its proposed language (Section 12.2.7.2.4.4), Eschelon accepts this

⁶⁹ Minnesota arbitration Tr. (Ms. Albersheim, Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim). *See also* Qwest Request for Reconsideration, Minnesota Arbitration (Apr. 9, 2007), p. 3 (“Eschelon accurately indicated to the Commission that, when Qwest classifies an order as customer not ready, Eschelon is required to supplement its order to reflect a new due date that at least three days out.”).

⁷⁰ *See id.*; Minnesota arbitration Tr. Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim). While Qwest admits that the interval it requires CLECs to request is three days, Ms. Albersheim has quibbled with the description of this as a requirement and states that Qwest may attempt to deliver the circuit earlier than three days. *See* MN Hearing Exhibit Q-2 (Albersheim Reb.), p. 62, lines 5-9. There is no guarantee, however, that the timeframe will be shorter. Because three days is Qwest’s required interval, Qwest may apply it in each case; certainly Eschelon must anticipate that likely possibility. No supplemental order would be required, however, if Qwest sent an FOC after the facility jeopardy cleared and Eschelon accepted the circuit.

1 consequence when it is at fault and therefore the jeopardy is accurately classified
2 as an Eschelon (CNR) jeopardy.

3 In the case of a Qwest-caused jeopardy, Qwest must take action to attempt to
4 meet the due date or, if it cannot be met, continue to process the order (including
5 sending Eschelon a jeopardy notice and issuing an FOC with a new date)⁷¹ with
6 no supplemental order from Eschelon.⁷² A Qwest jeopardy properly classified as
7 caused by Qwest *does not require Eschelon to supplement the due date and*
8 *therefore does not build in the three day delay.* In contrast, an erroneous
9 classification of a missed due date as caused by Eschelon, when in fact the delay
10 was due to Qwest's failure to provide an FOC or a timely FOC, will build in this
11 required request for a three-day delay and associated delay in delivery of the
12 Customer's service. Eschelon should not have to delay service to its Customer
13 because Qwest failed to properly notify Eschelon in sufficient time to schedule
14 resources, make arrangements with the End User Customer for access to its
15 premises, or take other steps necessary to prepare to accept delivery of service.

16 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 12-71 THROUGH 12-**
17 **73 REGARDING JEOPARDIES?**

⁷¹ Qwest's Provisioning and Installation Overview PCAT, stating: "If the column contains "Yes" and Qwest has the responsibility to resolve the jeopardy condition, we will advise you of the new DD when the jeopardy condition has been resolved. This is usually within 72 hours." (emphasis added). See <http://www.qwest.com/wholesale/clecs/provisioning.html>

⁷² See *id.*; see also Qwest's Installation and Overview PCAT available at http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc. According to this Qwest matrix, in case of Qwest-caused jeopardy "Qwest will work to solve the problem." See *id.*

1 A. Eschelon proposes the following three contract provisions:

2 **Issue 12-71 (Proposal #1):**

3 12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a
4 Qwest jeopardy, and a jeopardy caused by CLEC will be classified
5 as Customer Not Ready (CNR).

6 **Issue 12-71 (Proposal #2) (with difference from proposal #1 shaded in gray):**

7 12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a
8 Qwest jeopardy, and a jeopardy caused by CLEC will be classified
9 as Customer Not Ready (CNR). **Nothing in this Section**
10 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs)
11 set forth in Exhibit B and Appendices A and B to Exhibit K of this
12 Agreement.

13
14 **Issue 12-72:**

15 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these
16 types are: (1) CLEC or CLEC End User Customer is not ready or
17 service order is not accepted by the CLEC (when Qwest has tested
18 the service to meet all testing requirements.); and (2) End User
19 Customer access was not provided. For these two types of
20 jeopardies, Qwest will not characterize a jeopardy as CNR or send
21 a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest
22 attempts to deliver the service, and Qwest has not sent an FOC
23 notice to CLEC after the Qwest jeopardy occurs but at least the day
24 before⁷³ Qwest attempts to deliver the service. CLEC will
25 nonetheless use its best efforts to accept the service. If needed, the
26 Parties will attempt to set a new appointment time on the same day
27 and, if unable to do so, Qwest will issue a Qwest Jeopardy notice
28 and a FOC with a new Due Date.

29 **Issue 12-73:**

30 12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was
31 not caused by CLEC, Qwest will correct the erroneous CNR
32 classification and treat the jeopardy as a Qwest jeopardy.

33 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUES 12-71 THROUGH 12-73?**

34 A. Qwest proposes to delete all of Eschelon's ICA language in Section 12.2.7.2.4.4

⁷³ Eschelon will accept either "at least a day before" or at least the day before."

1 and subparts and replace it with the following reference to its web site:

2 12.2.7.2.4.4 Specific procedures are contained in Qwest's
3 documentation, available on Qwest's wholesale web site.

4 In support of this language, Qwest cites a generic argument that the issue belongs
5 in CMP.⁷⁴ As I discuss further below, jeopardies has already been through CMP,
6 and a decision is particularly needed in this arbitration as a result of Qwest's
7 inconsistent and non-compliant conduct.

8 **Q. PLEASE EXPLAIN ESCHELON'S PROPOSAL.**

9 A. To help ensure timely service to Customers, Eschelon's proposed language
10 regarding jeopardies requires Eschelon to use its best efforts to *accept delivery* of
11 the circuit/service, even when Qwest fails to meet its obligation to send an FOC
12 or a timely FOC. If, however, despite using best efforts Eschelon *cannot accept*
13 the circuit/service when Qwest attempts delivery after Qwest fails to send an FOC
14 or a timely FOC, Eschelon's proposed language provides that Qwest should not
15 be able to attribute the fault to Eschelon (by coding it as Customer Not Ready
16 (CNR)) and thus require Eschelon to submit a supplemental request for a new due
17 date at least three days later. Below, I refer to these two situations covered by
18 Eschelon's language (when Eschelon *can* accept delivery and when it *cannot*) as
19 real life scenarios, as I provide examples of when both situations have occurred
20 previously.⁷⁵ If the due date is missed despite best efforts to meet it and the

⁷⁴ Exhibit 2 to the Oregon Petition for Arbitration, Joint Disputed Issues Matrix, pp. 196-197, 199-200, 202-203 (Qwest position statements for Issues 12-71, 12-72 and 12-73).

⁷⁵ See Exhibit Eschelon 3.75 and Exhibit Eschelon 3.76.

1 jeopardy appropriately remains classified as a Qwest jeopardy (due to Qwest's
2 failure to send an FOC or a timely FOC), Eschelon's proposed language provides
3 that the companies may attempt delivery again as soon as later the same day,
4 without Qwest imposing the three-day interval associated with a CNR jeopardy.

5 Specifically, Eschelon's proposal (Section 12.2.7.2.4.4) reasonably states that
6 Qwest will classify a jeopardy caused by Qwest as a Qwest jeopardy and a
7 jeopardy caused by CLEC as a CLEC jeopardy (Customer Not Ready or "CNR")
8 (Issue 12-71). Similarly, Section 12.2.7.2.4.4.2 requires Qwest to reclassify
9 jeopardies that it has incorrectly classified as CNR (Issue 12-73). Eschelon's
10 proposal is very reasonable in providing that Eschelon must "establish" that
11 Eschelon did not cause the jeopardy to obtain a correction of Qwest's erroneous
12 classification. A correction is only fair, since Qwest should not have assigned a
13 CNR jeopardy after the Qwest jeopardy in the first place. Qwest has testified:
14 "We don't disagree with the notion that a CNR jeopardy should be assigned
15 appropriately."⁷⁶ Eschelon's language capturing that "notion" should be adopted.

16 Eschelon has two alternative proposals for Issue 12-71. In Minnesota, a statement
17 by the Administrative Law Judges (ALJs) that changes or refinements in the way
18 jeopardies are classified under the Performance Indicator Definitions ("PIDs")
19 may be addressed "through a process outside of an individual ICAs"⁷⁷ seemed to

⁷⁶ Minnesota arbitration Tr., Vol., 1, p. 94, lines 5-6 (Ms. Albersheim).

⁷⁷ Exhibit Eschelon 2.24, p. 58 [MN Arbitrators Report, ¶238]. The Minnesota ALJs recommendations on Issues 12-71 through 12-73 were overturned by the Minnesota Commission, who ruled to adopt

1 suggest a misimpression that the PIDs need to be changed.⁷⁸ That is not the case.
2 Eschelon offered proposal number two for Issue 12-71 to demonstrate that
3 Eschelon is not attempting to modify the PIDs through its proposed language
4 relating to jeopardies. In Minnesota, the commission concluded that this modified
5 language adequately addressed the concerns expressed by the ALJs and ordered
6 use of Eschelon's language in the ICA for Issues 12-71 (alternative #2), 12-72,
7 and 12-73.⁷⁹

8 Eschelon's proposal for Issue 12-72 (Section 12.2.7.2.4.4.1) reflects Eschelon's
9 experience with one particular recurring fact pattern, when Qwest may incorrectly
10 classify Qwest-caused jeopardies as CNR jeopardies. Qwest providing an FOC at
11 all (or a timely FOC) after a Qwest jeopardy is at the heart of this scenario. For
12 this issue, Eschelon's proposal clarifies that if (a) a Qwest facility jeopardy
13 already exists, (b) Qwest attempts to deliver service without timely notification
14 via FOC of the due date, and (c) Eschelon is unable to accept service because of
15 the absence of the timely notification via FOC, Qwest will not classify the
16 jeopardy as caused by Eschelon (CNR). Eschelon's proposal for Issue 12-72 is
17 narrowly limited to two types of CNR jeopardies. Of the many types of CNR

Eschelon's proposed language on all three issues, including Eschelon's proposal #1 on Issue 12-71. Exhibit Eschelon 2.25, pp. 23-24 [MN Order Resolving Arbitration, pp. 23-24, ¶6 (Topic 31)].

⁷⁸ Qwest testified that the PIDs currently require Qwest "to differentiate between Qwest caused and CLEC/customer caused delays." Minnesota arbitration Hrg. Ex. 1 (Albersheim Dir.), p. 69, lines 4-5. See Qwest Request for Reconsideration, Minnesota arbitration (April 9, 2007), p. 5 (regarding Qwest's Performance Assurance Plan (PAP): if "the Qwest technician classifies the order as customer not ready, it is excluded from the calculation entirely").

⁷⁹ Exhibit Eschelon 2.25, pp. 23-24 [MN Order Resolving Arbitration, pp. 23-24, ¶6 (Topic 31)].

1 jeopardies identified by Qwest, Eschelon’s proposed language for Issue 12-72
2 applies to only the following two: (1) CLEC or CLEC End User Customer is not
3 ready or service order is not accepted by the CLEC (when Qwest has tested the
4 service to meet all testing requirements.); and (2) End User Customer access was
5 not provided.⁸⁰ For these two types of CNR jeopardies, if the FOC is timely,
6 Eschelon has proper notice of the need to schedule resources and of when to
7 arrange access to the End User Customer’s premise to meet the due date.
8 Eschelon’s proposal is reasonable and does not attempt to address CNR jeopardy
9 types for which the absence of a timely FOC is less likely to be a factor in the
10 potential delay of service (even though Qwest is required to provide the FOC⁸¹ in
11 each case). For example, one specific CNR jeopardy (called “C24”) refers to
12 situations in which conduit needs to be installed. Eschelon’s proposed language
13 in Issue 12-72 does not address this type of CNR jeopardy, because even if Qwest
14 failed to deliver a timely FOC, the conduit is unlikely to be installed in a day.

