

Chronology of the Qwest Change Management Process (CMP)
Changes Relating to Expedites

In the first section of this Chronology, background information is provided to explain the terms and context of the CMP items discussed below. In the second section of this Chronology, the history of changes Qwest has made or attempted to make in CMP to both of its expedite processes (requiring approval based on emergency conditions process and later additional for-pay process) is discussed. There are seven sections in the latter history section. Documents cited in each of the seven sections are attached to this Chronology and organized by corresponding section number. Also attached are excerpts from Qwest's Statement of Generally Available Terms (SGAT) and Qwest's complete CMP Document, both printed from Qwest's web site. The CMP document governing the procedures for CMP ("CMP Document") is found at:

http://www.qwest.com/wholesale/downloads/2006/060130/QwestWholesaleChangeManagementDocument_01_30_06_1_.doc

The "Expedites & Escalations Overview" is a section of Qwest's Product Catalog ("PCAT") on the Qwest wholesale web site. See <http://qwest.com/wholesale/>. Changes to the wholesale PCAT are sometimes made through Qwest's Change Management Process (CMP) either by notice or Change Request ("CR"), depending on the nature of the change. Qwest assigned "Version" numbers to its proposed changes to the "Expedites & Escalations Overview" section of the PCAT, and the first six sections of the history discussion are arranged by Version number. The seventh section addresses CLEC objections, Qwest's denials, and dispute resolution.¹

BACKGROUND

Participation in CMP. Qwest's CMP documentation on its wholesale web site addresses who may participate in CMP: "Current CLEC Product, Process, or OSS Interface users, or those who have an agreed upon project work plan for implementing a Product, Process or OSS Interface, may submit change requests and participate in the CLEC Industry Team."² Eschelon must use Qwest's processes and OSS interfaces to conduct business with Qwest and therefore receives CMP notices and participates in CMP meetings. The CMP is often the only means through which information about system and process changes is obtained. Participation does not equal consent. The CMP Document provides that a participating CLEC's interconnection agreement ("ICA") governs over all CMP changes, and this does not vary depending of whether the CLEC participated in that change. See CMP Document §1.0; see also Qwest-Eschelon ICA, Part A, § 17.1.

No Voting on Process Changes in CMP. No voting occurs in CMP as to the substance of product and process changes. In other words, there is no vote in CMP as to whether a particular change request should be adopted or not. Qwest will complete or deny a request for a change in process or product. Regarding Expedites & Escalations, Qwest

¹ Most of the attached documents are Qwest's own documents (*i.e.*, admissions by Qwest).

² <http://www.qwest.com/wholesale/cmp/index.html> (italics deleted)

described its proposed changes as “process” changes. They were not system changes. CLECs are permitted to object in CMP to Qwest product and process changes. Even if, however, every single CLEC objects and Qwest still does not agree, Qwest nonetheless implements its desired change after applicable time periods for product and process changes. (*See* §5.4 of CMP Document.) Qwest refers to such CMP changes as “notification” processes.³ In contrast to Qwest’s “notice and go” relatively quick process, an objecting CLEC’s only recourse is to seek expensive and time-consuming dispute resolution for each change in state affected by the change. *See id.* & §15.0 Voting only occurs in two situations. First, voting occurs for changes to the CMP Document itself and certain procedures within that document (such as whether to change the disposition level of a CR, §5.4.3.1; whether to grant an exception to the CMP procedures, §16.2.1; *etc.*). *See* CMP Document §§ 5.1.1, 5.1.2, 5.4.3.1, 16.2 *et al.*, 16.4 *et al.*, 17.0. The expedite changes are not changes to the CMP Document or the CMP procedures. Second, voting occurs to prioritize (*i.e.*, “rank) proposed systems (OSS) changes. *See* CMP Document §§ 5.2.1, 5.2.2, 10.3.3, 10.3.4, 16.2 *et al.*, 17.0. The expedite changes are not system changes. Therefore, any reference to voting with respect to the expedite processes is a red herring to create the impression that there is a democratic process for process changes when there is not.

Section 252(a): Terms and conditions requiring mutual assent are governed by the ICA, and the CMP Document is clear that the ICA controls *vis a vis* CMP. *See* CMP Document §1.0; *see also* §252(a) of the Act; Notice of Apparent Liability for Forfeiture, *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263, ¶32 (March 11, 2004) (FCC said: At “no point did we create a general ‘web-posting exception’ to section 252(a)”).

CMP, PCAT and SGAT: Neither the PCAT nor CMP are mentioned anywhere in the Qwest-Eschelon ICA. Eschelon opted into the original AT&T ICA, and the Eschelon-Qwest ICA was approved by the ACC on April 28, 2000. The PCAT and CMP were developed after approval of the ICA, largely through or as the result of the Section 271 proceedings to determine the terms under which Qwest could enter the long distance market. Both the CMP and the PCAT are referenced in Qwest’s Statement of Generally Available Terms (“SGAT”) (which was developed largely through Section 271 proceedings). Qwest’s Arizona SGAT, in both Section 4.156 and Section 7.4.7, provides: “Qwest agrees that CLEC shall not be held to the requirements of the PCAT.”⁴ This provision shows that the history of CMP is that it was not intended to bind CLECs. Eschelon is similarly not held to the requirements of the PCAT, as neither the PCAT nor the CMP are part of its ICA with Qwest. Nonetheless, as described below, Eschelon voluntarily followed those processes in this case.

