

Gregory J. Kopta (WSBA No. 20519)
Davis Wright Tremaine LLP
2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688
Telephone: 206-628-7692
Facsimile: 206-628-7699
Email: gregkopta@dwt.com

Karen L. Clauson
Senior Director of Interconnection/Associate General Counsel
Eschelon Telecom of Utah, Inc.
730 2nd Ave. South, Suite 900
Minneapolis, MN 55402
Telephone: 612 436 6026
Facsimile: 612 436 6816
Email: klclauson@eschelon.com

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
MICHAEL STARKEY
ON BEHALF OF
ESCHELON TELECOM, INC.

June 29, 2007

TABLE OF CONTENTS

| | |
|--|------------|
| I. INTRODUCTION..... | 1 |
| II. OVERVIEW AND INTRODUCTION TO DIRECT TESTIMONY | 2 |
| A. ESCHELON BUSINESS NEED FOR INTERCONNECTION AGREEMENT TERMS..... | 10 |
| B. ISSUES FOR WHICH QWEST AGREES COMMISSION SHOULD ADOPT ICA LANGUAGE | 12 |
| C. ISSUES WHICH QWEST SEEKS TO EXCLUDE FROM THE ICA AND IGNORE THE NEED FOR CONTRACTUAL CERTAINTY | 14 |
| 1. QWEST POSITION ON EXCLUDING ISSUES FROM ICA | 20 |
| 2. REJECTION OF QWEST’S PROPOSAL TO EXCLUDE TERMS FROM ICA | 24 |
| 3. CMP HISTORY ESTABLISHES ICA TERMS MAY VARY AND, WHEN THEY DO, ICA CONTROLS OVER CMP..... | 26 |
| 4. CMP BACKGROUND: REALITIES OF CMP AND PCAT | 38 |
| a. CMP TERMINOLOGY AND PROCEDURES | 42 |
| b. EXAMPLES: QWEST VACILLATES OR MANEUVERS ON CMP | 51 |
| i. CRUNEC EXAMPLE | 52 |
| ii. DESIGN CHANGES EXAMPLE | 63 |
| iii. MINNESOTA 616 EXAMPLE | 67 |
| iv. DELAYED ORDER EXAMPLE | 77 |
| v. SECRET TRRO PCATS EXAMPLE..... | 85 |
| 5. ESCHELON’S POSITION IS CONSISTENT WITH SECTION 252 AND CMP SCOPE AND EACH ISSUE REQUIRES DISPOSITIVE ICA LANGUAGE | 106 |
| III. SUBJECT MATTER NO. 1: INTERVAL CHANGES AND PLACEMENT | 107 |
| Issue No. 1-1 and subparts: ICA Sections 1.7.2; 7.4.7, 9.23.9.4.3, Exhibit C (Group 2.0 & Group 9.0), Exhibit I (Section 3), Exhibit N, Exhibit O | 107 |
| Issue No. 1-1: Changes to Intervals – Section 1.7.2 and Exhibits N and O | 114 |
| Issue No. 1-1(a): Interconnection Trunks – Section 7.4.7; Issue 1-1(b): UDIT Rearrangements—Exhibit C, Group 2.0; Issue 1-1(c): LIS Trunking— Exhibit C, Group 9.0; Issue 1-1(e): Intervals for Loop Mux Combinations (LMC)—Section 9.23.9.4.3 (Eschelon)/ Section 24.4.4.3 (Qwest)..... | 121 |
| Issue No. 1-1(d): ICB Provisioning Intervals – Exhibit I, Section 3 | 122 |
| IV. SUBJECT MATTER NO. 14: NONDISCRIMINATORY ACCESS TO UNES..... | 127 |
| Issue No. 9-31: ICA Section 9.1.2 | 127 |
| V. SUBJECT MATTER NO. 16. NETWORK MAINTENANCE AND MODERNIZATION..... | 143 |
| Issue Nos. 9-33 and 9-34: ICA Section 9.1.9 | 143 |

| | |
|--|------------|
| VI. SUBJECT MATTER NO. 18: CONVERSIONS | 167 |
| Issue Nos. 9-43 and 9-44 and subparts: ICA Sections 9.1.15.2.3; 9.1.15.3 and subparts; 9.1.15.3.1; 9.1.15.3.1.1; 9.1.15.3.1.2 | 167 |
| Issue No. 9-43: Conversions – Circuit ID, Section 9.1.15.2.3..... | 178 |
| Issue No. 9-44 – Manner of Conversion – Section 9.1.15.3..... | 183 |
| Issue No. 9-44(a): Manner of Conversion – Use of adder or surcharge – Section 9.1.15.3.1..... | 184 |
| Issue No. 9-44(b): Manner of Conversion – Use of USOC – Section 9.1.15.3.1.1..... | 186 |
| Issue No. 9-44(c): Manner of Conversion – Same USOC – Section 9.1.15.3.1.1 | 187 |
| VII. SUBJECT MATTER NO. 24: LOOP-TRANSPORT COMBINATIONS | 189 |
| Issue No. 9-55: ICA Sections 9.23.4; 9.23.4.4; 9.23.4.4.1; 9.23.4.5; 9.23.4.6; 9.23.4.5.4..... | 189 |
| VIII. SUBJECT MATTER NO. 27: MULTIPLEXING (LOOP-MUX COMBINATIONS)..... | 198 |
| Issue No. 9-61 and subparts: ICA Sections 9.23.9 and subparts; 24.4 and subparts; 9.23.2; 9.23.4.4.3; 9.23.6.2; 9.23.9.4.3; 9.23.4.4.3; 9.23.6.2; Exhibit C; 24.4.4.3; Exhibit A; Sections 9.23.6.1 and subparts and 9.23.6.1 and subparts | 198 |
| Issue No. 9-61: Loop-Mux Combination (“LMC”) – Placement – Section 9 and Section 24..... | 208 |
| Issue No. 9-61(a): Loop-Mux Combination (LMC) – LMC Loop versus LMC, Sections 9.23.9 and subparts, 24.4 and subparts, and 9.23.2 | 209 |
| Issue No. 9-61(b): LMC Multiplexing – Intervals - Sections 9.23.9.4.3, 9.23.4.4.3, 9.23.6.2, Exhibit C, and 24.4.4.3 | 213 |
| Issue No. 9-61(c): LMC Multiplexing - Exhibit A Section 9.23.6.6 and subparts | 215 |