15 **Q. IS ESCHELON’S PROPOSED LANGUAGE FOR ISSUE 12-72**
16 **CONSISTENT WITH ESCHELON’S GOAL OF PROVIDING TIMELY**
17 **DELIVERY OF SERVICE TO CUSTOMERS?**

⁸⁰ The two types of potential customer (CNR) jeopardies described in Section 12.2.7.2.4.4.1 are coded in by Qwest as CO1 and CO2, and Eschelon’s ICA language mirrors Qwest’s PCAT “User Friendly Jeopardy Description” of these two jeopardies. *See* Qwest’s Provisioning and Installation Overview PCAT at “Jeopardy Data” download, available at http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August2005.doc

⁸¹ *See* ICA Sections 12.2.7.2.1 & 9.2.4.4.1 (quoted in above footnote); *see also* ICA Sections 9.2.2.9.3 (quoted in above footnote), 9.2.2.9.4, 9.2.2.9.5.3.

1 A. Yes. The interconnection agreement needs to explicitly address the particular
2 scenario described in Section 12.2.7.2.4.4.1 to avoid delays in providing service
3 to the Customer. Eschelon's proposed language for Issue 12-72 covers both real
4 life possibilities: (1) when, using best efforts, Eschelon is able to accept delivery
5 of the circuit despite receiving no FOC or an untimely FOC after the Qwest
6 facility problem is cleared; and (2) when, despite best efforts, Eschelon is unable
7 to accept delivery of the circuit due to receiving no FOC or an untimely FOC after
8 the Qwest facility problem is cleared. I provide examples of both of these real life
9 scenarios with my testimony (examples of the first scenario in Exhibit Eschelon
10 3.75 and the second scenario in Exhibit Eschelon 3.76). Regarding the first
11 scenario, Exhibit Eschelon 3.75 contains more than one hundred examples of
12 orders for which Qwest did not send any FOC at all after a Qwest facility
13 jeopardy to indicate the problem had cleared and Qwest would be delivering the
14 circuit, and for which Eschelon nevertheless attempted to accept the circuit and
15 succeeded in doing so. Consistent with these examples, Eschelon's proposed
16 language for Issue 12-72 provides that -- even when Qwest does not send an FOC
17 or a timely FOC after a Qwest facility jeopardy -- "CLEC will *nonetheless use its*
18 *best efforts to accept* the service."⁸² Eschelon has included this real life scenario
19 in its language proposal and committed to using best efforts, even when it should
20 receive an FOC but does not, because of the importance of providing timely

⁸² Proposed ICA Section 12.2.7.2.4.4.1 (emphasis added).

1 service to the customer. In the examples in Exhibit Eschelon 3.76, Eschelon *was*
2 nonetheless able to accept the service *despite* Qwest's failure to provide an FOC.

3 In contrast, in the second scenario, despite best efforts, Eschelon can *not* accept
4 service due to Qwest's failure to provide an FOC or a timely FOC. For example,
5 if access to the customer premise is needed and Qwest does not provide notice via
6 an FOC in sufficient time⁸³ to gain access to the customer premise, Eschelon
7 cannot accept service due to Qwest's failure to provide proper notice. Regarding
8 this scenario, Exhibit Eschelon 3.76 provides 22 examples of when Eschelon
9 could not accept service due to Qwest's failure to provide an FOC or a timely
10 FOC,⁸⁴ and yet Qwest classified the jeopardy as Eschelon-caused (CNR).⁸⁵ In
11 such situations, Eschelon's proposed language for Issue 12-72 provides: "***If***
12 ***needed***, the Parties will attempt to set a new appointment time ***on the same day***
13 ***and, if unable to do so***, Qwest will not issue a CNR jeopardy and will provide a
14 FOC with a new Due Date."⁸⁶ This proposed language also reflects Eschelon's

⁸³ See, e.g., Exhibit Eschelon 3.76, p. 14, Row No. 11 (FOC nine minutes before).

⁸⁴ Eschelon gathered these examples as these events were occurring and, at that time, Eschelon confirmed in Qwest's own systems whether and when an FOC was sent.

⁸⁵ As further described in Exhibit Eschelon 3.71 and Exhibit Eschelon 3.78, these 22 examples are just a sub-set of the many examples that Eschelon has provided to Qwest over time (involving both examples of insufficient notice and examples of no FOC at all). Although Qwest has attempted to explain its refusal to continue to review and root cause these examples (see Exhibit Eschelon 3.78) by indicating that it disagrees as to the examples involving insufficient notice (an FOC is provided but not the day before). Eschelon advised Qwest Service Management in October of 2005, that because Qwest did not agree the day before was non compliance to Qwest's process, and Qwest said it would not review that part of the data, Eschelon would stop including that those in data Eschelon sent Qwest to review. Eschelon stopped including the no FOC the day before examples in September, 2005, so that argument does not explain why Qwest refuses to review and root cause the examples involving other jeopardy non compliance examples, including no FOC, which Eschelon continues to provide and which Qwest continues to refuse to review.

⁸⁶ Proposed ICA Section 12.2.7.2.4.4.1 (emphasis added).

1 concern for the customer because it provides that a new appointment time will be
2 set the same day or as soon as possible afterward.⁸⁷

3 Timely delivery of service to the customer is of the utmost importance to
4 Eschelon. For Eschelon, failure to deliver working service on the due date can
5 have major ramifications to a business Customer. It may actually harm a CLEC's
6 relationship with its would-be Customer before it has begun. Therefore,
7 Eschelon's proposals for Issues 12-71 – 12-73 require proper handling of
8 jeopardies to help ensure timely delivery of service.

9 **Q. DOES QWEST RECOGNIZE THE IMPORTANCE OF NOTICE AND**
10 **THE NEED FOR PREPARATION TIME *FOR ITSELF*?**

11 A. Yes. When discussing the three-day interval required by Qwest to reschedule the
12 due date after Qwest has unexpectedly attempted to deliver a circuit but despite
13 best efforts cannot do so, Ms. Albersheim has testified that the interval gives
14 Qwest the notice that it needs to be prepared. Ms. Albersheim indicates that the
15 three-day standard interval “is necessary to ensure that Qwest *technicians can be*
16 *made* available to provision a designed circuit to the CLEC. Qwest must have
17 *flexibility to manage the technicians work assignments* in order to ensure that
18 other CLECs and other Qwest *customers are not negatively impacted* by the need
19 to send a technician back to the CLEC a second time because the CLEC was not

⁸⁷ As indicated above, if instead Qwest assigns a CNR jeopardy, Qwest requires a supplemental order with a *three-day* interval for the due date. *A jeopardy properly classified as a Qwest jeopardy does not require the CLEC to supplement the due date and does not build in this Qwest-requirement to request a three day delay.*

1 ready to receive the circuit on the original due date.”⁸⁸ Ms. Albersheim does not
2 explain why it is appropriate for Qwest to require a three-day interval so Qwest
3 may be prepared but it is unreasonable for Eschelon to ask for notice the day
4 before so that Eschelon may likewise prepare. After all, Eschelon also has to
5 make technicians available, manage technicians work assignments, and coordinate
6 with customers (including obtaining customer premise access).⁸⁹

7 While Qwest allows itself preparation time by requiring CLECs to request a three-
8 day interval, Qwest’s position is that Eschelon should inefficiently dedicate
9 resources every single day (and presumably alert the customer each day when
10 customer premise access is needed) after notice of a held order until the circuit is
11 actually delivered.⁹⁰ Specifically, Ms. Albersheim testified that Eschelon should
12 “always complete the work it needs to do in order to receive service on the
13 original requested due date,”⁹¹ even though Qwest has an unresolved facility
14 problem and an obligation to first notify CLECs via an FOC that its problem is

⁸⁸ Colorado arbitration Albersheim Rebuttal, p. 62, lines 16-21 (emphasis added). She said Qwest needs “to ensure that other CLECs and other Qwest customers are not negatively impacted by the need to send a technician back to the CLEC a second time.” *Id.* Ms. Albersheim refers to sending a technician back a second time without recognizing that most likely (and perhaps only) reason that a Qwest technician would have to go back a second time is because the technician had no customer premise access. Again, the purpose of the FOC is provide notice to Eschelon so that Eschelon may, for example, *arrange customer premise access*. If, by not providing an FOC or providing one on very short notice, Qwest causes a situation that prevents Eschelon from having time to arrange customer premise access, Qwest seeks to give itself the time to prepare that it denied Eschelon (which caused the problem).

⁸⁹ See Minnesota arbitration Tr., Vol. 1, p. 37, line 24 – p. 38, line 6 (Ms. Albersheim); *see also* Exhibit Eschelon 3.72, p. 5 (showing that on March 4, 2004, in CMP, Qwest confirmed that “Qwest cannot expect the CLEC to be ready for the service if we haven’t notified you.”).

⁹⁰ Colorado arbitration Albersheim Rebuttal, p. 58, line 16 – p. 59, line 5.

⁹¹ Colorado arbitration Albersheim Rebuttal, p. 59, lines 4-5.

1 resolved before attempting to deliver the circuit. Qwest does not always clear the
2 jeopardy on the CLECs desired due date. For example, Eschelon requested a due
3 date of 1/23/07 for PON CO825795T1FAC. Qwest delivered the circuit on
4 3/19/07. Under Qwest's new approach it proposes in arbitration, Eschelon would
5 have staffed personnel for *forty business days* to accept a circuit that Qwest did
6 not deliver. Ms. Albersheim's suggestion that Eschelon should as a matter of
7 course dedicate resources to standing ready to accept delivery of the circuit under
8 these circumstances (for forty business days in that example) would deny
9 Eschelon the opportunity Qwest gives itself to more efficiently plan and use its
10 resources.

11 **Q. DOES ESCHELON'S JEOPARDIES PROPOSAL REFLECT QWEST'S**
12 **CURRENT PROCESS?**

13 A. Yes. I participated in development of the process, and Eschelon's language
14 reflects Qwest's process. (As I explain below, Eschelon's language reflects how
15 Qwest's current process should work, if Qwest were consistently complying with
16 it.) Qwest's witness has testified that, with the exception of the single phrase "the
17 day before" (which is otherwise documented by Qwest in its own CMP
18 materials⁹²), Eschelon's jeopardies language reflects Qwest's current process.⁹³

⁹² Exhibit Eschelon 3.72, p. 5 (Qwest CMP minutes state: "Bonnie [Eschelon] confirmed that the CLEC should *always* receive the FOC *before the due date*. Phyllis [Qwest] agreed . . .") (emphasis added); *see also* Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest).

⁹³ Minnesota arbitration Hrg. Ex. 1 (Albersheim Dir.), p. 67, line 21 (referring to all of Eschelon's proposal, without the phrase "the day before," as Qwest's "current PCAT process"); Minnesota Tr.,

1 Q. YOU INDICATE THAT THE PHRASE “THE DAY BEFORE” IS A PART
2 OF QWEST’S CURRENT PROCESS, EVEN THOUGH QWEST’S
3 WITNESS HAS DENIED IT. PLEASE EXPLAIN.

4 A. Qwest confirmed its existing documented process in CMP and documented its
5 commitment and the process on its web site:

6 Action #1: As you can see receiving the FOC releasing the order
7 on the day the order is due does not provide sufficient time for
8 Eschelon to accept the circuit. Is this a compliance issue,
9 *shouldn't we have received the releasing FOC the day before the*
10 *order is due?* In this example, should we have received the
11 releasing FOC on 1-27-04?

12 Response #1 *This example is non-compliance to a documented*
13 *process. Yes an FOC should have been sent prior to the Due*
14 *Date.”*⁹⁴

15 “Bonnie confirmed that the *CLEC should always receive the FOC*
16 *before the due date. Phyllis agreed,* and confirmed that Qwest
17 cannot expect the CLEC to be ready for the service if we haven't
18 notified you.”⁹⁵

19 The first quotation reflects an example provided by Eschelon to confirm its
20 understanding of the jeopardies process, along with Qwest's response. As
21 Qwest's response shows, Eschelon correctly understands that Qwest's

Vol. 1, p. 37, lines 16-23 (Ms. Albersheim). (“Q Other than that phrase, at least a day before, is Eschelon's proposal consistent with Qwest's practice? A Current practice, yes, except for that sentence.”).