³*See, e.g.* Qwest’s 11/18/05 response to Eschelon’s objections to Version 30 (Qwest said: “Qwest utilized the appropriate CMP notification processes to notify CLECs of the pending changes.”) This indicates Qwest’s view that it can unilaterally notify CLECs of changes, rather than obtain their agreement. To the extent that CMP is such a “notice” process, it does not meet the requirement of mutuality for negotiated terms (or Commission involvement for arbitrated terms) governed by Section 252 and does not supplant Section 252, as the CMP Document itself recognizes by indicating that the ICA controls. *See* CMP Document, §1.0.

⁴ <http://www.qwest.com/wholesale/downloads/2003/030909/Arizona-SGAT-8-29-03.doc>

Scope of CMP: The document governing CMP,⁵ in Section 1.0 (“Introduction and Scope”), provides: “In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.”⁶ Qwest also repeats this language on many of its CMP notices. Rates and the application of rates are also outside the scope of CMP. *See, e.g.*, Qwest’s response to the McLeod-Eschelon escalation (attached and discussed below) in which Qwest states: “discussion around rates associated with an Interconnection Agreement are outside the scope of the CMP process.”

⁵ The CMP document is Exhibit G to the SGAT. The SGAT provides (at SGAT Section 12.2.6.3) that Exhibit G can be changed per the CMP document processes (which require a unanimous vote in CMP) without amendment of the SGAT. Therefore, the SGAT Exhibit G on the Qwest web site may not have all of the revisions made through CMP that are in the updated CMP document on the Qwest web site (see URL above). For the SGAT Exhibit G, see <http://www.qwest.com/wholesale/downloads/2003/030909/Arizona-08-29-03-Exhibit-G.doc>

⁶http://www.qwest.com/wholesale/downloads/2006/060130/QwestWholesaleChangeManagementDocument_01_30_06_1_.doc

HISTORY OF PROPOSED CHANGES⁷ TO QWEST EXPEDITE PROCESSES

1. Expedites Process – Later Called “Expedites Requiring Approval” Process

[See See Product Notification for Version 1 of the Expedites & Escalations Overview <http://www.qwest.com/wholesale/cnla/uploads/PROD%2E09%2E20%2E01%2EF%2E00087%2EF%2EBFRSR%2Edoc>; see also “Expedites & Escalations Overview – V8.0” - Copy is attached. It appears it is no longer on the Qwest web site.]

Summary: Under this process (“Expedites Process”), Qwest will expedite orders for all products and services (including all unbundled loops), but only if the order meets one of the criteria/conditions below. The conditions relate generally to emergencies and harm to end user customers. If the conditions are met, Qwest will grant the expedite (*i.e.*, meet the earlier due date) resources permitting, and no additional charge will apply. If the conditions are not met, no expedite will be granted (*i.e.*, the standard interval applies to establish the due date). The conditions are listed in the bullet points *below*. To obtain such an expedite, the CLEC submits an order with the normal due date interval and may call Qwest to request an expedite. On such a call, the CLEC provides information from which Qwest can determine if the expedite meets one or more of the conditions so that Qwest will approve the request.⁸ Under the expedites requiring approval process, Qwest granted expedite requests to Eschelon. [See, *e.g.*, PON Numbers AZ418942CJH (7/26/04); AZ409134CJH (6/22/04); CAZ5016941TIH (5/11/04); AZ467137RAK (1/10/05).] Although there are Commission approved rates for dispatches and hourly labor in Arizona, so that Qwest could have otherwise charged for expedites pursuant to the ICA if such additional dispatches or work were required, the ICA also provides for nondiscrimination.⁹ As Qwest does not require its own retail customers to pay an additional expedite charge (*see, e.g.*, Qwest RPD – “Due Dates – POTS/Non-Design – All States Bus Res”),¹⁰ no additional charge applies for CLEC expedites meeting the Original Conditions either under the expedites requiring approval process.

⁷ Other Proposed Changes/Versions. The Qwest “Expedites & Escalations Overview” went through several versions, but some of those versions/changes are not discussed here. Those versions did not affect, for example, the criteria or products to which those criteria apply. (This is just noted here to explain why the version numbers are not consecutive.) To view the other versions, see the history log for the “Expedites & Escalations Overview.” See

http://www.qwest.com/wholesale/downloads/2006/060407/HL_Exp_Escl_V36.doc

⁸ Therefore, Qwest later called the Expedites Process the “Expedites Requiring Approval” process. This title was not needed initially, as there was only one process. When Qwest later added an optional for pay process to obtain expedites when the conditions were not met but a CLEC would pay a higher charge (see below), Qwest referred to the additional process as the “Pre-Approved Expedite Process” and the Expedites Process as the “Expedites Requiring Approval” process to distinguish them.