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**
3 **RECORD.**

4 A. My name is Michael Starkey. My business address is QSI Consulting, Inc., 243
5 Dardenne Farms Drive, Cottleville, Missouri 63304.

6 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION**
7 **WITH THE FIRM?**

8 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated
9 industries, econometric analysis and computer-aided modeling. I currently serve
10 as the firm's President.

11 **Q. PLEASE PROVIDE A SYNOPSIS OF YOUR EDUCATIONAL**
12 **BACKGROUND AND RELEVANT WORK EXPERIENCE.**

13 A. Included with this testimony as Exhibit Eschelon 1.1 is a thorough description of
14 my educational background and relevant work experience. In brief, I have been a
15 consultant to telecommunications providers, equipment manufacturers,
16 government agencies and other private parties since 1996. Previous to my
17 consulting experience, I served as the Director of Telecommunications for the
18 Maryland Public Service Commission ("PSC") and prior to that, as the Office of
19 Policy and Planning's Senior Policy Analyst for the Illinois Commerce
20 Commission. I began my career as a Senior Economist at the Missouri PSC.

1 Throughout my career I have spent a great deal of time studying
2 telecommunications networks, including substantial time and effort aimed at
3 developing rationale, efficient means by which competing communications
4 carriers can interconnect their respective facilities. I have likewise analyzed the
5 underlying economic characteristics of communications networks and have on
6 numerous occasions provided expert testimony regarding the costs of providing
7 various services. Finally, I am very familiar with the negotiation, mediation and
8 arbitration processes envisioned by Section 252 of the Telecommunications Act
9 of 1996 and I have, since 1996, participated in dozens of negotiations and
10 arbitrations¹ on behalf of some of the largest, and smallest, carriers in the nation.

11 **II. OVERVIEW AND INTRODUCTION TO DIRECT TESTIMONY**

12 **Q. HOW IS ESCHELON'S DIRECT TESTIMONY PHYSICALLY**
13 **ORGANIZED?**

14 A. Eschelon's direct testimony follows the organization of the Issues by Subject
15 Matter List. I have provided as Exhibit Eschelon 1.2 a copy of the Issues by
16 Subject Matter List annotated to indicate where in Eschelon's direct testimony the
17 discussion of that Subject Matter may be found (*i.e.*, which witness discusses that

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").

1 Subject Matter for Eschelon).² The Issues by Subject Matter List is a roadmap to
2 all of the open issues, ICA Section numbers, and groupings of issues. The Issues
3 by Subject Matter List follows the same grouping and issue numbering as found
4 in the Joint Disputed Issues Matrix (“Disputed Issues Matrix”),³ for ease of
5 reference. In the Issues by Subject Matter List and the Disputed Issues Matrix,
6 the issues are generally discussed in the order in which they appear in the
7 Interconnection Agreement (“ICA”). Generally, the first number of the Issue
8 Number refers to the Section number of the ICA. For example, Issue 2-3 refers to
9 contract language that appears in Section 2 of the ICA (entitled “Interpretation
10 and Construction”) and issue number three of the total open issues.⁴

² The Issues by Subject Matter List (non-annotated) was provided as Exhibit 2 to Eschelon’s Petition for Arbitration.

³ 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 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.

⁴ There will be gaps in the issue numbering. For example, there is no issue 1-2. These gaps are generally due to renumbering or closure of issues.

1 Of the Subject Matter groupings identified on the Issues by Subject Matter List
2 filed with Eschelon's Petition, 25 remain wholly or partially disputed.⁵ The
3 discussion of these Subject Matters in individual Eschelon testimony will begin
4 with headings indicating the Subject Matter number, followed by the Issue
5 Numbers for that grouping and then the ICA Section numbers for each issue. In
6 an electronic version of Eschelon's Direct Testimony, which will be provided on
7 CD-ROM in addition to the hardcopy version, the files are linked such that the
8 reader may generally click on the Subject Matter heading (1-46) in the Issues by
9 Subject Matter List, and it will take the reader to that portion of Eschelon's direct
10 testimony. It is Eschelon's hope that this will allow the Commission an efficient
11 way to review each of the issues.

12 **Q. IN TERMS OF CONTENT, HOW IS ESCHELON'S DIRECT**
13 **TESTIMONY ORGANIZED?**

14 A. I begin with an overview of the open issues and address Qwest's claim, with
15 respect to a number of those issues, that they should be excluded from the
16 interconnection agreement and dealt with outside of the contract, such as in
17 Qwest's Change Management Process. After this overview, I turn to the

⁵ At the time that the Issues by Subject Matter List was filed as Exhibit 2 to Eschelon's Petition for Arbitration in this proceeding, there were 46 Subject Matter groupings on the list (with twenty of those subject matters – 15, 19, 20, 21, 23, 28, 30, 31A, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 46 and 47 – shown as intentionally blank). At the time of filing of this testimony, 25 Subject Matter groupings remain wholly or partially disputed. For each issue that has been partially or totally closed, Eschelon witnesses will provide the agreed upon language in Direct Testimony. Eschelon Direct Testimony will also point out any new or altered proposal for any of the remaining open issues. I have provided as Exhibit Eschelon 1.2 to this testimony an updated Issues by Subject Matter List, showing the current status of the disputed issues (including the issues that have closed) and the Eschelon witness that addresses each disputed issue.