⁹⁴ Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added).

⁹⁵ Exhibit Eschelon 3.72 p. 5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest (emphasis added). The Qwest-prepared minutes include a list of those “in attendance.” *See id.* The minutes confirm that I was in attendance and Ms. Albersheim was not. *See id.* Ms. Albersheim's name does not appear in the Qwest status history for either of the jeopardy Change Requests discussed by Ms. Albersheim in other states (see Exhibit Eschelon 3.72 & Exhibit Eschelon 3.73), nor do I recall her participating in jeopardy CMP discussions.

1 documented process is that an FOC should be sent *prior to* the due date. This is
2 logical and consistent with our business need, because Eschelon needs sufficient
3 time in advance of the due date to prepare for delivery of the circuit/service (to
4 schedule resources and any needed access to the Customer premises). The quoted
5 documentation shows that the failure to provide an FOC prior to the due date
6 demonstrates Qwest non-compliance with its process. Qwest provided this
7 written response to Eschelon's example in meeting materials prepared by Qwest
8 and distributed to CLECs before a CMP call to discuss this issue. On the call to
9 discuss these materials, Qwest confirmed more generally that its process is that
10 "CLEC should *always* receive the FOC before the due date."⁹⁶

11 Despite this clear Qwest documentation of the commitment that Qwest made to
12 me and other CLECs to provide an FOC the day before the due date, Qwest's
13 witness has testified that "Qwest never made such a commitment."⁹⁷ Qwest has
14 not explained how it can make this statement when Qwest's commitment was
15 documented by Qwest, as indicated in the above quoted language from Qwest's
16 own documentation. Qwest's denial of a process that has been confirmed with
17 Qwest's participation and documented on Qwest's web site supports the need for
18 inclusion of Eschelon's proposed language in the ICA to provide terms that we
19 can rely upon when conducting business with Qwest.

⁹⁶ Exhibit Eschelon 3.72 p. 5, March 4, 2004 CMP ad hoc call minutes (emphasis added).

⁹⁷ Minnesota arbitration Albersheim MN Reply, p. 16, lines 2-3. *See also* Arizona arbitration, Albersheim Rebuttal, p. 21, lines 9-15; *id.* p. 26, line 20.

1 Q. OTHER THAN QWEST'S ARBITRATION POSITION THAT THE
2 PHRASE "THE DAY BEFORE" IS NOT PART OF QWEST'S CURRENT
3 PROCESS, ARE THE KEY FACTS RELATED TO ESCHELON'S
4 PROPOSAL UNDISPUTED?

5 A. Yes. To re-cap, the companies agree on at least the following points:

- 6 ▪ The FOC is the agreed upon process by which Qwest informs Eschelon of the
7 due date for a circuit;⁹⁸
- 8 ▪ Qwest is required to send an FOC with the new due date after clearing a
9 Qwest facility jeopardy;⁹⁹
- 10 ▪ The reason Qwest is required to send an FOC after a Qwest facility jeopardy
11 has been cleared is to let the CLEC know that it should be expecting to
12 receive the circuit so that the CLEC will have sufficient notice to make
13 personnel available and perhaps make arrangements with the customer to have
14 access to the premises available;¹⁰⁰
- 15 ▪ A "CNR jeopardy should be assigned appropriately";¹⁰¹
- 16 ▪ If the CLEC does not have adequate notice that the circuit is being delivered
17 (with the agreed upon process for adequate notice consisting of an FOC), then

⁹⁸ Minnesota arbitration Tr., Vol. 1, p. 38, lines 17-19 (Ms. Albersheim) ("Q The FOC is the agreed upon process by which Qwest informs Eschelon of the due date for a circuit? A Yes.").

⁹⁹ Minnesota arbitration Tr., Vol. 1, p. 37, lines 20-23 (Ms. Albersheim) ("Q So you agree with me that Qwest's current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes."); *see also* ICA Section 9.2.4.4.1.

¹⁰⁰ Minnesota arbitration Tr. Vol. I p. 37, line 16 – p. 38, line 6 (Ms. Albersheim) ("Q And *the reason for that* is you want *to let the CLEC know that the CLEC should be expecting to receive the circuit*; right? A Yes. Q And the CLEC needs to have personnel available and it needs to also perhaps make arrangements with the customer to have the premises available; right? A Yes.") (emphasis added). *See also* Exhibit Eschelon 3.72, p. 5 (showing that on March 4, 2004, in CMP, Qwest confirmed that "Qwest cannot expect the CLEC to be ready for the service if we haven't notified you.").

¹⁰¹ Minnesota arbitration Tr. Vol. I p. 94, lines 7-11 (Ms. Albersheim) ("Q And if the CLEC doesn't have adequate notice that the circuit is being delivered, adequate notice consisting of an FOC, then you would agree that a CNR jeopardy is not appropriate; correct? A Yes.").

1 it is “*not appropriate*” for Qwest to assign a CLEC-caused (CNR)
2 jeopardy;¹⁰²

3 ■ When a jeopardy is classified as a CLEC-caused (CNR) jeopardy, the CLEC
4 is required to supplement its order by requesting a new due date that is at least
5 *three days after* the date of the supplemental order.¹⁰³

6 **Q. GIVEN THAT ALL OF THESE KEY FACTS ARE UNDISPUTED, WHAT**
7 **BASIS HAS QWEST PROVIDED FOR OPPOSING ESCHELON’S**
8 **LANGUAGE?**

9 A. Eschelon demonstrates through its examples in Exhibit Eschelon 3.76 that Qwest
10 has classified jeopardies as CLEC-caused (CNR) even though Qwest has failed to
11 send an FOC or a timely FOC per the agreed upon process meant to give
12 Eschelon an opportunity to prepare to accept the circuit/service.¹⁰⁴ Qwest has
13 made five claims, however, to attempt to defend this conduct: (1) Eschelon’s

¹⁰² Minnesota arbitration Tr., Vol. 1, p. 94, lines 4-11 (Ms. Albersheim) (emphasis added). *See also* Minnesota arbitration Tr., Vol. 1, p. 95, lines 19-24 (Ms. Albersheim) (“Q And you would agree that that’s not proper, if the CLEC hasn’t received an FOC in adequate time to be able to act on it; correct? A According to procedure, yes. Q That’s Qwest’s procedure? A Yes.”).

¹⁰³ Minnesota arbitration Tr. Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim). *See also* Qwest Request for Reconsideration, Minnesota Arbitration (Apr. 9, 2007), p. 3 (“Eschelon accurately indicated to the Commission that, when Qwest classifies an order as customer not ready, Eschelon is required to supplement its order to reflect a new due date that at least three days out.”).

¹⁰⁴ Arizona arbitration Hearing Exhibit Q-2 (Albersheim Reb.), p. 60, lines 8-16 (Qwest said that its classification of 12 jeopardies as Eschelon-caused (CNR) was appropriate, even though Qwest admitted that for all 12 of these examples, Qwest sent no FOC at all); Minnesota arbitration Tr. Vol. I p. 40, line 23 – p. 41, line 3 (Ms. Albersheim) (8 examples of no FOC); *see also* Exhibit Eschelon 3.76 (Category A and Category B). When Qwest reviewed (see Exhibit Eschelon 3.76, columns 5 & 6: “Qwest Review”) Eschelon’s data, Qwest did not confirm in its systems’ “FOC archives” whether and when an FOC was sent (Exhibit Eschelon 1.5, MN Tr. Vol. I, p. 41, lines 10-22 (Ms. Albersheim)), even though those facts are key to this analysis. Qwest relied instead upon its technicians’ notes. (*Id.* Vol. I, p. 41, lines 10-22.) Based on those notes, Qwest admitted in Minnesota that it sent no FOC at all after the pertinent facility jeopardy in at least 8 (*Id.* Vol. I, p. 40, lines 5-14) of the examples. Yet, Qwest testified: “Qwest has determined that only 3 of the 23 orders demonstrate a situation in which Qwest incorrectly used the Customer Not Ready (“CNR”) status when placing the order in jeopardy.” *See* Albersheim MN Rebuttal, p. 55, lines 19-22. By the

1 proposal “force[s] extra time”¹⁰⁵ in to the process and causes delay;¹⁰⁶ (2) process
2 details do not belong in an ICA so the issue should be returned to CMP;¹⁰⁷ (3) the
3 phrase “at least the day before” is not documented in the PCAT, in addition to
4 being documented in the CMP materials, so it may be disregarded¹⁰⁸; (4)
5 regardless of the type of jeopardy, CLECs should disregard the jeopardy notice
6 and always take all steps to prepare to accept a circuit even when Qwest has told
7 the CLEC (through a Qwest facility jeopardy) that Qwest has a facility problem in
8 its network that needs to be resolved before the circuit can be delivered to CLEC
9 and Qwest sends no FOC to indicate the facility problem has been cleared;¹⁰⁹ and
10 (5) the FOC status notices required by the contract, SGAT and Qwest’s own
11 procedures are a “formality” that Qwest can disregard¹¹⁰ because in “some”

Arizona arbitration, Qwest admitted it sent no FOC at all in 12 of the examples. Arizona arbitration Hearing Exhibit Q-2 (Albersheim Reb.), p. 60, lines 8-16.

¹⁰⁵ Washington arbitration (Albersheim Responsive), p. 58, line 23.

¹⁰⁶ Arizona arbitration Hearing Exhibit Q-2 (Albersheim Reb.), p. 58, line 16 - p. 59, line 8. Qwest refers to “‘at least a day’ or 24 hours notice in advance of a new due date.” See *id.* p. 22, line 1.

¹⁰⁷ Arizona arbitration Hearing Exhibit Q-1 (Albersheim Dir.), p. 74, lines 3-4. See also Exhibit 2 to the Oregon Petition for Arbitration, Joint Disputed Issues Matrix, pp. 196-197, 199-200, 202-203 (Qwest position statements for Issues 12-71, 12-72 and 12-73).

¹⁰⁸ Arizona arbitration Tr., Vol. 2, Q-22 & Q-23 & pp. 340-341; see *id.* p. 340 lines 18-19 (Mr. Topp: “no language whatsoever” referring to at least the day before in the PCAT) & see *id.* p. 34, lines 1-18 (my response that Qwest confirmed in CMP that Qwest would give CLECs an FOC the day before and my references on the stand to pages 37 and 21 of Exhibit BJJ-5 to my Arizona direct testimony).

¹⁰⁹ Arizona arbitration Tr., AZ Vol. 1, pp. 67-69 (Ms. Albersheim); Colorado arbitration Albersheim Rebuttal, p. 59, lines 4-5.

¹¹⁰ Arizona arbitration Tr., Vol. I, p. 70, lines 4-9 (Ms. Albersheim) (“Q. Does that assume this Qwest has sent the FOC with a new due date or that it hasn't? A. Qwest is supposed to. Q. And let's assume that it doesn't. A. The formality is that Qwest is supposed to, but the technicians are in touch with each other.”).

1 examples informal “communication was happening between Qwest and the CLEC
2 technicians.”¹¹¹

3 **Q. WHAT IS ESCHELON’S RESPONSE TO QWEST’S FIRST CLAIM**
4 **REGARDING DELAY AND FORCING EXTRA TIME¹¹² INTO THE**
5 **PROCESS?¹¹³**

6 A. There is no request for, or requirement of, a time delay in Eschelon’s proposed
7 language. Eschelon’s proposed language does not require Qwest to send an FOC
8 before it attempts to deliver the circuit, so it does not force extra time into the
9 process. Eschelon’s proposed language provides for *advance* notice before the
10 due date to help ensure *timely* delivery of the circuit on the due date. Eschelon’s
11 language in Section 12.2.7.2.4.4.1 provides that, even when Qwest provides no
12 FOC, Eschelon “will nonetheless use its best efforts to accept the service” when
13 delivered. It specifically states that, if needed, the companies will attempt to set a
14 new appointment time “*on the same day*.”¹¹⁴ This language (like the examples in
15 Exhibit Eschelon 3.75) shows Eschelon will use its best efforts to accept the
16 service and will scramble and try to staff the unexpected delivery and coordinate
17 Customer access if possible to avoid delay.