⁹ The ICA provides that Qwest “shall provide CO-PROVIDER the capability to expedite a service order. . . . If CO-PROVIDER requests a due date earlier than the standard due date interval, then expedite charges may apply.” (ICA Att. 5, Sections 3.2.2.13 & 3.2.4.2.1.) This language is in Attachment 5, which applies to all products and services. Section 31.1 of Part A of the ICA provides that Qwest “shall conduct all activities and interfaces which are provided for under this Agreement with CO-PROVIDER Customers in a carrier-neutral, nondiscriminatory manner.”

¹⁰ Note that “waive charges” refers to other NRCs (such as installation) and not expedite charges, as there are no expedite charges in this process. Eschelon understands that the installation NRC charge will not be waived when Eschelon causes the disconnect in error and has not sought such a waiver here. If the end user customer caused the disconnect, the expedite would not be granted, but that is not the case here. It is a carrier-caused disconnect in error. Eschelon does not get the NRC waiver, as it is the carrier in this case,

Effective Date: The Commission approved the Eschelon-Qwest ICA on April 28, 2000. The mutually agreed upon process was in place before Qwest documented it on its website. On September 22, 2001, Qwest issued a product notification that Qwest had updated its website on methods and procedures for Expedites and Escalations to document the definition of expedite and valid expedite reasons (*i.e.*, the emergency conditions). (*See* Product Notification for Version 1 of the Expedites & Escalations Overview.) This was not a change request or change in process. Qwest specifically recognized in the product notification that “these updates reflect current practice.” *See* <http://www.qwest.com/wholesale/cnla/uploads/PROD%2E09%2E20%2E01%2EF%2E00087%2EF%2EBFRSR%2Edoc>

Products: All (including unbundled loops – analog and high capacity)

Expedite Charge: No additional charge. [The carrier pays the standard installation/order charge generally but does not pay an extra charge for expediting the due date to an earlier date. The same work (as the work included in the standard charge) is performed, but it is just performed earlier.]

Conditions/criteria for obtaining an expedite requiring approval (“Original Conditions”):

- Fire
- Flood
- Medical emergency
- National emergency
- Conditions where your end-user is completely out of service (primary line)
- Disconnect in error by Qwest
- Requested service necessary for your end-user’s grand opening event delayed for facilities or equipment reasons with a future Ready For Service (RFS) date
- Delayed orders with a future RFS date that meet any of the above described conditions

2. Optional, Additional Pay-for-Expedites Not Meeting Criteria Process (Optional “Pre-Approved Expedite” Process)

[*See* “Expedites & Escalations Overview – V11.0”

(http://www.qwest.com/wholesale/downloads/2004/040629/PCAT_Exp_Escl_V11_0_reis_sue.doc)]

Summary: Sometimes a carrier desires an expedite but the situation does not meet the emergency criteria. For example, an existing End User Customer with service may call its carrier and say: “I need to add 2 lines, and I need it within 2 days because my equipment vendor is only available then.” This situation does not meet the above criteria, so historically an expedite was not available. Covad indicated that, if Qwest were to provide expedites in this type of optional situation (*i.e.*, when the above criteria are not met), Covad would be willing to pay an additional charge to obtain an expedite. Covad submitted a Change Request (CR #PC 021904-1) to Qwest’s CMP to request this optional process. The title of Covad’s CR is “Enhancement to Existing Expedite Process

but it does get the expedite at no additional charge over and above that NRC (or, Eschelon is willing to pay the Commission approved rates for costs to Qwest for the expedite, if any).

for Provisioning.” Eschelon supported Covad’s request, so long as the imposition of charges was optional and the expedites meeting the criteria were still available (at no additional charge). In Qwest’s May 12, 2004 Response to the Covad CR, Qwest reassured CLECs that: “If a CLEC chooses not to amend their Interconnection Agreement, the current expedite criteria and process will be used.” *See* http://www.qwest.com/wholesale/cmp/archive/CR_PC021904-1.htm.

In Qwest’s July 15, 2004 Response to Eschelon’s comments on Covad’s CR, Qwest added: “If a CLEC chooses not to sign the amendment and pay the approved rates, this will not impact resources. For Qwest’s Retail and Access customers, they are bound by the terms established in the tariffs (which have been or are in the process of being filed). Qwest did not want to shut the door for its Interconnect customers *because of existing contractual obligations*, so is offering those customers *two options*: 1) To be able to expedite without reason for a per-day improved rate, like the Retail and Access customer, or 2) Continue with the existing process that is in place. Qwest is providing the Interconnect customers an *additional option*. *If the CLEC chooses option 2, and the expedite reason is for one of those listed in the PCAT*, they are given the same opportunity at having the due date requested. This comment is accepted.” (emphasis changed):

http://www.qwest.com/wholesale/downloads/2004/040715/DNLD_QwestResponse_Exp_Escl_V11.doc).