1 individual issues set forth in the Issues by Subject Matter List. In my testimony
2 and the direct testimony of the other Eschelon witnesses, Eschelon addresses each
3 Subject Matter individually and asks the Commission to consider it on the merits.
4 Eschelon generally begins with an explanation of the business need that led
5 Eschelon to bring the particular issue – out of the numerous other issues that arise
6 in the Qwest-Eschelon business relationship – to the Commission for resolution.
7 Eschelon identifies its proposed language, briefly describes Qwest’s position, and
8 then discusses the reasons why the Commission should adopt Eschelon’s
9 proposal.

10 **Q. HOW IS CONTRACT LANGUAGE IDENTIFIED IN ESCHELON’S**
11 **TESTIMONY?**

12 A. I provide the language proposals of both Eschelon and Qwest for each issue. The
13 format used to identify the disputed language in my testimony will be similar to
14 the format shown for Eschelon’s proposed language in Exhibit 3 to Eschelon’s
15 Petition for Arbitration (the Joint Disputed Issues Matrix). When Eschelon’s
16 proposed language is shown, any language that is proposed by Eschelon and
17 opposed by Qwest will be shown in underlined text to denote that the language is
18 not agreed to. Oftentimes it is helpful to review Qwest’s language alongside that
19 of Eschelon’s within Eschelon’s proposed language to illustrate the differences in
20 proposals, and in these instances, Qwest’s proposed language is shown in
21 ~~strikeout text~~. The same goes for when Qwest’s proposed language is displayed:
22 Qwest proposed language opposed by Eschelon is shown in underlined text, and

1 Eschelon’s language is shown in ~~strikeout text~~. Any agreed to language that is
2 provided for context will not be highlighted in any way (*i.e.*, not underlined and
3 not strikeout).

4 **Q. ARE THE 25 SUBJECT MATTERS THAT REMAIN OPEN PROPERLY**
5 **BEFORE THIS COMMISSION FOR DETERMINATION OF**
6 **APPROPRIATE INTERCONNECTION AGREEMENT LANGUAGE**
7 **RESOLVING THE ISSUE?**

8 A. Yes. Section 252(b) of the federal Telecommunications Act (“the Act”) indicates
9 that interconnection “agreements [will be] arrived at through compulsory
10 arbitration” for issues raised in the arbitration petition and any response thereto.⁶
11 The issues are properly before the Commission for action to determine the
12 interconnection agreement’s terms.

13 The 25 open Subject Matters represent only a small number of the total issues that
14 Eschelon and Qwest confront in their business relationship. These 25 Subject
15 Matters, however, rise to the level of needing Commission action to arrive at
16 interconnection agreement terms. A key factor in determining the importance of
17 an issue is often the effect on End User Customers. With respect to many of the
18 issues, therefore, Eschelon will describe the customer impact when explaining
19 Eschelon’s business need reflected in the issue to be arbitrated. If the End User
20 Customer is harmed, Eschelon’s reputation and its ability to compete

⁶ 47 U.S.C. §252(b).

1 meaningfully are harmed as well. Many of the terms and conditions that Eschelon
2 believes need to be included in the ICA have a direct impact on End User
3 Customers, and those terms and conditions should not be changed without
4 Commission oversight through approval of contract amendments.

5 Eschelon has no incentive to arbitrate unnecessarily. Qwest is the dominant
6 carrier, and Eschelon is dependent on Qwest for the products and services
7 governed by this Section 251/252 interconnection agreement. Eschelon's annual
8 revenue is less than 2% of Qwest's annual revenue.⁷ It is too time consuming and
9 expensive for Eschelon to arbitrate unnecessarily. The Commission can fairly
10 draw an inference that Eschelon – in bringing forward in this arbitration a
11 relatively few, but specific, issues⁸ winnowed from the vast number of day-to-day
12 business issues – is raising them because the business need is compelling and a
13 Commission determination of *ICA language* resolving the substance of each issue
14 is critical. Obtaining ICA language resolving the language issues now will help
15 avoid future disputes.

16 **Q. ARE THERE ANY EXHIBITS TO YOUR DIRECT TESTIMONY?**

⁷ Eschelon's business is described further in the Testimony of Mr. Denney.

⁸ Qwest will likely enumerate for the Commission the number of issues that Eschelon has brought to Qwest's Change Management Process (CMP). In addition, Eschelon must raise many more issues in weekly and monthly communications to the Qwest service management team, as described in the Testimony of Ms. Johnson. Although Qwest may attempt to characterize the number of arbitration issues as large (and the workload may feel that way), the number selected for arbitration is very small when compared to the total potential number.

1 A. Yes. Exhibits Eschelon 1.1 through 1.7 are exhibits to my direct testimony.

2 These exhibits are described as follows:

- 3 • Exhibit Eschelon 1.1: Curriculum Vitae
- 4 • Exhibit Eschelon 1.2: Issues by Subject Matter List (updated and
5 annotated)⁹
- 6 • Exhibit Eschelon 1.3: Qwest form showing that Qwest has impacted
7 CLEC customer address and circuit i.d. information readily available to it
8 when performing network maintenance and modernization activities (Issue
9 9-34)
- 10 • Exhibit Eschelon 1.4: Minnesota PUC Orders dated 7/31/03 and 11/12/03
11 *In The Matter of a Request by Eschelon Telecom for an Investigation*
12 *Regarding Customer Conversion by Qwest and Regulatory Procedures.*
13 Minnesota PUC Docket P-4211C-03-616 (“MN 616 orders”).
- 14 • Exhibit Eschelon 1.5: Pages from the Minnesota hearing transcript in
15 OAH Docket No. 3-2500-17369-2/PUC Docket No. P5340,421/IC-06-
16 768, *In the Matter of the Petition of Eschelon Telecom, Inc., for*
17 *Arbitration of an Interconnection Agreement with Qwest Corporation*

⁹ The Issues by Subject Matter List filed as Exhibit 2 to Eschelon’s Petition for Arbitration has been updated and annotated in Exhibit Eschelon 1.2 to show closed issues and to show which Eschelon witness addresses each issue in his or her direct testimony.