¹¹¹ Minnesota arbitration Tr. Vol. I, p. 94, lines 19-20 & p. 96, lines 8-10.

¹¹² Washington arbitration (Albersheim Responsive), p. 58, line 23.

¹¹³ Arizona arbitration Hearing Exhibit Q-2 (Albersheim Reb.), p. 58, line 16 - p. 59, line 8. Qwest refers to “‘at least a day’ or 24 hours notice in advance of a new due date.” See id. p. 22, line 1.

¹¹⁴ Proposed ICA Section 12.2.7.2.4.4.1 (emphasis added).

1 **Q. WHAT IS ESCHELON’S RESPONSE TO QWEST’S SECOND CLAIM**
2 **REGARDING PROCESS DETAILS AND CMP¹¹⁵?**

3 A. There is nothing left to do in CMP with respect to every provision of Eschelon’s
4 proposal for which Qwest has testified Eschelon’s language reflects Qwest’s
5 current process. No change is needed. Qwest has admitted with respect to key
6 aspects of Eschelon’s proposal that it cannot “imagine any circumstances under
7 which a CLEC might want something different.”¹¹⁶

8 With respect to the single phrase Qwest disputes (“the day before”), earlier I
9 quoted the CMP documentation that supports this phrase and shows it is part of
10 Qwest’s process, despite Qwest’s denials in these arbitrations. Jeopardies have a
11 long history in CMP, and this history and later events (which are summarized
12 primarily in Exhibit Eschelon 3.71 and Exhibit Eschelon 3.78) provide ample
13 evidence that sending this issue back to CMP will not resolve the problem.

14 Specifically:

15 (1) In CMP, Qwest agreed to provide an FOC the day before the due date
16 as part of a Change Request in which Eschelon requested a designated
17 time frame for receiving the FOC after a jeopardy cleared.¹¹⁷ Consistent
18 with this resolution in CMP, Qwest provided FOCs the day before the due

¹¹⁵ Arizona arbitration Hearing Exhibit Q-1 (Albersheim Dir.), p. 74, lines 3-4. *See also* Exhibit 2 to the Oregon Petition for Arbitration, Joint Disputed Issues Matrix, pp. 196-197, 199-200, 202-203 (Qwest position statements for Issues 12-71, 12-72 and 12-73).

¹¹⁶ Arizona arbitration Tr., Vol. 1, p. 64, lines 5-14 (Ms. Albersheim); *see also* Arizona arbitration Tr. at Vol. 1, p. 64, line 19 – p. 65, line 3 (Ms. Albersheim).

¹¹⁷ Exhibit Eschelon 3.72, p. 2 (Change Request PC081403-1 – title, description of change and expected deliverable in CMP quoted below with respect to Qwest’s third claim); *see also* Exhibit Eschelon 3.72, p. 5 (Qwest CMP minutes state: “Bonnie [Eschelon] confirmed that the CLEC should *always* receive the FOC *before the due date*. Phyllis [Qwest] agreed . . .”) (emphasis added); *see also* Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest).

1 date and treated instances when it did not as non-compliance with its
2 process;¹¹⁸

3 (2) Qwest then changed its policy and began to deny that providing FOCs
4 the day before the due date was part of its process; Qwest took no action
5 in CMP, however, to change the designated time frame or otherwise
6 change the process developed in CMP to reflect Qwest's unilateral change
7 in policy;¹¹⁹

8 (3) Qwest's CMP Manager even denied that providing the FOC at all was
9 a requirement or part of Qwest's process and instead characterized it as a
10 "goal";¹²⁰

11 (4) Qwest then admitted in arbitration that providing an FOC after a Qwest
12 facility jeopardy has cleared is part of Qwest's process, to let Eschelon
13 know to have personnel available and make any arrangements with the
14 customer so as to be prepared to accept the circuit;¹²¹

15 (5) Qwest then said that when there is *no FOC at all* in violation of
16 Qwest's process, even though Qwest agrees that Eschelon needs advance
17 notice and an FOC is the agreed upon process to provide that notice,¹²² it
18 is appropriate to classify the jeopardy when Eschelon cannot be ready due
19 to lack of the required notice as "CNR" (Eschelon-caused),¹²³ and

20 (6) Despite its own classification of several jeopardies with no FOC at all
21 as CNR (Eschelon-caused) in its own Review,¹²⁴ Qwest testified that it is
22 improper, under Qwest's current process, to categorize the CLEC's
23 inability to take the circuit as a CNR jeopardy when Qwest did not provide
24 an FOC after the jeopardy cleared.¹²⁵

¹¹⁸ See, e.g., Exhibit Eschelon 3.71, pp. 5-6 (Chronology entries for 2/18/04 and 3/4/04).

¹¹⁹ See, e.g., Exhibit Eschelon 3.71, p. 12.

¹²⁰ Exhibit Eschelon 3.71, pp. 16 & 18.

¹²¹ Minnesota arbitration Tr., Vol. 1, p. 37, line 20 – p. 38, line 6.

¹²² Minnesota arbitration Tr., Vol. 1, p. 38, lines 17-19 (Ms. Albersheim); see also *id.* p. 37, line 20 – p. 38, line 6.

¹²³ Minnesota arbitration Tr., Vol. 1, p. 40, lines 5-14 (Ms. Albersheim) (8 examples clearly had no FOC). Compare *id.* p. 98, lines 23-25.

¹²⁴ See Exhibit Eschelon 3.76 (column labeled "Qwest Review").

¹²⁵ Minnesota arbitration Tr., Vol. 1, p. 95, lines 6-24.

1 Qwest's statements contradict each other, and its conduct contradicts its
2 statements. And, the jeopardies history does not end there. Eschelon continues to
3 provide jeopardies data (including examples of no FOC after a Qwest jeopardy is
4 cleared) to Qwest as it committed in CMP to do when Eschelon agreed to close its
5 Change Request. But, Qwest has recently refused to review and root cause
6 Eschelon's examples. Since August of 2004, Eschelon has provided data relating
7 to DS1 capable loop jeopardies to Qwest's service management team on an
8 approximately weekly basis as part of Eschelon's tracking and obtaining root
9 cause of this important issue. Eschelon and Qwest then discussed the data after
10 Qwest had an opportunity to review it. In some cases, Qwest disputed Eschelon's
11 data and in others it acknowledged its errors and, in the latter cases, described
12 steps it had taken (such as training of Qwest's employees) to attempt to gain
13 compliance with its delayed order process and avoid Qwest-caused delays for
14 Eschelon customers. This data exchange, therefore, has led to needed remedial
15 action to try to address this problem.

16 Recently, however, Qwest has changed its position regarding jeopardy examples.
17 After Eschelon sent its regular weekly data to Qwest, Qwest responded after the
18 Minnesota arbitration hearing (on November 7, 2006) that "Qwest has determined
19 that due to resources Qwest will not be reviewing this report any longer. Qwest
20 through self reporting internally will manage the process and compliance of the

1 delayed order process.”¹²⁶ It is difficult to accept Qwest’s claim that this Qwest
2 decision is “due to resources” because obtaining compliance saves both
3 companies resources that would otherwise be expended when the process breaks
4 down and both companies have to scramble to correct the problem and re-do the
5 work on another day when delivery has to be rescheduled. In addition, Eschelon
6 expends its own resources on researching the data for Qwest to point Qwest to the
7 problem areas, and this saves Qwest time that it would have to expend on finding
8 these issues for itself. If Qwest were able to identify all of these problems by
9 itself based on “self reporting internally,” presumably Qwest would have
10 corrected the problems and they would not re-occur.¹²⁷ The fact that they
11 continue to occur until Eschelon raises them through its examples shows that the
12 examples have an added benefit beyond any internal Qwest efforts.

13 Particularly in light of the most recent development – Qwest’s refusal to review
14 and root cause Eschelon’s data¹²⁸ – these facts show that contractual certainty is
15 needed. Qwest’s ICA proposal, stating only that “procedures are contained in
16 Qwest’s documentation,” will ensure that Eschelon’s business need remains
17 unresolved for its Customers.

¹²⁶ See Exhibit Eschelon 3.78. Since then, Eschelon has continued to send the data (including examples of no FOC after a Qwest facility jeopardy clears) with a request for Qwest to review it, but Qwest continues to decline to review and root cause Eschelon’s data.

¹²⁷ As I discussed above, when Qwest reviewed Eschelon’s data for purposes of arbitration, Qwest relied upon its technicians’ notes and did not confirm in its systems’ FOC archives whether and when an FOC was sent. This is at least some evidence that Qwest’s internal review is inadequate, because whether and when an FOC was sent is key to this analysis.

1 Q. WHAT IS ESCHELON'S RESPONSE TO QWEST'S THIRD CLAIM
2 THAT ITS PROCESS TO PROVIDE AND FOC AT LEAST THE DAY
3 BEFORE THE DUE DATE MUST ALSO BE DOCUMENTED IN THE
4 PCAT?¹²⁹

5 A. Qwest cannot deny that the above-quoted language is part of the CMP
6 documentation posted on its website, now that Eschelon has provided it in the
7 record.¹³⁰ Instead, Qwest has recently suggested that Qwest's statements
8 reflected in the CMP minutes are for some reason not applicable because Qwest
9 has not *also* documented them in its PCAT. In other words, Qwest is pointing to
10 the absence of similar language in its PCAT as alleged support for its position.
11 Qwest has provided no basis for suddenly favoring the PCAT over CMP minutes
12 as documentation of its CMP commitments and its procedures. Qwest routinely
13 relies upon processes documented in CMP materials, internally, or not at all,
14 regardless of whether they are also in the PCAT.¹³¹ With respect to jeopardies

¹²⁸ Qwest's refusal is contrary to the documented role of the Qwest CMP Service Manager's Role, which includes providing root cause analysis when CLEC provides examples. *See* Exhibit Eschelon 3.51, p. 2 (last paragraph).

¹²⁹ Arizona arbitration Tr., Vol. 2, Q-22 & Q-23 & pp. 340-341; *see id.* p. 340 lines 18-19 (Mr. Topp: "no language whatsoever" referring to at least the day before in the PCAT) & *see id.* p. 34, lines 1-18 (my response that Qwest confirmed in CMP that Qwest would give CLECs an FOC the day before and my references on the stand to pages 37 and 21 of Exhibit BJJ-5 to my Arizona direct testimony).

¹³⁰ Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials) & Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP ad hoc call minutes (both quoted above regarding the phrase "the day before").

¹³¹ *See, e.g.*, Arizona arbitration Hearing Exhibit Q-2 (Albersheim Reb.), p. 21, lines 15-17 ("In order to present a more complete record of the activities that took place regarding the Change Requests in question, I have attached the actual Change Requests, which include the minutes from the Project meeting."); *see id.* pp. 22 & 24 (relying upon CMP meeting minutes). *See also, e.g.*, Exhibit Eschelon 3.60, p. 1 (showing Qwest took away CLEC access to Qwest internal documentation and said it would make "efforts" to provide external documentation -- not of all process information --

1 specifically, as indicated above, Qwest for a time recognized its documented
2 commitment in CMP to provide the FOC the day before¹³² and treated its own
3 failure to do so as non-compliance with its process, before changing its position
4 without going back to CMP.¹³³

5 In the particular PCAT version referenced by Qwest in support of its position,¹³⁴
6 Qwest documented in its PCAT some *changes* that were developed in CMP to its
7 jeopardies process.¹³⁵ Qwest took the position in CMP, however, that providing
8 an FOC at least the day before the due date was already part of its *current*
9 internally documented process. In other words, as an *existing* process, it did not
10 need to be documented through a PCAT *change*. Specifically, Qwest said at the
11 time: “This example is non-compliance to a *documented process*. Yes an FOC
12 should have been sent prior to the Due Date.”¹³⁶ Qwest was referring to an
13 internally documented process, as it is not documented in the PCAT. Additional
14 documentation is not needed to demonstrate Qwest’s commitment in this case,
15 because Qwest documented its commitment in written and posted CMP materials.

but only that which Qwest found “critical”; and defining external documentation beyond the PCAT to include “business procedures” and other information).