In Qwest’s June 29, 2004 announcement related to Covad’s CR, Qwest said: “Qwest is modifying/changing the existing manual Expedite process to incorporate *two processes*. These are described as Pre-Approved and Expedites Requiring Approval” (emphasis added).

Qwest’s own responses and announcement show that the Covad CR did nothing to alter or eliminate the Expedites Process requiring approval, which remained available for expedites of loop orders when the conditions were met, in addition to the Covad-initiated option, without an ICA amendment. In contrast, Qwest claims in ¶14(B) of its Answer, that “Qwest worked on the process with the industry in CMP for 18 months – from February 2004 to July 2005. Qwest then gave the industry – including Eschelon – until January 2006 to prepare for the new process.” Nothing in Qwest’s responses and announcement, however, suggested that there was going to be an “old process” and a “new process.” Qwest clearly stated that there were “two options” (*see* above), denying that one process would replace the other. CLECs had no reason, therefore, to “prepare” for a new process.

Announcement/Effective Dates: June 29, 2004/July 31, 2004

Products/Pre-Approved Expedite Process: Applies to specified products (see Version 11) only, including unbundled loop (*except for* 2/4 wire analog loops)

Exclusive process for loops? *No*. The Expedites Process (a/k/a “Expedites Requiring Approval”) is still available for all products for no additional charge, if the Original

Conditions are met.¹¹ For example, Qwest provided expedites at no additional charge to Eschelon that completed on January 10, 2005 (AZ PON 467137RAK), and May 11, 2005 (AZ PON CAZ5016941TIH).

Expedite Charge/ Pre-Approved Expedite Process: \$200 per day expedited (*i.e.*, if the standard interval was 5 days, and the order was for a same day expedite, the additional charge would be \$1,000).

Criteria for obtaining / Pre-Approved Expedite Process: Must sign contract amendment, order products on specified list, and payment of additional charge. No need to meet Original Conditions listed above to obtain an expedite at the \$200 per day expedited rate.

Background (see attached documents):

2/20/04 – Covad submitted a Change Request (CR) requesting a process to expedite installations that did not meet Qwest’s Original Conditions for expedites (see above).
(http://www.qwest.com/wholesale/cmp/archive/CR_PC021904-1.htm)

6/15/04 – Qwest sent PROS.06.15.04.F.01792.ExpeditesV11 for review and comments.
<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E06%2E15%2E04%2EF%2E01792%2EExpeditesV11%2Edoc>

6/18/04 – To review CLEC comments and Qwest responses to the Qwest proposed changes see
http://www.qwest.com/wholesale/downloads/2004/040715/DNLD_QwestResponse_Exp_Escl_V11.doc

6/29/04 – Qwest announcement (attached)

7/31/04 Effective date (see above)

3. Expansion of the Original Conditions to Add Additional Conditions

[See “Expedites & Escalation Overview – V22.0”

(http://www.qwest.com/wholesale/downloads/2005/050506/PCAT_Exp_Escl_V22.doc)]

Summary: The status of the Expedites Process requiring approval remained the same. Qwest added three conditions to the list of Original Conditions to expand the occasions upon which Qwest would grant expedites when the conditions were met.

Announcement/Effective Date: May 9, 2005/June 23, 2005

Announcement:

<http://www.qwest.com/wholesale/cnla/uploads/PROS%2E05%2E09%2E05%2EF%2E02892%2EExpedites%5FEscalations%5FV22%2Edoc>

Expedite Charge: No additional charge.

Products: All (including unbundled loops – analog and high capacity). For example, although Covad’s CR had been processed and the optional Pre-Approved for pay process was in place at this time, expedites remained available to CLECs that had not signed that

¹¹ See, e.g., later objection by Integra (#6 below): “When Integra signed the Qwest Expedite Amendment we were not advised that by signing the amendment it would change the current Expedites Requiring Approval process. We signed the amendment believing that this would ADD to our options of having an order completed outside the standard interval.”

amendment but met the emergency conditions. For example, Qwest provided an expedite at no additional charge to Eschelon that completed on July 6, 2005 (PON MN510386T1FAC).

Conditions/criteria for obtaining an expedite requiring approval (with three new conditions highlighted as last three bullet points) (“Original Conditions”):

- Fire
- Flood
- Medical emergency
- National emergency
- Conditions where your end-user is completely out of service (primary line)
- Disconnect in error by Qwest
- Requested service necessary for your end-user’s grand opening event delayed for facilities or equipment reasons with a future Ready For Service (RFS) date
- Delayed orders with a future RFS date that meet any of the above described conditions
- National Security
- Business Classes of Service unable to dial 911 due to previous order activity
- Business Classes of Service where hunting, call forwarding or voice mail features are not working correctly due to previous order activity where the end-users business is being critically affected

4. Expansion of Optional, Additional Pay-for-Expedites Not Meeting Criteria Process (“Pre-Approved Expedite” Process) to Add Two Products