1 *Pursuant to 47 U.S.C. 252(b)* (“Eschelon-Qwest Minnesota
2 Arbitration”).¹⁰

3 • Exhibit Eschelon 1.6: Pages from the Arizona hearing transcript in ACC
4 Docket Nos. T-03406A-06-0572/T-01051B-06-0572, *In the Matter of the*
5 *Petition of Eschelon Telecom of Arizona, Inc. for Arbitration with Qwest*
6 *Corp. Pursuant to 47 U.S.C. Section 252 of the Federal*
7 *Telecommunications Act of 1996* (“Eschelon-Qwest Arizona Arbitration”).

8 • Exhibit Eschelon 1.7: Pages from the Colorado hearing transcript in
9 COPUC Docket No. 06B-497T, *In the Matter of the Petition of Qwest*
10 *Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47*
11 *U.S.C. Section 252 of the Federal Telecommunications Act of 1996*
12 (“Eschelon-Qwest Colorado Arbitration”).

¹⁰ The Minnesota Arbitrators’ Report, the Minnesota Commission’s Order relating to the Minnesota Arbitrators’ Report, and the Minnesota Commission Order Denying Qwest’s Petition for Reconsideration are attached to the testimony of Mr. Denney as Exhibits Eschelon 2.24, 2.25 and 2.26, respectively. See Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding [“MN PUC Arbitration Order”], *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*, (March 30, 2007) [“Minnesota arbitration”] (Exhibit Eschelon 2.25); see also Arbitrators’ Report, Minnesota arbitration, OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (Jan. 16, 2006) (“MN Arbitrators’ Report”) (Exhibit Eschelon 2.24); and Minnesota PUC Order Denying Reconsideration, Docket No. P-5340, 421/IC-06-768, June 4, 2007.

1 A. ESCHELON BUSINESS NEED FOR INTERCONNECTION
2 AGREEMENT TERMS

3 **Q. WHAT CRITICAL BUSINESS NEEDS ARE COMMON TO THE**
4 **REMAINING 25 SUBJECTS FOR WHICH ESCHELON SEEKS**
5 **DISPOSITIVE¹¹ LANGUAGE IN THE ICA?**

6 A. Interconnection agreements are contracts. A primary reason why Eschelon needs
7 an interconnection agreement addressing these issues is fundamental to most
8 contracts – Eschelon needs certainty to plan and manage its business. The FCC
9 has specifically recognized this need for CLECs to “rely on” interconnection
10 agreements “on a permanent basis.”¹² While the interconnection agreement can
11 be amended and therefore is not “permanent” in the sense that it is frozen in time,
12 the FCC recognized that permanency is needed for the term of the contract when
13 the parties do not agree to changes through contract amendment. Eschelon needs
14 certainty and reliability to plan its business and effectively compete. The FCC
15 has also recognized that interconnection agreement terms can be “many and
16 complicated.”¹³

¹¹ By “dispositive,” I mean language that resolves the substantive dispute, and not language that defers the dispute for another day (such as language referring to Qwest’s ever changing Product Catalog, or “PCAT”).

¹² Notice of Apparent Liability for Forfeiture, *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263 (March 11, 2004) (“*FCC Forfeiture Order*”) at ¶ 32.

¹³ Memorandum and Order, *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, (rel. October 4, 2002) (“*Declaratory Ruling*”) at ¶ 8.

1 Another business need common to these Subject Matters is the need for
2 Commission involvement and oversight to address the imbalance created by
3 Qwest's continued dominance in the areas governed by the interconnection
4 agreement. In terms of arbitrating issues brought to the Commission, Qwest's
5 special status as an incumbent monopoly provider for Section 251 products and
6 services requires Commission intervention to break the deadlock when Qwest and
7 Eschelon disagree. Eschelon does not have any of the leverage in negotiations
8 that would result from saying it will go elsewhere to obtain the product, because
9 Qwest is its only source for these types of products.¹⁴ Section 252(b) addresses
10 the lack of this more typical customer leverage by instead giving CLECs an
11 ability to obtain Commission resolution of disputes and interconnection
12 agreement terms through "compulsory arbitration." To fulfill this function of
13 Section 252(b), an arbitration decision needs to provide the type of certainty and
14 reliability recognized as a business need by the FCC. All of the issues in this
15 proceeding have been negotiated by Eschelon and Qwest and are, therefore,
16 properly before the Commission for resolution on their merits in this arbitration.

¹⁴ See, e.g., TRRO ¶ 2 ("By using our section 251 unbundling authority in a more targeted manner, this Order imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition.").

