

**ESCHELON RESPONSE TO QWEST'S QUESTION AS TO WHICH ITEMS ON
QWEST'S CHART ARE SUBJECT TO LITIGATION/ARBITRATION**

February 5, 2007

If a call is held, please add these comments to the meeting minutes for the call. If not, please add these minutes to the status history for the CR. (Please note that Qwest has inappropriately separated out the CR into two numbers, with one being followed by "-2," which creates the impression that there is no earlier status history, when there is additional information that is part of the history of events. Qwest needs to put them back together, so the single status history is complete.)

Qwest CMP Minutes of 1/11/07 Ad Hoc Call: "Cindy Buckmaster-Qwest confirmed that the CLECs will take this information back. She said that she would still like to go through the matrix line-by-line in the next adhoc meeting. Cindy states that we need to ask two questions: 1) Is this in litigation and why, and 2) Can we get consensus if something is in litigation where we can move it on the list."

-- See Eschelon responses below to each of these questions for each Qwest Bucket on Qwest's matrix.

Qwest CMP Minutes of 11/15/06 Monthly Call: "Cindy said Qwest is asking to release the undisputed items, those not in arbitration or items being challenged under law. Disputed items will not immediately be processed through CMP."

Qwest CMP Minutes of 12/14/06 Monthly Call: "Bonnie J-Eschelon stated that in regard to Qwest's proposal, she is hearing that Qwest does not really have one. Cindy B-Qwest stated that was correct."

Minnesota Arbitrators' Report, Qwest-Eschelon ICA MN Arbitration, ¶¶21-22: "The CMP document itself provides that in cases of conflict between changes implemented through the CMP and any CLEC ICA, the rates, terms and conditions of the ICA shall prevail. In addition, if changes implemented through CMP do not necessarily present a direct conflict with an ICA but would abridge or expand the rights of a party, the rates, terms, and conditions of the ICA shall prevail.¹ Clearly, the CMP process would permit the provisions of an ICA and the CMP to coexist, conflict, or potentially overlap. The Administrative Law Judges agree with the Department's analysis that any negotiated issue that relates to a term and condition of interconnection may properly be included in an ICA, subject to a balancing of the parties' interests and a determination of what is reasonable, non-discriminatory, and in the public interest. Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection."

¹ Ex. 1 (Albersheim Direct) at RA-1, part 1.0, page 15.

QWEST BUCKETS FROM QWEST'S CHART (enclosed)

A = "Products/Processes Introduced on PC102704-1ES"

B = "Products/Processes Postponed on PC102704-1ES"

C = "Products/Processes Not Yet Covered on any CR"

D = "Products Known to be in Arbitration/Litigation"

NOTE: Eschelon disagrees with Qwest's characterizations, as further described in Eschelon's testimony in the Qwest-Eschelon ICA arbitrations.

QWEST BUCKET A

All nine of the items listed in Qwest Bucket A (A1 – A9) deal with UNE-P. Qwest has indicated that items A1-A9 were completed in CMP.² In addition, CLECs have signed amendments regarding elimination of UNE-P (at least some in conjunction with QPP), and the terms of those agreements control. Eschelon is not aware of pending litigation regarding UNE-P. As Qwest has said it intends to discuss which products or terms relating to its identified items are subject to litigation, if Qwest is a party to, or aware of, any pending litigation, Qwest should provide this information to CLECs (before a call, if any call is held).

RESPONSE TO QWEST #1: Not in litigation to Eschelon's knowledge.

RESPONSE TO QWEST #2: Leave in Bucket A and note in final column ("Notes"): "Completed in CMP." There is no need to "release the undisputed items" because they are completed.

QWEST BUCKET B

All eleven of the items in Qwest Bucket B (B10 - B20) are subject to litigation. Qwest repeats B(10), B(15), B(17), and B(18) in Qwest's Bucket D (which identifies these items as known to be in litigation). Qwest does not explain why it does not also include the other items, which are also in litigation (often in the same cases).

See Colorado Commission Docket No. 07S-028T, The Investigation and Suspension of Tariff Sheets Filed by Qwest Corporation with Advice Letter No. 3058.

See also Wire Center Dockets:

AZ Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091; CO Docket No. 06M-080T; MN Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685; OR Docket No. UM 1251; UT Docket No. 06-049-40.