[See “Expedites & Escalation Overview – V27.0”

(http://www.qwest.com/wholesale/downloads/2005/050909/PCAT_Exp_Escl_V27.doc)]

Summary: Qwest added two products to the recent optional Pre-Approved Expedite Process (where a charge applies and the conditions need not be met) with no mention that any products would later be removed from the original Expedites Requiring Approval Process (no charge when Original Conditions are met). At this time (*i.e.*, after the effective date of the Version 27 notice), the original process was still available (at no additional charge) for all unbundled loops when the Original Conditions were met. It did not matter to what products the Pre-Approved process applied or did not apply for CLECs not opting to use that process, because such CLECs could still use the Expedites Process when they met the emergency conditions. In Version 27, Qwest added the following two products to the Pre-Approved Expedite Process: (1) port in/port within associated with certain products; and (2) 2/4 wire analog unbundled loops. In the list of products to which the Pre-Approved Expedite Process applied, 2/4 wire analog unbundled loops were previously listed as an exception. Qwest added 2/4 wire analog unbundled loops to the list by removing this exception to the list of applicable products. This allowed CLECs desiring such a process to expedite unbundled analog loops when the expedite did not meet the Original Conditions. Eschelon did not desire to use an expedite process, except in the emergency kinds of situations that are identified on the list of Original Conditions. Because expedites for all unbundled loops (including 2/4 wire analog unbundled loops) were still available at no charge under the original process when the Original Conditions were met, Eschelon expressed no objection to adding them to the Pre-Approved Expedite Process for CLECs who desired to use that process for expedites not meeting the Original Conditions. Eschelon did inquire, however, as to the

cost if a CLEC should later desire to use that process. *See* <http://www.qwest.com/wholesale/downloads/2005/051011/QwestResponsetoDocumentInReview.doc>

Announcement/Effective Dates: October 12, 2005/October 27, 2005

Products/Pre-Approved Expedite Process: Applies to specified products (see Version 11) only, including unbundled loop (*including* 2/4 wire analog loops)

Exclusive process for loops? *No*. The Expedites Requiring Approval are still available for all products for no additional charge, if the Original Conditions are met. For example, Qwest provided an expedite at no additional charge to Eschelon that was granted on Nov. 7, 2005 (PON CO588026T1FAC).

Expedite Charge/ Pre-Approved Expedite Process: \$200 per day expedited (*i.e.*, if the standard interval was 5 days, and the order was for a same day expedite, the additional charge would be \$1,000).

Criteria for obtaining / Pre-Approved Expedite Process: Must sign contract amendment, order products on specified list (which includes all loops), and payment of additional charge. No need to meet Original Conditions listed above to obtain an expedite at that rate.

5. Qwest Attempted to Change the Expedites Process to Exclude CLEC-Caused Disconnects in Error, But Retracted its Proposal After Eschelon Objected.

[*See* Initial “Expedites & Escalation Overview – V29.0”

(http://www.qwest.com/wholesale/downloads/2005/051014/PCAT_Exp_Escl_V29.doc); *See also* Qwest notice retraction PROS.10.18.05.F.03397.Retract_ExpandEscal_V29 <http://www.qwest.com/wholesale/cnla/uploads/PROS%2E10%2E18%2E05%2EF%2E03397%2ERetract%5FExpandEscal%5FV29%2Edoc>]

Summary: Qwest issued a Version 29 in which it attempted to modify some of the original emergency conditions. For example, one of the conditions states that expedites will be granted for “Conditions where your end-user is completely out of service (primary line).” In its proposed Version 29, Qwest proposed to add to this condition a limiting qualifier that said: “Does not include disconnects in error” to begin to exclude CLEC-caused disconnects in error from the emergency conditions. Qwest issued its Version 29 as a “Level 1” notice, which is defined in the CMP Document as minor changes that do not affect CLEC’s procedures so they can become effective immediately.¹² Eschelon objected to the assignment of a Level 1 designation and objected to Qwest’s description of such changes as “simple clarifications that have not been previously documented.” In fact, under this process, Qwest grants expedites for conditions when CLEC’s end user customer is completely out of service (primary line) due to a CLEC disconnect in error. (*See, e.g.*, CAZ5016941TIH (5/11/04); Z467137RAK (1/10/05.)) After all, CLEC is the carrier, just as Qwest is the carrier when

¹² *See* CMP Document §5.4.2 (“Level 1 changes are defined as changes that do not alter CLEC operating procedures or changes that are time critical corrections to a Qwest product/process. Time critical corrections may alter CLEC operating procedures, but only if such Qwest product/process has first been implemented through the appropriate level under CMP. Level 1 changes are effective immediately upon notification.”).

Qwest disconnects in error. In both cases, the circumstances are different from an error caused by the end user customer. Qwest retracted this notice and did not re-issue it at all (at any Level). Therefore, the Original conditions are still in place and were not modified to exclude CLEC-caused disconnects in error from the emergency conditions.