¹³² Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added); p. 11, p. 5, March 4, 2004 CMP ad hoc call minutes (emphasis added).

¹³³ See, e.g., Exhibit Eschelon 3.71, pp. 1 & 4-6.

¹³⁴ Exhibit Eschelon 1.6, p. 47 (AZ Transcript, in which Mr. Topp of Qwest references the announcement and associated redlined PCAT for Version 42 of the Provisioning and Installation Overview PCAT). It appears that Qwest is suggesting that, because this particular PCAT update does not include a redlined change inserting a designated time frame of the day before, there was no change in CMP to that effect. *See id.*

¹³⁵ Exhibit Eschelon 1.6, Arizona arbitration Tr., Vol. 2, Q-22 & Q-23.

¹³⁶ Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest)

1 The absence of additional documentation in the PCAT is not evidence that
2 Eschelon gave up its Change Request regarding jeopardies or associated expected
3 deliverables in CMP, despite any suggestions by Qwest to the contrary. In fact,
4 Qwest *expanded* the deliverable of Eschelon's Change Request in CMP to
5 include more issues. This is shown by the new title of the Change Request, which
6 is more general in scope and thus broader and more inclusive than the original
7 title, while still including Eschelon's original request:

8 "Title: Jeopardy Notification Process Changes (new title). Delayed
9 order process modified to allow the CLEC a designated time frame
10 to respond to a released delayed order after Qwest sends an
11 updated FOC (old title)."¹³⁷

12 The description of change (the first paragraph in the Change Request) makes it
13 clear that Qwest updated the Change Request with Qwest's new, *additional*
14 description of change and expected deliverable. The description of this change
15 states:

16 "Changed the description of this CR as a result of synergies with
17 PC072303-1. During the October 15 CMP meeting we discussed
18 whether we should close/leave open/ or update CR PC081403-1
19 'Delayed order process modified to allow the CLEC a designated
20 time frame to respond to a released delayed order'. The reason we
21 wanted to close/leave open or update PC081403-1 is because
22 PC072303-1 is meeting many of the needs. Bonnie Johnson agreed
23 to change this CR, *as long as we retained the original CR*
24 *description*."¹³⁸

25 I asked that Eschelon's description of change remain as a part of the Change
26 Request so it would be clear that Eschelon's request would be included and to

¹³⁷ Exhibit Eschelon 3.72, p. 1.

1 avoid any confusion. There are two expected deliverables in this Change
2 Request. Qwest added the later expected deliverable and asked more generally to
3 “change the jeopardy notification process to reduce unnecessary jeopardy notices
4 being sent to the CLEC when the Due Date is not in jeopardy *and* to improve the
5 *overall* jeopardy notification process.”¹³⁹ This description is very broad,
6 referring generally to improving the overall process (including Eschelon’s
7 request). Eschelon’s initial description of change and expected deliverable, which
8 remained a part of the Charge Request, stated:

9 “Qwest will contact the CLEC to test and accept only after the
10 updated FOC has been sent and *a designated time frame* has
11 passed. *Qwest will not put the order in a CNR (customer not*
12 *ready) jeopardy status* until this time frame has passed and the
13 CLEC is not ready. When Qwest puts a CLECs request in delayed
14 for facilities jeopardy status, Qwest should be *required to send the*
15 *CLEC an updated FOC when the delayed order is released* and
16 *allow the CLEC a reasonable time frame to prepare* to accept the
17 circuit. Qwest releases orders form a held status (in some cases the
18 CLEC has not even received an updated FOC) and immediately
19 contacts the CLEC to accept the circuit. Because Qwest does not
20 allow the CLEC a reasonable amount of time to prepare for the
21 release of the delayed order, the CLEC may not be ready when
22 Qwest calls to test with the CLEC. Qwest then places the request
23 in a CNR jeopardy status. Qwest should modify the Delayed order
24 process, to require Qwest *to send an updated FOC and then allow*
25 *a reasonable amount of time for the CLEC to react and prepare*
26 *to accept the circuit before contacting the CLEC for testing.*

27 Expected Deliverable:
28 *Qwest will modify, document and train a process, that requires*
29 *Qwest to send an updated FOC and allow a CLEC a reasonable*
30 *amount of time (from the time the updated FOC is sent) to*

¹³⁸ Exhibit Eschelon 3.72, p. 1.

¹³⁹ Exhibit Eschelon 3.72, p. 2.

1 *prepare for testing before Qwest contacts the CLEC to test and*
2 *accept the circuit.*¹⁴⁰

3 This shows that Eschelon clearly made these requests as part of this Change
4 Request, which was completed in CMP on July 21, 2004.¹⁴¹ The description of
5 change quoted above shows I took steps to ensure that, when Qwest expanded the
6 scope of the Change Request, Eschelon’s request (including this expected
7 deliverable) remained a part of the Change Request.¹⁴² Eschelon specifically
8 requested a documented¹⁴³ “designated time frame” to “allow CLEC a reasonable
9 amount of time (from the time the updated FOC is sent)” and, as the Qwest CMP
10 documentation shows, Qwest committed in writing in posted minutes (*i.e.*,
11 documented) that it had an internally documented process to provide the FOC the
12 day before delivering the circuit.¹⁴⁴ The “day before” is the designated time
13 frame documented at Qwest and which Qwest verified in CMP, and Qwest
14 initiated no change request to alter that time frame. When Qwest does not
15 provide the FOC the day before (such as in the example when Qwest provided the
16 FOC nine minutes before delivering the circuit¹⁴⁵) Qwest’s conduct remains “non-

¹⁴⁰ Exhibit Eschelon 3.72, p. 2(emphasis added).

¹⁴¹ Exhibit Eschelon 3.72, p. 1.

¹⁴² Exhibit Eschelon 3.72, p. 1 (“as long as we retained the original CR description”).

¹⁴³ Note, the above-quoted reference is for a “documented” process, which did not specify and was not limited to documentation in the PCAT, as Qwest also provides documentation in other ways, such as CMP minutes.

¹⁴⁴ “This example is non-compliance to a *documented process*. Yes an FOC should have been sent prior to the Due Date.” Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added).

¹⁴⁵ Exhibit Eschelon 3.76, p. 14 (Row 11).

1 compliance to a *documented process*.”¹⁴⁶ That the internal Qwest documentation
2 is confirmed in CMP minutes and not the PCAT is inconsequential. Qwest’s
3 denial of this documented fact, after all of Eschelon’s efforts in CMP,
4 demonstrates the need for language in the interconnection agreement establishing
5 the designated time frame. Any proposal to refer to the PCAT, which Qwest
6 admits contains no time frame at all,¹⁴⁷ should be rejected.

7 Ironically, despite Qwest’s current claims about the PCAT, Qwest’s proposed
8 language (consistent with Eschelon’s position that relevant Qwest documentation
9 is broader than the PCAT) does not refer specifically to the PCAT but rather
10 provides: “12.2.7.2.4.4 Specific procedures are contained in Qwest’s
11 documentation, available on Qwest’s wholesale web site.” Qwest’s
12 documentation on its wholesale web site (*i.e.*, CMP materials) provides the
13 “CLEC should *always* receive the FOC *before the due date*.”¹⁴⁸ Because Qwest
14 denies this documented commitment, however, its proposed language does
15 nothing to resolve the dispute.

¹⁴⁶ Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest)

¹⁴⁷ Arizona arbitration Tr., Vol. 2, Q-22 & Q-23 & pp. 340-341; *see id.* p. 340 lines 18-19 (Mr. Topp: “no language whatsoever” referring to at least the day before *in the PCAT*).

¹⁴⁸ Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest (emphasis added).

1 Q. WHAT IS ESCHELON'S RESPONSE TO QWEST'S FOURTH CLAIM
2 THAT ESCHELON MUST ALWAYS PREPARE TO ACCEPT SERVICE
3 REGARDLESS OF THE TYPE OF JEOPARDY?¹⁴⁹

4 A. This very recent claim, which Qwest made at the Arizona hearing, is not the
5 process reflected in Qwest's own documentation. The documented process in
6 Qwest's Provisioning and Installation Overview PCAT states (with emphasis
7 added) with respect to Qwest facility jeopardies: "*we will advise you of the new*
8 *DD when the jeopardy condition has been resolved.*"¹⁵⁰ In other words, for this
9 type of jeopardy (when Qwest has insufficient facilities or a problem with the
10 facilities), the CLEC is told to do nothing to prepare unless Qwest sends a notice
11 advising the condition has been resolved. To ignore or disregard a jeopardy
12 notice means to plan to prepare to accept delivery as though you had not received
13 a notice. Qwest's PCAT states:

14 "Qwest differentiates between DD jeopardies and Critical Date
15 jeopardies. DD jeopardies indicate that your due date is in
16 jeopardy; however, Critical Date jeopardies indicate that a critical
17 date prior to the DD is in jeopardy. *Critical Date jeopardies can be*
18 *ignored by you.* Critical Date jeopardies are identified in the
19 Jeopardy Data document (see download in the following
20 paragraph) in the column labeled "Is Due Date in Jeopardy?" *If the*
21 *DD is not in jeopardy, this column will contain "No" and you*
22 *can disregard the jeopardy notice* sent for this condition and
23 continue your provisioning process with the scheduled DD. *If the*
24 *column contains "Yes" and Qwest has the responsibility to*
25 *resolve the jeopardy condition, we will advise you of the new DD*

¹⁴⁹ Exhibit Eschelon 1.6, Arizona arbitration Tr., AZ Vol. 1, pp. 67-69 (Ms. Albersheim); *see also* Colorado arbitration Albersheim Rebuttal, p. 59, lines 4-5.

¹⁵⁰ Qwest's Provisioning and Installation Overview PCAT (quoted above).

1 *when the jeopardy condition has been resolved.* This is usually
2 within 72 hours.”¹⁵¹

3 As Qwest’s own PCAT language shows, Qwest differentiates by type of jeopardy
4 notice and tells CLECs to plan to prepare to accept the circuit (*i.e.*, disregard the
5 jeopardy notice) even if the CLEC is not advised of a new due date for one type
6 (Critical Date jeopardies) and not to prepare to accept the circuit (*i.e.*, do not
7 disregard the jeopardy notice) unless Qwest advises CLEC of a new due date for
8 the other type (DD jeopardies). The Qwest facility jeopardies that are the subject
9 of Issue 12-72 (Proposed ICA Section 12.2.7.2.4.4.1)¹⁵² fall within the “DD
10 jeopardy” category.¹⁵³

11 As discussed above regarding the time Qwest allows itself to prepare, it would not
12 be reasonable to require CLECs for every single day of the held order period to
13 schedule personnel to handle additional circuit deliveries – and bother the
14 customer to request access to the customer’s premises – on the chance that Qwest
15 may deliver the circuit when Qwest has a known problem in its network with its
16 facilities.

¹⁵¹ See Qwest Provisioning and Installation Overview PCAT.

¹⁵² The two types of potential customer (CNR) jeopardies described in Section 12.2.7.2.4.4.1 are coded in Exhibit Eschelon 3.74, pp. 7 and 8 as CO1 and CO2, and Eschelon’s ICA language mirrors Qwest’s PCAT “User Friendly Jeopardy Description” of these two jeopardies.

¹⁵³ See Qwest Provisioning and Installation Overview PCAT (“If the column contains “Yes” and Qwest has the responsibility to resolve the jeopardy condition, we will advise you of the new DD when the jeopardy condition has been resolved.”).