1 B. ISSUES FOR WHICH QWEST AGREES COMMISSION SHOULD
2 ADOPT ICA LANGUAGE

3 **Q. DOES QWEST AGREE THAT THE ISSUES THAT ESCHELON IS**
4 **ASKING THE COMMISSION TO RESOLVE IN THIS COMPULSORY**
5 **ARBITRATION SHOULD RESULT IN DISPOSITIVE**
6 **INTERCONNECTION AGREEMENT LANGUAGE?**

7 A. For certain issues, yes, Qwest agrees. As indicated by Qwest’s proposed
8 language and its position statements in the Joint Disputed Issues Matrix in other
9 states, Qwest arranges the issues into two categories: (1) interconnection
10 agreement issues that do not belong in the Change Management Process
11 (“CMP”)¹⁵ so that Qwest agrees the Commission may decide upon ICA language
12 resolving the issue in this arbitration [“contractual non-CMP issues”]; and (2)
13 issues that Qwest claims inherently belong in CMP so that Qwest argues the
14 Commission should not decide upon dispositive ICA language in this arbitration
15 and should defer its oversight and decision making authority to CMP [“inherent
16 CMP issues”].

¹⁵ I discuss further Qwest’s claims regarding the ICA and the need for contractual certainty below. For a more detailed description of the terms of CMP, *see* the Qwest “CMP Document” which sets forth the rules for conduct of CMP. The CMP Document is attached to the Testimony of Ms. Johnson as Exhibit Eschelon 3.10. (It is also Exhibit G to the SGAT and the proposed ICA.) The “scope” provision of the CMP Document (§1.0) provides that “CMP provides a means to address changes that support or affect pre-ordering, ordering/provisioning, maintenance/repair and billing capabilities and associated documentation and production support issues for local services (local exchange services) provided by Competitive Local Exchange Carriers (CLECs) to their end users.” About this provision, a Minnesota Department of Commerce witness testified in the Minnesota arbitration: “It is important to note that in defining the scope of CMP, Qwest’s CMP document states that ‘CMP provides *a* means to address changes’ to OSS interfaces, products, and processes. It does not state ‘the *only* means’ or even ‘*the* means.’” See DOC Doherty MN Reply, p. 10, lines 15-17 (emphasis in original).

1 **Q. FOR WHICH ISSUES DO ESCHELON AND QWEST AGREE THAT THE**
2 **COMMISSION SHOULD DECIDE UPON DISPOSITIVE CONTRACT**
3 **LANGUAGE ADDRESSING THE MERITS OF THE ISSUE?**

4 A. Eschelon and Qwest agree that the Commission should establish dispositive ICA
5 language for the following Subject Matters¹⁶ and decide them individually and on
6 the merits to determine ICA language that provides certainty as to how issues will
7 be handled for the term of the contract, unless amended:¹⁷

- 8 • **RATE APPLICATION (2)**¹⁸: Issue No. 2-3
- 9 • **EFFECTIVE DATE OF LEGALLY BINDING CHANGES (3)**: Issue
10 No. 2-4
- 11 • **DESIGN CHANGES (4)**: Issue No. 4-5 and subparts¹⁹
- 12 • **DISCONTINUATION OF ORDER PROCESSING AND**
13 **DISCONNECTION (5)**: Issue Nos. 5-6, 5-7 and subpart
- 14 • **DEPOSITS (6)**: Issue Nos. 5-8, 5-9, 5-11, and 5-12
- 15 • **REVIEW OF CREDIT STANDING (7)**: Issue No. 5-13
- 16 • **COPY OF NON-DISCLOSURE AGREEMENT (8)**: Issue 5-16
- 17 • **TRANSIT RECORD CHARGE AND BILL VALIDATION (9)**: Issue
18 Nos. 7-18, 7-19
- 19 • **NONDISCRIMINATORY ACCESS TO UNES (14)**: Issue No. 9-31
- 20 • **NETWORK MAINTENANCE AND MODERNIZATION (16)**: Issue
21 Nos. 9-33 and 9-34²⁰
- 22 • **WIRE CENTER (17)**: Issues 9-37 – 9-42

¹⁶ Currently, 19 out of 25 open Subject Matters.

¹⁷ This is Eschelon's current understanding based on Qwest's position statements in the Joint Disputed Issues Matrix and testimony in other states. For these Subject Matters, Qwest does not argue that the issue should be addressed through CMP. As discussed below and demonstrated by the Exhibits to the Testimony of Ms. Johnson, Qwest's position on whether an issue belongs in CMP or not vacillates, so the list is a moving target.

¹⁸ The number in parentheses indicates the Subject Matter Number on the Issues by Subject Matter List.

¹⁹ Qwest's position as to whether design changes is a CMP issue has vacillated over time. See my discussion of the Design Changes example below, *e.g.*, quoting Exhibit 2 to Minnesota Petition for Arbitration (Joint Disputed Issues Matrix) (May 26, 2006), Qwest position statement at p. 15.

²⁰ Issues 9-33(a), 9-35 and 9-36 are closed.

- 1 • **UNBUNDLED CUSTOMER CONTROLLED REARRANGEMENT**
- 2 **ELEMENT (UCCRE) (22)**: Issue No. 9-53
- 3 • **APPLICATION OF UDF-IOF TERMINATION (FIXED) RATE**
- 4 **ELEMENT (22A)**: Issue 9-51
- 5 • **LOOP-TRANSPORT COMBINATIONS (24)**: Issue No. 9-55
- 6 • **SERVICE ELIGIBILITY CRITERIA – AUDITS (25)**: Issue No. 9-56
- 7 • **COMMINGLED EELS/ARRANGEMENTS (26)**:²¹ Issue Nos. 9-58
- 8 and subparts, 9-59
- 9 • **MULTIPLEXING (LOOP-MUX COMBINATIONS) (27)**: Issue No.
- 10 9-61 and subparts
- 11 • **RATES FOR SERVICES (44)**: Issue Nos. 22-88 and subparts and 22-89
- 12 • **UNAPPROVED RATES (45)**: Issue No. 22-90 and subparts

13 **C. ISSUES WHICH QWEST SEEKS TO EXCLUDE FROM THE ICA**

14 **AND IGNORE THE NEED FOR CONTRACTUAL CERTAINTY**

15 **Q. FOR WHICH ISSUES DO ESCHELON AND QWEST DISAGREE THAT**

16 **THE COMMISSION SHOULD DECIDE UPON DISPOSITIVE**

17 **CONTRACT LANGUAGE ADDRESSING THE MERITS OF THE ISSUE**

18 **IN THIS ARBITRATION?**

19 **A.** The list of open Subject Matters on which Eschelon and Qwest disagree is shown

20 below.²² For each of these issues, Eschelon asks the Commission to decide the

21 issue on the merits and provide much needed certainty for purposes of planning

22 and conducting business and competing effectively. Eschelon provides ample

23 support for its position and business need with respect to each of these issues and

²¹ See my discussion below of the Secret TRRO PCATs Example; see also Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology) to the testimony of Ms. Johnson.