Announcement/Effective Dates: October 17, 2005/None (Retracted October 18, 2005)

Products: No change (Retracted)

Expedite Charge: No change (Retracted)

Criteria for obtaining: No change (Retracted).

Exclusive process for loops? No change (Retracted)

6. Two Expedite Processes (Requiring Approval and For Pay) Exist, But Qwest Will No Long Honor the Expedites Process Requiring Approval for Unbundled Loop Products, Even When Conditions Met. For Loops, Expedites Only Available If CLEC Agrees to a Per Day Rate Structure.

[See “Expedites & Escalation Overview – V30.0”

(http://www.qwest.com/wholesale/downloads/2005/051018/PCAT_ExpEscl_V30.doc)]

Summary: Qwest’s changes in Version 30 denied the capability to a CLEC with expedite “language in [its] Interconnection Agreement (ICA)” to expedite any product (including all loops) on Qwest’s expanded Pre-Approved Expedite product list, even when the Original Conditions are met. Among other changes, Qwest deleted the quoted phrase in the previous sentence regarding the ICAs from the PCAT (*see* below). Through this change in CMP, Qwest imposed a “per day” expedite rate structure upon CLECs requesting an expedite for loops, even though rate issues are outside the scope of the CMP process. Ironically, however, in response to an Eschelon and McLeod escalation to object, Qwest denied the escalation because rate issues are “outside the scope of the CMP process.” (*See* #6 below.)¹³ As a result of Qwest’s January 3, 2006 Version 30 changes (when combined with those in Version 27), for the first time during the term of the Qwest-Eschelon ICA (since April of 2000), Qwest changed the terms on which expedites were available so that Qwest will not provide the capability to expedite orders under the ICA for unbundled loops, even when the ICA contains expedite language and the Original Conditions are met. As the above examples show, Qwest previously not only did so under the ICA but also did so at no additional charge. The ICA has not changed.¹⁴

¹³http://www.qwest.com/wholesale/downloads/2005/051104/Qwest_Response_to_Escalation_39_McLeodUSA.doc

¹⁴ The ICA provides that its terms cannot be altered without a written amendment of the parties. A party desiring an amendment may request one and, if it is not obtained, seek dispute resolution. Qwest did not do so to obtain an amendment to allow it to refuse to apply the expedites process requiring approval to loops or to impose a new rate structure different from any approved by the Commission. *See* Eschelon-Qwest ICA, Part A, § 17.1: “Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. If either Party desires an amendment to this Agreement during the term of this Agreement, it shall provide written notice thereof to the other Party describing the nature of the requested amendment. If the Parties are unable to agree on the terms of the amendment within thirty (30) days after the initial request therefore, the Party requesting the amendment may invoke the dispute resolution process

Following is the Qwest redline showing these changes from the previous version to Version 30 of its PCAT:

Requesting an expedite follows one of two processes, depending on the product being requested ~~and the language in your Interconnection Agreement (ICA).~~ If the request being expedited is for a product ~~on the list of products contained in the “Pre-Approved Expedites” section below (see below), and~~ your ICA has must contain language supporting expedited requests with a “per day” expedite rate; ~~then the requested does not need approval.~~ If the request being expedited is for a product that is not on the defined list, ~~or your ICA does not support a “per day” expedite rate,~~ then the expedited request follows the process defined in the “Expedites Requiring Approval” section below.

In its November 18, 2005 Response, Qwest gave the following reason for its refusal to provide the capability to expedite orders for loops under the Expedites Process: “Qwest does not sell Unbundled Loops to its end user customers.” In other words, Qwest is apparently claiming there is no retail analogue for loops. Qwest then concludes in the same Response: “so it is not appropriate to make a comparison to retail in this situation.” The Commission, not Qwest, must determine whether the FCC’s tests in the NY 271 Order¹⁵ are met for the provision of UNEs on terms that are just, reasonable, and nondiscriminatory -- in “substantially the same time and manner” for an element with a retail analogue and offering a “meaningful opportunity to compete” when no retail analogue. The FCC stated specifically that the latter retail analogue test is no less rigorous than the first. (*Id.* ¶ 55.) When Qwest decided to change course after six years of operating in an agreed upon matter under the ICA, Qwest should have submitted the issue to the Commission to determine application of this test, not implemented its own, unapproved decision. *See* ICA, Part A, § 17.1.

Announcement/Effective Dates: October 19, 2005/January 3, 2006

Products/Pre-Approved Expedite Process: Applies to specified products (see Version 11) only, including unbundled loop (except for 2/4 wire analog loops until the Version 27 change took effect to include them). Despite earlier effective date for Version 27, Qwest did not change the PCAT to reflect Version 27 until after Version 30 was announced. Therefore, the announcement for Version 30 did not reflect the Version 27 change to add the two products.

Expedite Charge/ Pre-Approved Expedite Process: \$200 per day expedited (*i.e.*, if the standard interval was 5 days, and the order was for a same day expedite, the additional charge would be \$1,000).