See also Qwest-Eschelon ICA arbitrations:

AZ T-03406A-06-0572, T-01051B-06-0572
CO 06B-497T

² Qwest provides a CMP effective date in the second to last column. In addition, the URLs provided in the third column do not use the term "TRRO," as do the non-CMP TRRO PCAT URLs in other columns.

MN P5340, 421/IC-06-768
OR ARB 775
UT petition not yet filed
WA UT-063061

As Qwest has said it intends to discuss which products or terms relating to its identified items are subject to litigation, if Qwest is a party to, or aware of, any additional pending litigation, Qwest should provide this information to CLECs (before a call, if any call is held).

RESPONSE TO QWEST #1: In litigation.

RESPONSE TO QWEST #2: Move to Bucket D.

QWEST BUCKET C

All thirteen of the items in Qwest Bucket C (C21 – C33) have related terms that is subject to approval before becoming effective in the Qwest-Eschelon ICA arbitrations and/or Colorado Docket No. 07S-028T. In addition, C31 (Reclassification of Terminations for UNE Conversions, APOTs) relates to open disputed language in the Qwest-Eschelon ICA arbitrations. For all thirteen of the items in Qwest Bucket C (C21 – C32), Qwest identifies them as “not yet covered.” Depending on what these items entail, additional issues could be subject to litigation.

See Colorado Commission Docket No. 07S-028T, The Investigation and Suspension of Tariff Sheets Filed by Qwest Corporation with Advice Letter No. 3058.

See also Qwest-Eschelon ICA arbitrations:

AZ T-03406A-06-0572, T-01051B-06-0572
CO 06B-497T
MN P5340, 421/IC-06-768
OR ARB 775
UT petition not yet filed
WA UT-063061

As Qwest has said it intends to discuss which products or terms relating to its identified items are subject to litigation, if Qwest is a party to, or aware of, any additional pending litigation, Qwest should provide this information to CLECs (before a call, if any call is held).

FOR C(21)-C(30) & C(32)-C(33):

RESPONSE TO QWEST #1: In litigation.

RESPONSE TO QWEST #2: As “not yet covered” by Qwest, Qwest to provide (before a call, if any call is held) a written proposal identifying the changes it wants to make to the existing PCAT and indicating, for each change, whether all ICAs have been amended accordingly.

FOR C(31):**RESPONSE TO QWEST #1:** In litigation.**RESPONSE TO QWEST #2:** Move to Bucket D.**QWEST BUCKET D**

All four of the items in Qwest Bucket D (D34 – D37) are subject to litigation, per Qwest’s own inclusion of them in the bucket for “Products Known to be in Arbitration/Litigation.” (Qwest provided no docket numbers. Eschelon has provided docket numbers below.) Qwest’s list is incomplete (see above). For example, Qwest omits Commingled EELs (B19), Reclassification of Terminations for UNE Conversions (APOTs) (B19), Loop Mux Combination (B11), UCCRE (B13), TRRO compliance and transition procedures (B20) from its Bucket D, even those issues are clearly subject to litigation in the Qwest-Eschelon ICA arbitrations and wire center proceedings and are subject to change of law provisions requiring ICA terms (*see, e.g.,* TRRO ¶196).

See Colorado Commission Docket No. 07S-028T, The Investigation and Suspension of Tariff Sheets Filed by Qwest Corporation with Advice Letter No. 3058.

See also Wire Center Dockets:

AZ Docket Nos. T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091; CO Docket No. 06M-080T; MN Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685; OR Docket No. UM 1251; UT Docket No. 06-049-40.

See also Qwest-Eschelon ICA arbitrations:

AZ T-03406A-06-0572, T-01051B-06-0572
CO 06B-497T
MN P5340, 421/IC-06-768
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UT petition not yet filed
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As Qwest has said it intends to discuss which products or terms relating to its identified items are subject to litigation, if Qwest is a party to, or aware of, any additional pending litigation, Qwest should provide this information to CLECs (before a call, if any call is held).

RESPONSE TO QWEST #1: In litigation.**RESPONSE TO QWEST #2:** Remain in Bucket D (Bucket D should also be expanded to include the items identified above as in litigation and belonging in Bucket D).