1 Q. WHAT IS ESCHELON'S RESPONSE TO QWEST'S FIFTH CLAIM
2 THAT THE FOC IS A MERE FORMALITY THAT QWEST MAY
3 REPLACE WITH POTENTIAL INFORMAL COMMUNICATIONS?¹⁵⁴

4 A. Providing an FOC after a Qwest facility jeopardy has cleared is not a mere
5 formality; it is a contractual requirement (see closed language in Section
6 9.2.4.4.1). The contractual requirement is also part of the SGAT that the
7 Commission and companies spent a significant amount of time reviewing in 271
8 workshops, as well as in Qwest's own proposed template interconnection
9 agreement.¹⁵⁵ Regarding FOCs and jeopardy notices, the FCC said:

10 [W]e address the OSS ordering issues that the Commission
11 previously has found *relevant and probative for analyzing a*
12 *BOC's ability to provide access to its ordering functions in a*
13 *nondiscriminatory manner*: a BOC's ability to return *timely status*
14 *notices* such as *firm order confirmation*, reject, *jeopardy*, and
15 service order completion notices, to process manually handled
16 orders accurately, and to scale its system.¹⁵⁶

17 Despite recognition by the FCC and in the contract of the importance of the FOC,
18 Qwest claims that the FOC can be disregarded because informal "communication

¹⁵⁴ Arizona arbitration Tr., Vol. I, p. 70, lines 4-9 (Ms. Albersheim) ("Q. Does that assume this Qwest has sent the FOC with a new due date or that it hasn't? A. Qwest is supposed to. Q. And let's assume that it doesn't. A. The formality is that Qwest is supposed to, but the technicians are in touch with each other."); see also Minnesota arbitration Tr. Vol. I, p. 94, lines 19-20 & p. 96, lines 8-10.

¹⁵⁵ Exhibit Eschelon 3.76, note 4.

¹⁵⁶ Memorandum Opinion and Order, In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, WC Docket No. 02-314, Decision No. 02-332 (Dec. 23, 2002), ¶85 (emphasis added).

1 was happening between Qwest and the CLEC technicians” in the examples
2 provided by Eschelon in Exhibit Eschelon 3.76.¹⁵⁷

3 Qwest admitted that communication with the technician(s), “was the case” in only
4 “some” of these examples.¹⁵⁸ In addition, Qwest has provided no evidence that
5 the CLEC technicians (rather than, for example, CLEC service delivery
6 personnel) are the appropriate contacts with respect to FOCs and scheduling. At
7 both Qwest and Eschelon, a service delivery type organization sends/receives the
8 jeopardy and FOC notices,¹⁵⁹ and that organization is different in both companies
9 from the network type of organization in which the technicians work. Eschelon
10 cannot rely upon informal communications that are outside the agreed upon
11 process to plan its business and ensure timely delivery of service necessary to
12 meet its end user customers’ expectations.

13 The Qwest technician notes provided in the “Qwest Review” column of Exhibit
14 Eschelon 3.76 show that, when communication was “happening between Qwest
15 and the CLEC technicians,”¹⁶⁰ it was associated with attempted delivery of the

¹⁵⁷ Minnesota arbitration Tr. Vol. I, pp. 94-96. This particular sentence regarding communication is found *id.*, p. 94, lines 19-20.

¹⁵⁸ Minnesota arbitration, Tr. Vol. I p. 96, lines 8-10 (Ms. Albersheim).

¹⁵⁹ See Qwest’s Provisioning and Installation Overview PCAT, stating “If a LSR goes into a jeopardy condition and it is detected: . . . On the DD/ Once the Qwest CSIE is advised of the condition (if the RFS Date is known)/ Qwest sends a jeopardy notice. A FOC is subsequently sent advising you of the new DD that Qwest can meet.”. The Qwest “CSIE” is its Customer Service Inquiry and Education center, which may also be referred to as the Interconnect Service Center (ISC), as in Section 12.1.3.3.3.2.1 of the proposed ICA. (See, e.g., reference to “ISC/CSIE” in Qwest CMP documentation at http://www.qwest.com/wholesale/cmp/archive/CR_PC101001-1.htm.)

¹⁶⁰ Minnesota arbitration, Tr. Vol. I, p. 94, lines 19-20 (Ms. Albersheim).

1 circuit and was not for the purpose of advance notice (to allow Eschelon time to
2 schedule resources and arrange any customer premise access in advance of
3 delivery). This is clear on the face of the technician notes provided by Qwest.
4 For example, Qwest technicians' notes expressly state that the purpose of the
5 noted communications was to "test" or to "turn up" the circuit/service.¹⁶¹ If
6 Qwest is calling about test and turn up, it is part of attempted service delivery.¹⁶²

7 Obviously, communications during attempted delivery of the circuit/service are
8 not advance notice of when Qwest is going to attempt delivery. The attempt is
9 already in progress, so under Qwest's approach Eschelon is left to scramble and
10 staff the unexpected delivery rather than have an opportunity to efficiently
11 prepare in advance. Eschelon's ICA language provides that Eschelon will attempt
12 to overcome these obstacles because delivery of service to its end user customer is
13 so important to Eschelon.¹⁶³ Thus, any further disruption or delay in service is
14 clearly a direct product of Qwest's jeopardy and failure to send an FOC after the
15 jeopardy cleared, not of any unwillingness on Eschelon's part to lessen the

¹⁶¹ See, e.g., Exhibit Eschelon 3.76 (Qwest technician notes in column entitled "Qwest Review From MN RA-30") at p. 6 ("Contacted Eschelon to attempt to turn up the circuit"); pp. 8-9 ("Contacted [ER] at Eschelon at 16:58 he said he would test and call back. [ER] called back at 17:23 can't see signal. Problem originally thought to be on CLEC side. 4/15 found trbl to be in Qwest wiring"); p. 16 ("referred order to CLEC to test"); p. 21 ("called [ER] at Eschelon, talked to [ER] advised ready to test and accept").

¹⁶² Qwest's Provisioning and Installation Overview PCAT discusses communications that occur at the time of delivery (under the heading of "Delivering UNE, Resale, and Interconnection Services"). That technicians may need to communicate at the time of delivery does not obviate the need for notice in advance through the proper channels/departments to schedule resources, including the availability of those very technicians who may be needed for the test and turn up communications and activities that are part of delivering the service.

¹⁶³ ICA Section 12.2.7.2.4.4.1.

1 consequences of Qwest's issue. Qwest created the situation that lead to the
2 inability to complete delivery. If the obstacles are too great because of Qwest's
3 failure to provide proper timely notice to Eschelon of service delivery, and
4 Eschelon cannot accept delivery at the time, Qwest should not classify this as a
5 CLEC (CNR) jeopardy

6 To help ensure timely service to Customers, the Commission should adopt
7 Eschelon's proposed language for Issues 12-71, 12-72, and 12-73.

8 **D. SUBJECT MATTER NO. ISSUE 43. CONTROLLED PRODUCTION**

9 *Issue No. 12-87: ICA Section 12.6.9.4¹⁶⁴*

10 **Q. PLEASE DESCRIBE CONTROLLED PRODUCTION, NEW**
11 **IMPLEMENTATION, AND RECERTIFICATION.**

12 A. Section 12.6 of the proposed interconnection agreement is entitled "On-Going
13 Support for OSS" (Operations Support Systems). It addresses several types of
14 systems testing including, in Section 12.6.9.4, controlled production testing.
15 *Controlled production* testing consists of controlled submission of CLEC real

¹⁶⁴ Throughout discussion of Issue 12-87 there are references to the Implementation Guidelines. Excerpts are included with my testimony as Exhibit Eschelon 3.83. The full Implementation Guidelines are posted on the Qwest web site. For Version 21, the URL is

http://www.qwest.com/wholesale/downloads/2007/070406/IMAXMLImplementationGuidelines21_040607.doc ; For Version 20, the URL is http://www.qwest.com/wholesale/downloads/2006/061030/IMA_XML_Implementation_Guidelines_20_0_10_30_06.pdf; For Version 19.2, the URL is http://www.qwest.com/wholesale/downloads/2006/060425/IMA_EDI_Implementation_Guidelines_19_2_042406.pdf

1 product orders to the production environment.¹⁶⁵ The submission is “controlled”
2 (as opposed to ordinary submission of orders) in the sense that the number of
3 orders is limited and both Qwest and Eschelon are monitoring the limited orders
4 for testing purposes. Qwest and CLECs “use Controlled Production results to
5 determine operational readiness for full Production¹⁶⁶ turn-up.”¹⁶⁷ This test
6 verifies that the data exchange between Qwest and CLEC is done according to the
7 industry standard.¹⁶⁸

8 *A new implementation* effort involves transactions that CLEC does not yet have in
9 production using a current Interconnect Mediated Access (“IMA”) version.
10 About “new implementation,” the Implementation Guidelines state: “At the time
11 a CLEC migrates to a new release, any transaction(s) that the CLEC does not yet

¹⁶⁵ Exhibit Eschelon 3.83, p. 3 (Version 21, p. 13 ¶6); *id.* p. 9 (Version 20, p. 13 ¶6); *id.* p. 17 (Version 19.2, p. 9, ¶6).

¹⁶⁶ “Production” is defined as “The CLEC is certified and able to submit full volumes of production LSRs and pre-order transactions to Qwest.” Exhibit Eschelon 3.83, p. 3 (Version 21, p. 13 ¶7); *id.* p. 9 (Version 20, p. 13 ¶7); *id.* p. 17 (Version 19.2, p. 9, ¶7).

¹⁶⁷ Exhibit Eschelon 3.83, p. 3 (Version 21, p. 13 ¶6); *id.* p. 9 (Version 20, p. 13 ¶6); *id.* p. 17 (Version 19.2, p. 9, ¶6) (footnote added).

¹⁶⁸ The industry standard is currently called X12. It is an ANSI standard for syntax that governs electronic data transfers. Some CLECs are on IMA Release 19. Eschelon has recently started to use to IMA Release 20, for which the applicable standard is XML. Eschelon currently uses both Release 19 and 20, with retirement of its EDI gateway scheduled for June of 2007. Qwest has multiple releases available at any given time, and the CMP Document allows different carriers to be on different releases. *See* Exhibit Eschelon 3.10 §§ 6.0-9.0. For example, the Implementation Guidelines state that: “Qwest supports a multi-release strategy” for its interface. *See* Exhibit Eschelon 3.83, p. 4 (Version 21, p. 40); *id.* p. 10 (Version 20, p. 40); *id.* p. 18 (Version 19.2, p. 47). IMA Release 19 is available until October 27, 2007. IMA Release 21 became available on May 14, 2007. Therefore, a CLEC could move from Release 19 to Release 21 without ever being on Release 20. *See* Qwest OSS Calendar at http://www.qwest.com/wholesale/downloads/2006/061011/OSS_Calendar_Version_84.pdf

1 have in production using a current IMA version is considered to be a new
2 implementation effort.”¹⁶⁹

3 *Re-certification* is defined in agreed-upon language of the proposed contract as
4 “the process by which CLECs demonstrate the ability to generate correct
5 functional transactions for enhancements not previously certified.”¹⁷⁰ Similarly,
6 the Implementation Guidelines state: “Recertification is the process by which
7 CLECs demonstrate the ability to correctly generate and accept transactions that
8 were updated for the new release.”¹⁷¹

9 **Q. PLEASE DESCRIBE ESCHELON’S BUSINESS NEEDS REGARDING**
10 **CONTROLLED PRODUCTION.**

11 A. Eschelon needs certainty in the contract language that *controlled production*
12 *testing*, consistent with current practice, will continue to be necessary for a *new*
13 *implementation* effort and unnecessary for *re-certification*. Eschelon’s business
14 need is to avoid costly and/or time consuming controlled production testing that is
15 unnecessary because, for recertifications, the transaction has previously been in
16 production and is simply being enhanced. Under Eschelon’s proposal, testing will
17 be conducted for both new implementations and recertifications. Eschelon
18 supports necessary testing. In fact, Eschelon volunteered to be one of the first

¹⁶⁹ See Exhibit Eschelon 3.83, p. 5 (Version 21, p. 41); *id.* p. 11 (Version 20, p. 41); *id.* p. 19 (Version 19.2, p. 48) (The sentence is the same in the different versions of the Guidelines, except that the acronym “EDI” is inserted before “IMA” for Version 19.2.).