²² Six out of the 25 remaining open Subject Matters. At the outset of the first arbitration (in Minnesota), about one-third of the total issues were on this list. After the Minnesota Arbitrators' ruling in the Qwest-Eschelon arbitration, a number of those issues closed with Eschelon's language for six states.

1 encourages the Commission to individually review the evidence related to each
2 issue. Eschelon is not seeking to force Qwest to make substantial changes in how
3 it does business. Indeed, several of the provisions that Eschelon proposed, and
4 Qwest has opposed on the ground that they deal with issues that should be
5 addressed outside the contract, did not require Qwest to make any change at all.
6 Rather, those proposals merely reflected Qwest's current practices, often as
7 reflected in its PCAT. In fact, several of the issues for which Qwest took this
8 same position closed for all six states after a Minnesota arbitration ruling²³ with
9 Eschelon language in the ICA, showing that they are appropriate for inclusion in
10 an ICA. For the remaining issues of this type, Qwest may deny that Eschelon's
11 language reflects its current practice, but Eschelon will show that it is Qwest's
12 established practice even though Qwest may deny it in arbitration (see Issue 12-
13 72, Jeopardies & Issue 12-87, Controlled Production) or Qwest has changed it
14 unilaterally over CLEC objection (see Issue 12-67, Expedites) or Qwest has no
15 proper process but instead implemented an alleged process outside of negotiations
16 and CMP and without CLEC input (see Issue 9-43, Conversions). For other
17 issues, Eschelon will show that its proposal is similar to or incorporates existing

²³ MN Arbitrators' Report, ¶229 (PSOs); ¶¶ 244 & 246 (Fatal Rejection Notices); ¶¶ 249 & 251 (Loss and Completion Reports and Trouble Report Closure); *see id.* ("Qwest would delete all of the disputed language. In the section concerning trouble report closure, it would simply reference the procedures available on its wholesale website. Qwest maintains inclusion of this language in Eschelon's ICA would 'lock in' these processes, preclude future changes, and require Qwest to operate in one way for Eschelon and another way for all other CLECs. . . . The disputed language exactly reflects Qwest's current practice. Inclusion of Eschelon's language in the ICA would not prohibit future changes, whether through the CMP or ICA amendment. Eschelon's language merely defines the minimum elements that make these resources useful to CLECs. Eschelon's language should be adopted for these issues.").

1 Qwest practices (Issue 1-1, Intervals & Issue 12-64 Root Cause Analysis). By
2 including the now closed and Eschelon's proposed language for the remaining
3 open provisions in the interconnection agreement, the Commission will be
4 assuring that terms that Eschelon has come to rely on, and in some cases
5 expended substantial resources helping to develop, will continue to be available.

6 As there is little, if any, substantive response that Qwest can make to Eschelon's
7 evidence, Qwest instead asks the Commission to consider these issues in the
8 abstract. Qwest asks the Commission to find that, regardless of whether these are
9 pressing business issues for Eschelon, *conceptually* they are somehow different in
10 some respect that makes them inherently inappropriate for inclusion in an ICA
11 and appropriate for CMP instead (regardless of whether they have *already* been
12 resolved in Eschelon's favor in CMP, as is the case for some of these issues).
13 Qwest asks the Commission to leave the future uncertain and, instead of the ICA,
14 rely upon Qwest's Product Catalog ("PCAT")²⁴ or Standard Interval Guide
15 ("SIG")²⁵ language – for which the only certainty is that Qwest can accomplish

²⁴ The "PCAT," which is an acronym for Product Catalog, is a web-site published by Qwest to distribute a catalog describing Qwest's products and services. Qwest's PCAT is provided for informational purposes only and does not govern rates, terms or conditions that exist between Qwest and Eschelon. Section 4.0 of both the SGAT and agreed upon language in the proposed ICA, for example, provide in the definition of "Product Catalog" or "PCAT" that: "Qwest agrees that CLEC shall not be held to the requirements of the PCAT." Not all Qwest PCAT changes are generated as a result of CMP. *See, e.g.,* Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology).

²⁵ The "SIG," or Standard Interval Guide, is a Qwest document posted on Qwest's web site listing various provisioning intervals with respect to Resale, UNE and other Interconnection Services. *See, e.g.,* Qwest Communications Service Interval Guide for Resale, UNE and Interconnection Services, V73.0, updated 7/21/06
http://www.qwest.com/wholesale/downloads/2006/060721/InterconnSIG_V73.pdf. CMP applies

1 change over Eschelon's objection without amending the interconnection
2 agreement.