Criteria for obtaining / Pre-Approved Expedite Process: Must sign contract amendment with “per day” rate structure, order products on specified list, and payment of additional

under Section 27 of this Part A of this Agreement to determine the terms of any amendment to this Agreement.”

¹⁵ Memorandum Opinion and Order, *In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket No. 99-295, ¶ 44 (rel. December 22, 1999).

charge. No need to meet Original Conditions listed above to obtain an expedite at that rate.

Exclusive process for loops? *Yes, according to Qwest.* Qwest claims the Expedites Requiring Approval are *now no longer available* for all products on the Pre-Approved Expedite list (including all unbundled loops) for no additional charge, even when the Original Conditions are met. The Expedited Requiring Approval process exists as it did before, but Qwest denies the capability to use it for unbundled loops.

7. CLEC Objections, Qwest's Denials, and Dispute Resolution

Although the CMP Document is not part of Eschelon's ICA with Qwest, Eschelon voluntarily followed the CMP objection, escalation, and dispute resolution processes to attempt to resolve this matter. Eschelon also complied with the ICA's dispute resolution provisions before bringing this matter to the Commission.

On October 21, 2005, Eschelon requested a CMP ad hoc call to obtain further information about Qwest's proposed Version 30 changes.

On October 27, 2005, McLeod submitted a written escalation in which McLeod said: "2w/4w analog loops are no longer an exception in the Pre-Approved Expedite process. Thus Qwest will begin charging \$200 per circuit per day expedite fee instead of following the existing process of approving expedites based upon the Expedites Requiring Approval process. . . . McLeodUSA wants 2w/4w loops to remain in the Expedites Requiring Approval process and thus incur no charges for an approved expedite. . . . Makes it almost impossible for McLeodUSA to expedite with such a high charge for just 2w/4w loop service. . . . McLeodUSA wants 2w/4w loops to remain in the Expedites Requiring Approval process and thus incur no charges for an approved expedite."¹⁶ See

http://www.qwest.com/wholesale/downloads/2005/051028/Escalation_39_Mcleod_PROS_09_12_05_F_0342_Expedites_Escalations_V27.doc. McLeod and Eschelon escalated these issues after Qwest announced both Versions 27 and 30 so it had now become clear that Qwest was attempting to deny the capability to use the Expedites requiring approval process for unbundled loops, though it was unclear through which Version Qwest had actually done so.¹⁷

¹⁶ McLeod cited the Version 27 Qwest notice in its escalation (and not also Version 30). By this time, however, Version 30 had been announced and the substance of McLeod's escalation addressed the problem created by the two versions combined. As indicated below, Qwest recognized in its response regarding Version 30 that CLEC's were commenting to multiple notices together. Also, Qwest later claimed that the issue of Qwest's process change resulting in a change in the rate and application of the rate was outside the scope of CMP. Qwest thus rendered further CMP escalation moot, as it had both provided its binding denial and indicated that it would not discuss the issue again in CMP.

¹⁷ Qwest issues a series of notices in a short amount of time that created confusion. It was so confusing that Qwest, in its Nov.18, 2005 had to both describe the overlapping changes and include a complicated timeline to show what it said it had done.

Eschelon joined McLeod's escalation. (Qwest did not formally post the participants at that time but has acknowledged in writing that Eschelon joined the escalation and that Qwest sent its escalation response to Eschelon.) (*See* Qwest/Jill Martain 3/28/06 email.)

On November 1, 2005, a CMP ad hoc call was held on which Qwest and CLECs discussed CLEC's questions and concerns about Versions 27 and 20. Eschelon participated in the ad hoc call.

On November 3, 2005, Eschelon objected to Qwest's Version 30 changes. ***McLeod, Covad, Integra, and PriorityOne also objected.*** CLECs objected, for example, on the grounds that the change resulted in discrimination (between Qwest retail and CLECs & between facility based and non-facility based CLECs)¹⁸ and created unilateral, unapproved rate changes. Qwest issued a written denial.¹⁹ For CLEC objections and Qwest's response, *see* http://www.qwest.com/wholesale/downloads/2005/051118/PROS.11.18.05.F.03492.FNL_Exp-EscalationsV30Qwest%20Response.doc

In Qwest's response sent by email on November 7, 2005 (and dated November 4, 2005), Qwest issued a binding written denial of the McLeod-Eschelon escalation. In Qwest's response, Qwest said: "In response to McLeod's concern around the costs associated with an expedited request; discussion around rates associated with an Interconnection Agreement are outside the scope of the CMP process. Qwest maintains its position that 2w/4w analog loops be included in the pre-approved expedite process to create consistencies across the UBL product line as well as other products that follow the designed services flow." *See* http://www.qwest.com/wholesale/downloads/2005/051104/Qwest_Response_to_Escalation_39_McLeodUSA.doc

On November 18, 2005, Qwest also issued a written denial of the objections of multiple CLECs (including Eschelon) to Version 30. Qwest acknowledged in its response that it had distributed multiple notices on this topic and thus that comments from CLECs dealt with both Versions 27 and 30.²⁰ By this time CLECs had already received the binding denial to their escalation (*see* previous paragraph). In the previous denial of the McLeod-Eschelon escalation, even though Qwest had added its requirement for a "per day" rate structure through CMP, Qwest said that rate issues were outside the scope of CMP and therefore Qwest would not discuss in CMP. Qwest had already made clear, therefore, that no further CMP escalation was necessary or would be granted by Qwest.