¹⁷⁰ Section 12.6.4 of the proposed ICA (closed language).

1 CLECs to move from EDI to XML (a new implementation that required
2 controlled production testing) and acted as one of the beta testers with Qwest for
3 XML, even though this is a significant commitment of time and resources.
4 Nothing about Eschelon's proposal is inconsistent with the use of controlled
5 production when applicable or the importance of testing, or Eschelon would not
6 be proposing it. Eschelon's proposal simply reflects the status today, and Qwest
7 would not say that its testing today is inadequate. Under Eschelon's proposal, the
8 testing -- like that done today -- will be appropriate for the type of change being
9 made (with a re-certification logically requiring less testing than an initial
10 certification).

11 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUE 12-87?**

12 A. Eschelon proposes controlled production testing, consistent with current practice,
13 will continue to be necessary for a new implementation effort and unnecessary for
14 re-certification (unless the companies agree otherwise). Eschelon proposes
15 adoption of one of the two following proposals for Section 12.6.9.4 (Issue 12-87):

16 **Proposal #1**

17 12.6.9.4 Controlled Production – Qwest and CLEC will perform
18 controlled production. The controlled production process is
19 designed to validate the ability of CLEC to transmit EDI data that
20 completely meets X12 (or mutually agreed upon substitute)
21 standards definitions and complies with all Qwest business rules.
22 Controlled production consists of the controlled submission of
23 actual CLEC production requests to the Qwest production
24 environment. Qwest treats these pre-order queries and orders as
25 production pre-order and order transactions. Qwest and CLEC use

¹⁷¹ See Exhibit Eschelon 3.83, p. 5 (Version 21, p. 41); *id.* p. 11 (Version 20, p. 41); *id.* p. 19 (Version 19.2, p. 48).

1 controlled production results to determine operational readiness.
2 Controlled production requires the use of valid account and order
3 data. All certification orders are considered to be live orders and
4 will be provisioned. Controlled production is not required for
5 recertification, unless the Parties agree otherwise, for features or
6 products that the CLEC does not plan on ordering. Recertification
7 does not include new implementations such as new products and/or
8 activity types.

9 **Proposal #2**

10 12.6.9.4 Controlled Production – Qwest and CLEC will perform
11 controlled production for new implementations, such as new
12 products, and as otherwise mutually agreed by the Parties. The
13 controlled production process is designed to validate the ability of
14 CLEC to transmit EDI data that completely meets X12 (or
15 mutually agreed upon substitute) standards definitions and
16 complies with all Qwest business rules. Controlled production
17 consists of the controlled submission of actual CLEC production
18 requests to the Qwest production environment. Qwest treats these
19 pre-order queries and orders as production pre-order and order
20 transactions. Qwest and CLEC use controlled production results to
21 determine operational readiness. Controlled production requires
22 the use of valid account and order data. All certification orders are
23 considered to be live orders and will be provisioned.

24 **Q. WHAT IS QWEST'S PROPOSAL ON ISSUE 12-87?**

25 A. Qwest originally proposed to omit both of Eschelon's language modifications. In
26 other words, Qwest's original proposal was to delete Eschelon's proposal (the
27 underlined sentences in the above cited language of section 12.6.9.4). Qwest has
28 since modified its proposal as follows:

29 All certification orders are considered to be live orders and will be
30 provisioned. Controlled production is not required for
31 recertification, unless the Parties agree otherwise, for features or
32 products that the CLEC does not plan on ordering. Recertification
33 does not include new implementations such as new products and/or
34 activity types.

1 Qwest asserts that Eschelon should not be able to make unilateral decisions such
2 as refusing controlled production testing “when it may be necessary to protect the
3 industry at large.”¹⁷² Qwest argues that controlled testing protects not only
4 against system down time, but also potential negative impact on other CLECs.¹⁷³
5 I address these claims below.

6 **Q. DOES ESCHELON’S PROPOSAL REFLECT QWEST’S CURRENT**
7 **DOCUMENTED PRACTICE?**

8 A. Yes. Eschelon’s proposal reflects Qwest’s current practice of not requiring
9 controlled production for enhancements to the existing system releases (as
10 opposed to new implementations), so no change is required. Qwest’s current
11 terms allow a CLEC to forego controlled production for recertification, including
12 as an example, if the CLEC does not plan to use the new functionality of the
13 updated existing system. This principle accurately reflects that, if Eschelon does
14 not plan to use the new functionality, it should not have to expend resources on
15 unnecessary controlled production. Eschelon proposes that this be captured in the
16 ICA language. More broadly, if Eschelon has been certified (so this is not a “new
17 implementation”), Qwest does not require controlled production for
18 recertification.¹⁷⁴ This fact is documented in Qwest’s Implementation Guidelines,

¹⁷² Qwest Response, p. 44, lines 1-2.

¹⁷³ Qwest Response, p. 43, lines 24-25. See also Joint Disputed Issues Matrix, Exhibit 3 to Oregon Petition (10/10/06), Qwest’s position, p. 238.

¹⁷⁴ For example, Eschelon was already certified and in production for Facility Based Directory Listings (“FBDL”) when Release 19.0 was issued and included two additional fields for the existing FBDL product, so Eschelon did not have to do controlled production testing when Eschelon re-certified its

1 which state consistently across releases:

2 **IMA Release 21 and IMA Release 20 (same language in both):**

3 Migration Activities. CLECs will be reminded in writing of their need to
4 migrate to a new release prior to the next release being implemented. For
5 migration, the CLEC will follow the same process as an initial
6 implementation *except that Controlled Production is not required on any*
7 *XML transaction that successfully completed Controlled Production*
8 *testing in a prior release.* Any product not successfully tested in
9 Controlled Production in a prior release will not be migrated under this
10 exemption.¹⁷⁵

11 **IMA Release 19.2:**

12 Migration Activities. CLECs will be reminded in writing of their
13 need to migrate to a new release prior to the next release being
14 implemented. For migration, the CLEC will follow the same
15 process as an initial implementation *except that Controlled*
16 *Production is not required on any EDI transaction that*
17 *successfully completed Controlled Production testing in a prior*
18 *release.* Any product not successfully tested in Controlled
19 Production in a prior release will not be migrated under this
20 exemption.¹⁷⁶

21 **Q. WHAT IS QWEST'S ARBITRATION POSITION REGARDING**
22 **WHETHER ESCHELON'S PROPOSED LANGUAGE REFLECTS**
23 **QWEST'S CURRENT PRACTICE?¹⁷⁷**

functionality for FBDL for Release 19.0. The fact that controlled production was not required does *not* mean the two additional fields were not tested. The two fields were tested using progression testing in the Stand Alone Test Environment (SATE) (*see* closed language in proposed ICA Section 12.6.9.2). Eschelon's proposed language for Issue 12-87 is, on its face, specific to one type of testing (controlled production) and does not affect the other testing to which Eschelon has agreed. Although this example occurred with Release 19.0, Qwest's own documentation for Release 20.0 provides that the same terms apply. *See* Exhibit Eschelon 3.83, p. 6 (Version 21, p. 42); *id.* p. 12 (Version 20, p. 42) [quoted below].

¹⁷⁵ Exhibit Eschelon 3.83, p. 6 (Version 21, p. 42); *id.* p. 12 (Version 20, p. 42) (emphasis added).

¹⁷⁶ Exhibit Eschelon 3.83 p. 20 (Version 19.2, p. 50) (emphasis added).

¹⁷⁷ Arizona arbitration, Albersheim Rebuttal, p. 65, lines 10-13.

1 A. Qwest has provided conflicting testimony as to whether Eschelon's proposed
2 language reflects Qwest's current practice. In the Arizona Qwest-Eschelon
3 arbitration proceeding, in her direct testimony on November 8, 2006, Ms.
4 Albersheim of Qwest testified as follows:

5 Q. ADDRESSING THE SECOND ISSUE, IS ESCHELON'S
6 LANGUAGE ACCURATE WITH REGARD TO
7 RECERTIFICATION?

8 A. Yes.

9 Q. IF ESCHELON'S LANGUAGE IS ACCURATE, WHY DOES
10 QWEST OBJECT TO THE ADDITION OF THIS LANGUAGE IN
11 THE CONTRACT?

12 A. While the language may be accurate today, it may not be accurate
13 tomorrow.¹⁷⁸

14 Ms. Albersheim provided almost identical testimony in the Minnesota
15 arbitration.¹⁷⁹ In Minnesota, in their January 16, 2007 report, the ALJs found:
16 "Qwest agrees that Eschelon's language accurately depicts its current practice,
17 which does not require CLECs to recertify if they have successfully completed
18 testing of a previous release; in addition, Qwest admits that Qwest can control
19 whether a CLEC can access its OSS."¹⁸⁰ The ALJs recommended adoption of
20 Eschelon's first proposal for Issue 12-87.¹⁸¹

21 In Qwest's February 9, 2007 rebuttal testimony in Arizona, Ms. Albersheim of
22 Qwest provided the following testimony:

¹⁷⁸ Arizona arbitration, Albersheim Direct, p. 99, line 24 – p. 100, line 4.

¹⁷⁹ Minnesota Arbitration, Albersheim Direct, p. 99, line 24 – p. 100, line 4.

¹⁸⁰ Exhibit Eschelon 2.24, p. 62 (MN Arbitrators' Report, ¶255).

1 Q. MR. WEBBER ALLEGES ON PAGE 169 OF HIS DIRECT
2 TESTIMONY THAT ESCHELON'S PROPOSED LANGUAGE FOR
3 ISSUE 12-87 REFLECTS QWEST'S CURRENT PRACTICE. IS THAT
4 TRUE?

5 A. No.¹⁸²

6 Ms. Albersheim indicated that Eschelon had cited documentation for Release
7 19.2,¹⁸³ without mentioning that the more recent documentation contains the same
8 language (as shown in the above quotations).¹⁸⁴ Ms. Albersheim said: "The issue
9 here is with new releases, such as IMA Release 20.0, that require controlled
10 production testing."¹⁸⁵ Under either of Eschelon's language proposals, controlled
11 production testing is required for IMA Release 20.0, as shown above.¹⁸⁶ Ms.
12 Albersheim did not mention in her testimony that, by the date of her testimony
13 (February 9, 2007), Eschelon had already indicated -- consistent with Eschelon's
14 proposed language -- it would participate in controlled production testing for

¹⁸¹ *Id.* ¶258.

¹⁸² Arizona arbitration, Albersheim Rebuttal, p. 65, lines 10-13.

¹⁸³ Arizona arbitration, Albersheim Rebuttal, p. 66, lines 1-2.

¹⁸⁴ To the extent that, by referring to Release 19.2, Ms. Albersheim was attempting to suggest that some change occurred from Version 19.2 to Version 20.0 (or Version 21), the Implementation Guidelines show that this is not the case. Each one contains a change log (entitled "Document History") identifying the changes made in that Version, and none lists such a change. *See* Exhibit Eschelon 3.83, p. 2 (Version 21, p. 2); *id.* p. 8 (Version 20, p. 2); *id.* pp. 14-16 (Version 19.2, pp. 2-4).

¹⁸⁵ Arizona arbitration, Albersheim Rebuttal, p. 66, lines 5-6.

¹⁸⁶ *See, e.g.*, Eschelon Proposal #1, which creates an exception to performing controlled production testing for recertification but specifically states: "Recertification does not include new implementations."