3 The open Subject Matters identified on the Issues by Subject Matter List which
4 Qwest currently places in this category are:

- 5 • **INTERVAL CHANGES AND PLACEMENT (1)**: Issue No. 1-1 and
6 subparts
- 7 • **CONVERSION (18)**:²⁶ Issue Nos. 9-43 and 9-44 and subparts
- 8 • **ROOT CAUSE ANALYSIS AND ACKNOWLEDGEMENT OF**
9 **MISTAKES (29)**: Issue No. 12-64 and subparts
- 10 • **EXPEDITED ORDERS (31)**: Issue No. 12-67 and subparts
- 11 • **JEOPARDIES (33)**: Issue Nos. 12-71, 12-72, 12-73
- 12 • **CONTROLLED PRODUCTION (43)**: Issue No. 12-87

13 **Q. YOU STATE THAT IT IS CRITICAL FOR THE ICA TO PROVIDE**
14 **CERTAINTY. HAS QWEST RECOGNIZED THE NEED FOR**
15 **CERTAINTY IN THE ICA DESPITE QWEST'S PROPOSAL TO**
16 **EXCLUDE A NUMBER OF THE OPEN ISSUES FROM THE ICA?**

17 **A.** Yes. Qwest has confirmed that certainty is important and is a valid basis for
18 deciding to include terms in an interconnection agreement. Qwest testified in the
19 arbitrations in other states²⁷ that "a critical goal of this arbitration should be

only to changes to intervals "in Qwest's SIG" (see Exhibit Eschelon 3.10, CMP Document §§ 5.4.3 & 5.4.5). It does not control conflicting intervals in ICAs. (*Id.* at §1.0.)

²⁶ See my discussion below of the Secret TRRO PCATs Example; see also Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology) to the testimony of Ms. Johnson.

²⁷ Reference to the Minnesota arbitration refers to the ICA arbitration between Qwest and Eschelon in Minnesota PUC Docket No. P-5340, 421/IC-06-768; OAH Docket No. 3-2500-17369-2 ["Minnesota arbitration"]. The hearing was held in Minnesota the week of October 16-20, 2006. The MN Arbitrators' Report is Exhibit Eschelon 2.24 and the MN PUC Arbitration Order is Exhibit Eschelon 2.25 (attached to the testimony of Mr. Denney). Reference to the Arizona arbitration refers to the ICA arbitration between Qwest and Eschelon in Arizona (ACC) Docket Nos. T-

1 establishing clarity concerning the parties' rights and obligations."²⁸ Qwest
2 added that "clear ICA language is necessary so that the parties *know what is*
3 *expected of them* under the agreement and to avoid or minimize future
4 disputes."²⁹ Further, Qwest argued that it is a "reasonable expectation" that a
5 party's obligations "should be clearly defined and should not be subject to future
6 interpretations" that a party "develops based on its needs and desires at a given
7 time."³⁰ Eschelon likewise needs and requests clearly defined obligations,
8 especially for issues that are likely to impact its core business operation and
9 ultimately its ability to effectively serve its customers. The Commission should
10 clearly define these obligations by establishing interconnection agreement terms
11 and conditions that must be filed, approved, and amended if changed. Unlike

03406A-09-0572 & T-01051B-06-0572 ["Arizona arbitration"]; Reference to the Washington arbitration refers to the ICA arbitration between Qwest and Eschelon in Washington UTC Docket No. UT-063061 ["Washington arbitration"].

²⁸ Direct Testimony of Karen Stewart, Minnesota PUC Docket No. P-5340, 421/IC-06-768; OAH Docket No. 3-2500-17369-2; August 25, 2006 ("Stewart Minnesota Direct"), p. 13, lines 4-6; *see also* Direct Testimony of Karen Stewart, Washington UTC Docket No. UT-063061 (Sept. 29, 2006) ("Stewart Washington Direct"), p. 20, lines 6-8; *see also* Direct Testimony of Karen Stewart, Arizona (ACC) Docket Nos. T-03406A-09-0572 & T-01051B-06-0572 (Nov. 8, 2006) ("Stewart Arizona Direct"), p. 16, lines 5-6 ("paramount goal").

²⁹ Stewart Minnesota Direct, p. 13, lines 6-7 (emphasis added); *see also* Stewart Minnesota Direct, p. 13, lines 16-17 ("the goal of avoiding future disputes under the ICA"); *see also* Stewart Arizona Direct, p. 16, lines 6-8; *see also* Stewart Washington Direct, p. 20, lines 8-9.

³⁰ Stewart Minnesota Direct, p. 13, lines 13-16; *see also* Stewart Washington Direct, p. 20, lines 12-14. Qwest was specifically referring to itself as the party at the time. *See id.* Eschelon believes the statement applies to Qwest as well, such as Qwest's position that language should be subject to future interpretations that Qwest develops based on its needs and desires at a given time, through CMP (*see, e.g.*, CRUNEC example, Exhibit Eschelon 3.13 – Exhibit Eschelon 3.15), through disregarding CMP results (*see, e.g.*, the jeopardies example in Exhibits Eschelon 3.71 and Exhibit Eschelon 3.76), and through non-CMP activities (*see, e.g.*, Qwest's recent collocation non-CMP notice discussed with respect to Issue 9-31, access to UNEs, and the non-CMP "TRRO" PCATs, discussed in Exhibit Eschelon 3.16).

1 Qwest, Eschelon asks that the Commission define these obligations for all of the
2 open issues in the arbitration, and not just a subset hand-picked by Qwest.

3 **Q. PLEASE ELABORATE ON YOUR LAST POINT. WHY DO YOU**
4 **SUGGEST THAT QWEST IS ASKING THE COMMISSION TO RULE ON**
5 **ONLY A SUBSET OF THE ISSUES?**

6 A. When an issue is to Qwest's advantage, Qwest welcomes, and often insists (*e.g.*,
7 by requiring an ICA amendment),³¹ on certainty in the ICA as to terms protecting
8 Qwest's interests. Yet, for a number of issues for which Eschelon has asked for a
9 definitive decision, Qwest argues (or has argued)³² that the only decision that
10 should be made is a decision to punt the issue to a forum in which it has much
11 more control, and there is much less Commission oversight – *i.e.*, CMP.³³ For
12 other important business issues, Qwest seeks to simply exclude them from the
13 ICA in favor of Qwest's own discretion.³⁴ While Qwest may naturally desire to

³¹ See, *e.g.*, Issue 12-67 (Expedites) & Exhibit Eschelon 3.53 and, *see below*, CRUNEC example.