The CMP Document includes escalation and dispute resolution procedures in Sections 14.0 and 15.0. The CMP document states, in Section 15.0, that: "Without the necessity

¹⁸ The Eschelon-Qwest ICA contains several provisions requiring nondiscrimination. Section 31.1 of Part A, for example, provides that Qwest "shall conduct all activities and interfaces which are provided for under this Agreement with CO-PROVIDER Customers in a carrier-neutral, nondiscriminatory manner."

¹⁹ CMP is not a consensus process, as described above in the Background section.

²⁰ Documentation is cited above (as CLEC objections and Qwest response are at the same URL). *See* http://www.qwest.com/wholesale/downloads/2005/051118/PROS.11.18.05.F.03492.FNL_Exp-EscalationsV30Qwest%20Response.doc

for a prior ADR Process, Qwest or any CLEC may submit the issue, following the commission's established procedures, with the appropriate regulatory agency requesting resolution of the dispute. This provision is not intended to change the scope of any regulatory agency's authority with regard to Qwest or the CLECs. This process does not limit any party's right to seek remedies in a regulatory or legal arena at any time."²¹ There is no time limit on requesting resolution, which may occur "at any time." *See id.* The process provides that "any CLEC" may submit an issue to the Commission for resolution. The CMP dispute resolution process anticipates, therefore, that the dispute will be a dispute between an individual CLEC and Qwest. There is no multiple-CLEC requirement or other CMP-specific type of dispute resolution. Under the CMP dispute resolution process (§15), any individual CLEC may submit an issue to the Commission at any time, as Eschelon has done in this case.

Eschelon did not rush to judgment. Eschelon continued to request expedites, which provided Qwest with an opportunity to comply with the ICA. If Eschelon had complained earlier, it would undoubtedly be facing claims now that it did not give Qwest a fair chance to do so. In addition, Eschelon needed to assess the impact on the business, given the high cost and drain on resources caused by litigating individual issues. The severity of the particular rehabilitation center example in Arizona, involving serious 911 issues, compelled action. In addition, it became clear after a number of requests that this was not a Qwest compliance problem but a Qwest policy. Qwest will impose its position that it can unilaterally breach a six-year mutually agreed upon term under the ICA, and create a required "per day" rate structure, without filing anything with the Commission or gaining its approval.²² It requires a Commission proceeding, therefore, to resolve the issue.

In addition to objecting to Qwest's changes and joining McLeod's escalation in CMP, Eschelon later escalated with Qwest pursuant to the dispute resolution provisions of the Qwest-Eschelon ICA (Part A, §27.2). On a March 31, 2006 dispute resolution call with Qwest, the CMP issues were discussed and, in Eschelon's April 3, 2006 letter to Qwest relating to dispute resolution in this matter, Eschelon specifically cited both Qwest CMP notices (Versions 27 and 30) as subject to the escalation and dispute resolution. Qwest cannot legitimately claim to be unaware of Eschelon's CMP objection and escalation and their relationship to this dispute when the dispute resolution letter contained the following detailed information in the subject line: "Joint McLeod-Eschelon Escalation #39 Re. PROS.09.12.05.F.03242.Expedites_Escalations_V27 – Denied by Qwest 11/4/05; Eschelon 11/3/05 objections to PROS.10.19.05.F.03380.ExpeditesEscalationsV30." Qwest is well aware, therefore, that Eschelon has objected to Qwest's change in CMP, escalated the matter in CMP, and pursued both CMP and ICA escalation and dispute resolution to resolve this dispute.

²¹http://www.qwest.com/wholesale/downloads/2006/060130/QwestWholesaleChangeManagementDocument_01_30_06_1_.doc

²² This is not the first time Qwest has done so. Its actions here, for example, are similar to those rejected by this Commission in the Qwest 271 proceeding. Qwest is on notice through these documents and that proceeding that it should not have implemented such a change without first seeking Commission approval. *See, In re. US West Communication, Inc.'s, Compliance with Section 271 of the Telecommunications Act of 1996*, ACC Docket No. T-00000A-97-0238, Decision No. 66242, ¶109 (Sept. 16, 2003).

Section 27.2 of Part A of the ICA provides that, to the extent that Qwest and Eschelon “are unable to agree on certain issues during the term of this Agreement, the Parties may identify such issues for arbitration before the Commission.”

Pursuant to the dispute resolution provisions of both the ICA and the CMP document, the next step was to bring the issue to the state commission for resolution, as Eschelon has done in this case.