1 IMA Release 20.0.¹⁸⁷ The issue is whether, for a transaction that has already been
2 through controlled production testing (*e.g.*, in a prior release) and thus is certified,
3 controlled production testing must be conducted again for recertification. Despite
4 Ms. Albersheim's more recent testimony to the contrary,¹⁸⁸ Qwest's current,
5 documented practice is that controlled production testing is not required for
6 recertification.¹⁸⁹

7 **Q. IF ESCHELON'S PROPOSAL REFLECTS QWEST'S CURRENT**
8 **PRACTICE, WHY IS IT NECESSARY TO INCLUDE IT IN THE**
9 **CONTRACT?**

10 A. Qwest's inconsistency on this point (which I discussed in my previous answer)
11 supports the need to include Eschelon's proposed language in the interconnection
12 agreement to provide contractual certainty to allow Eschelon to plan its business.
13 It is also necessary to include Eschelon's proposed language modification in the
14 ICA because, without it, the broader language in the remainder of the paragraph
15 (Section 12.6.9.4) may suggest that controlled production is required for re-
16 certification, when it is not. The first sentence, for example, broadly states:
17 "Qwest and CLEC will perform controlled production." That is not always the
18 case under current practice, and the ICA should be clear on this point when

¹⁸⁷ Eschelon was previously scheduled to move to IMA Release 20.0 in approximately February of 2007, though that date was later pushed out. Because of the anticipated February 2007 date, discussions with Qwest regarding controlled production testing for IMA Release 20.0 had taken place before February of 2007.

¹⁸⁸ Arizona arbitration, Albersheim Rebuttal, p. 65, lines 10-13 (quoted above).

¹⁸⁹ Exhibit Eschelon 3.83, p. 6 (Version 21, p. 42); *id.* p. 12 (Version 20, p. 42) (quoted above).

1 outlining the terms of controlled production. Eschelon made its second proposal
2 as an alternative way of dealing with the broad statement in this sentence.

3 Further, Qwest is violating its previously agreed upon policy of bringing its IMA
4 implementation guidelines through CMP, which is another reason for Eschelon to
5 seek contractual certainty and include its proposed language (reflecting status
6 quo) into the ICA. Qwest's *Change Management Process Document* (Exhibit
7 Eschelon 3.10) describes the scope of CMP as including OSS implementations. It
8 states:

9 Qwest will track changes to OSS Interfaces, products and
10 processes. This CMP includes the identification of changes and
11 encompasses, as applicable, Design, Development, Notification,
12 Testing, **Implementation**, Disposition of changes, etc. (See Change
13 Request Status Codes, Section 5.8). ***Qwest will process any such***
14 ***changes in accordance with this CMP.***¹⁹⁰

15 This language was specifically added to the Scope section of the CMP Document
16 to ensure that the Implementation Guidelines would be within the scope of
17 CMP.¹⁹¹ The CMP Document was created by a Redesign team. The Redesign
18 team maintained a list of action items and then noted when they were closed. The
19 minutes of the CMP Redesign meetings are posted on the Qwest web site. The
20 action item log was attached to the minutes as an attachment. Attachment 5 (the
21 action item log) to the March 5 through March 7, 2002 CMP Redesign meeting

¹⁹⁰ Exhibit Eschelon 3.10, p. 15, Section 1.0 (emphasis added).

¹⁹¹ See Exhibit Eschelon 3.80 to my testimony containing Excerpts from Final Meeting Minutes of CLEC-Qwest Change Management Process Re-design meeting dated March 5-March 7, 2002 (Att. 5, Action Item 143).

1 minutes shows that Action Item Number 143 (“Is the EDI Implementation
2 Guideline under the scope of CMP?”; “Does Scope include documentation?”) was
3 closed in the affirmative in “Master Redline Section 1.0.”¹⁹² Specifically, the
4 team closed with the resolution: “The EDI Implementation Guideline will follow
5 the CMP guidelines and timeframes.”¹⁹³ Therefore, as shown in the above-quoted
6 language, the Implementation Guideline is supposed to be within the scope of
7 CMP. Qwest obtained 271 approvals after completing these action items and
8 providing assurances such as this one about CMP to CLECs, including Eschelon
9 (which was a member of the CMP Redesign Core Team).

10 Despite Qwest’s assurances to the CMP Redesign team and the language of the
11 governing CMP Document, Qwest does not submit changes to the EDI
12 Implementation Guidelines through CMP. An example is the way Qwest treated
13 its IMA Release 20.0 Implementation Guidelines, which was announced via a
14 non-CMP notice and was effective immediately.¹⁹⁴ In the Minnesota Arbitration
15 regarding the same contract language, Qwest testified that the IMA
16 Implementation Guideline documents are not and should not be under the CMP
17 control¹⁹⁵ -- without citing any documentation in Qwest’s posted CMP Redesign
18 materials to support this statement, which is contrary to the closure of Action Item
19 143 and the language of Section 1.0 of the CMP Document (both quoted above).

¹⁹² *Id.*

¹⁹³ *Id.* (final column for Action Item 143).

¹⁹⁴ This notice is contained in Exhibit Eschelon 3.82.

1 The fact that Qwest is violating its previously agreed upon policy of bringing its
2 IMA implementation guidelines through CMP is another reason for Eschelon to
3 seek contractual certainty and include its proposed language (reflecting status
4 quo) into the ICA. If Qwest’s proposal is adopted, Qwest could just as easily –
5 with same day notice and no CMP activity, much less any amendment to the ICA
6 – impose the costs of unnecessary controlled production testing upon Eschelon.
7 This is an important issue that Eschelon has properly raised under Section 252,
8 and Qwest should not be able to impose such costs on Eschelon without
9 Eschelon’s agreement.

10 **Q. DOES ESCHELON’S PROPOSAL REPRESENT A THREAT TO THE**
11 **“INDUSTRY AT LARGE,” AS SUGGESTED BY QWEST?¹⁹⁶**

12 A. No. As I explained above, Qwest’s current practice allows CLECs to forego
13 controlled production testing during recertification. (It is worth noting again that
14 under Eschelon’s proposal recertification does not include new implementations,
15 such as Release 20.) As stated in Qwest’s own implementation guidelines quoted
16 above, controlled production testing is not required for any transaction that
17 successfully completed controlled production testing in a prior release.
18 Obviously, Qwest does not consider the fact that some CLECs will forego the test
19 in this situation as being a threat to the “industry at large.” Eschelon’s language

¹⁹⁵ Minnesota arbitration, Surrebuttal Testimony of Renee Albersheim, p. 44 lines 4-10.

¹⁹⁶ Qwest Response, p. 47, line 15; *see also* Qwest Oregon Response, p. 46, line 15 (“threat to the industry at large”).

1 modification does not prohibit CLECs from undergoing controlled production
2 testing. It only states that such testing is optional in this particular scenario –
3 which is in full accord with Qwest’s current practice. This clarification is
4 necessary because the remainder of the language of section 12.6.9.4 without
5 modification may suggest that controlled production is required under all
6 circumstances when it is not. Eschelon’s proposed language does not state that
7 Eschelon would never participate in controlled production for recertification, as
8 the companies may agree to it if it is needed. Qwest and Eschelon may discuss
9 what Qwest perceives as potential harm in any particular case. Eschelon has an
10 incentive to avoid harm as well. In Minnesota, the ALJs specifically found that:
11 “There is no evidence that Eschelon has or would opt out of recertification testing
12 for any improper purpose.”¹⁹⁷

13 **Q. YOU STATE ABOVE THAT QWEST MODIFIED ITS PROPOSAL ON**
14 **ISSUE 12-87. PLEASE RESPOND TO QWEST’S PROPOSAL.**

15 A. In Minnesota, as in Utah, Eschelon offered two proposals on the issue of
16 Controlled Production (see quoted language above). The ALJs in the Minnesota
17 said that they “recommend adoption of Eschelon’s first proposal.”¹⁹⁸ The
18 Minnesota commission affirmed the ALJs’ recommendation.¹⁹⁹

¹⁹⁷ Exhibit Eschelon 2.24, p. 62 (MN Arbitrators’ Report, ¶258).

¹⁹⁸ Exhibit Eschelon 2.24, p. 62 (MN Arbitrators’ Report, ¶258).

¹⁹⁹ Exhibit Eschelon 2.24 and Exhibit Eschelon 2.25, p. 22 (MN Order Resolving Arbitration Issues ¶1).

1 In the alternative, the Minnesota ALJs had also indicated that the Commission
2 could adopt the phrase “for features or products that the CLEC does not plan on
3 ordering,” which Qwest later offered as a counter proposal for other states (as
4 shown above in Qwest’s proposed language). The alternative, however, covers
5 only a subset of the recertifications for which Qwest currently does not require
6 controlled production. Controlled production is not required currently for
7 recertification (regardless of whether the CLEC intends or does not intend to
8 order the products/features). There is no need to adopt this lesser alternative,
9 which does not fully capture Qwest’s current process. Despite the ALJs having
10 mentioned this alternative, the Minnesota commission did not adopt it. As
11 pointed out by the ALJs in Minnesota, in a ruling that has now been affirmed by
12 the Minnesota commission:

13 Qwest agrees that Eschelon’s language accurately depicts its
14 current practice, which does not require CLEC’s to recertify if they
15 have successfully completed testing of a previous release.²⁰⁰

16 Qwest wants to maintain the flexibility to unilaterally change its practices,
17 claiming that it should not be locked in to the current practices.²⁰¹ When Qwest
18 made a similar argument with respect to Issue 12-74, the ALJs in Minnesota
19 rejected it, saying: “Eschelon’s language would not require any changes to
20 Qwest’s current process or systems, and Qwest has failed to identify any credibly
21 adverse effect on CLECs, itself, or the public interest if this language were

²⁰⁰ Exhibit Eschelon 2.24, p. 62 (MN Arbitrators’ Report ¶255).

1 incorporated into the ICA. The proposed language exactly reflects Qwest's
2 current practice."²⁰² The same is true for controlled production.

3 **Q. PLEASE SUMMARIZE ISSUE 12-87.**

4 A. A requirement that CLECs go through testing that uses actual order data
5 (Controlled Production) for enhancements to transactions that have already been
6 in production (recertifications) would cause unnecessary waste of resources and
7 could potentially cause delay. Qwest's current practices allow a CLEC to forego
8 Controlled Production in the same manner as Eschelon's proposed language. This
9 does not mean that recertifications will be untested. Although controlled
10 production testing is not required for recertifications currently, other testing²⁰³
11 occurs for recertifications and Eschelon proposes to maintain the status quo.

12 Consistent with the status quo, Eschelon's proposed language requires additional
13 testing for new implementations that have not been in production. An example of
14 a new implementation effort was the change from EDI to XML. Because Release
15 20.0 is a new implementation,²⁰⁴ no CLEC had used it in production. Therefore,
16 no CLEC was certified to use it before testing. Under both the current practice

²⁰¹ See, e.g., Colorado arbitration, Albersheim Direct Testimony, p. 75, lines 4-14; see also Minnesota arbitration Hearing Ex. 1 (Albersheim Dir.) at p. 9, line 4.

²⁰² Exhibit Eschelon 2.24, p. 60 (MN Arbitrators' Report, ¶246).

²⁰³ See the remaining paragraphs of Section 12.6 (closed language regarding other forms of testing).

²⁰⁴ Ms. Albersheim has admitted that Release 20.0 is a "new implementation" (*i.e.*, the term used in Eschelon's proposed language). See Minnesota arbitration, Albersheim Surrebuttal Testimony, p. 43, lines 13-15 ("The underlying architecture of IMA Release 20.0 is changing from EDI to XML. This is such a significant change that Qwest is treating this as a new implementation").

1 today and Eschelon's proposed language, CLECs will need to go through
2 controlled production testing and become certified for Release 20.0, just as
3 Eschelon has recently done. No CLEC will go through *re*-certification, because
4 they were not initially certified. Eschelon's proposed language in Section
5 12.6.9.4 is very clear that controlled production testing is required for such new
6 implementations. Therefore, it addresses any concerns expressed by Qwest that
7 relate to new implementations.

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

9 **A. Yes.**