³² A review of closed issues for which Qwest advocated use of CMP shows that Qwest is not applying a consistent test to decide whether issues belong in CMP or the ICA and these issues can be included in the contract if Qwest so desires. See Exhibit Eschelon 3.2 (Matrix of Closed Language and Associated CMP Activity, if Any).

³³ Issue 1-1 (Interval Changes and Placement); Issue 12-67 (Expedited Orders); Issues 12-71 – 12-73 (Jeopardies). It is unclear whether Qwest is now proposing use of CMP for Conversions (Issues 9-43 and 9-44) and Commingled EELs (Issues 9-58 and 9-59). Qwest did not use CMP for unilaterally producing its non-CMP PCAT terms but is now claiming it may belatedly put some TRRO issues through CMP (rather than use the ICA change of law provisions or update its SGAT). See my discussion below of the Secret TRRO PCATs Example; *see also* Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology) to the testimony of Ms. Johnson.

³⁴ Regarding Issue 12-87 (Controlled Production), Qwest does not even rely upon CMP. As discussed by Ms. Johnson with respect to this issue, Qwest is violating a previously agreed upon requirement to bring its IMA implementation guidelines through CMP. Instead, Qwest wants the ICA to be silent on the issue addressed by Eschelon's proposal (which reflects Qwest's current practice), leaving it entirely to Qwest's discretion to change course. Regarding Issue 12-64 (Root Cause

1 protect its own interests by picking and choosing the issues it would like the
2 Commission to decide, the Commission's decision should be based upon the
3 merits of each company's proposed language. A decision that the decision should
4 be made elsewhere (*e.g.*, CMP), is no decision at all, especially when one
5 considers the distinct advantage Qwest enjoys in implementing or denying issues
6 via CMP (an issue I describe in more detail below).

7 **1. QWEST POSITION ON EXCLUDING ISSUES FROM ICA**

8 **Q. HOW DOES QWEST PROPOSE TO DETERMINE THE ALLEGED**
9 **CONTRACTUAL OR NON-CONTRACTUAL NATURE OF AN ISSUE TO**
10 **DETERMINE WHICH ISSUES SHOULD BE EXCLUDED FROM THE**
11 **ICA?**

12 A. Qwest suggests a couple of criteria or tests in its Utah position statements for
13 determining whether an issue allegedly belongs only in CMP so that it must be
14 excluded from the ICA, notwithstanding Section 252's arbitration provisions.
15 The first Qwest-proposed standard is whether a label of "process" or "procedure"
16 can be attached to the proposed provision.³⁵ According to Qwest, "processes"

Analysis and Acknowledgement of Mistakes), Qwest did not submit processes ordered by the Minnesota Commission to CMP despite its own claims about CMP, as discussed by Ms. Johnson regarding Issue 12-64.

³⁵ See, *e.g.*, Oregon Disputed Issues Matrix to Eschelon's *Petition for Arbitration* in the Oregon Eschelon-Qwest Eschelon, Exhibit 3, p. 1 ("Eschelon is attempting to import PCAT-like process language into the ICA"). I refer to the Oregon Disputed Issues Matrix (Exhibit 3 to Eschelon's *Petition for Arbitration in Oregon*) several times in my direct testimony, for the reasons explained in an above footnote and at page 8, footnote 2 of Eschelon's *Petition*. See also Exhibit Eschelon 1.5 [Transcript, Vol. 1, p. 58, lines 1-11 (Testimony of Ms. Albersheim) Minnesota arbitration (Oct. 16, 2006) ("Q. Now, just as an overall question, am I correct to understand from your testimony that

1 and “procedures” should be excluded from the ICA and relegated to CMP.³⁶
2 However, this type of labeling tends to be fairly circular, with the chosen label
3 often restating the desired result. Even so (or perhaps because of this measure of
4 control when needed to obtain desired ends), it does not necessarily lead to
5 consistent or fair results. For example, as discussed with respect to “Minnesota
6 616” example below, when Qwest was ordered to propose “*procedures*” for
7 promptly acknowledging mistakes,³⁷ Qwest did not use CMP to implement the
8 “procedures” it then put in place.³⁸ Similarly, Qwest agreed in its Utah ICA with
9 Covad to certain terms regarding repeat troubles like those it now claims are
10 “processes” or “procedures” (such as an *interval*³⁹), without any CMP activity.⁴⁰
11 Under the Qwest-Covad Utah ICA, Covad may charge Qwest for dispatches in
12 the case of certain repeat troubles.⁴¹ If Qwest had placed these procedures

there are some issues that should be addressed only in the CMP and should not be in an interconnection agreement? A. Yes. Q. Is that right? A. I believe that process and procedure detail, which is covered in our PCATs, is intended to be managed through the CMP and not through individual interconnection agreements.”)].

³⁶ *See id.*

³⁷ 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*, Docket No. P-421/C-03-616, (July 30, 2003) (“MN 616 Order”). See Exhibit Eschelon 1.4, p. 14.

³⁸ *See also* discussion of Issue 12-64 and subparts in Ms. Johnson’s testimony.

³⁹ Qwest’s Response to Eschelon’s Petition for Arbitration, Utah PSC Docket No. 07-2263-03, 5/22/07, (“Qwest Response”), p. 39, lines 16-17 (“Service intervals are exactly the type of *process* that the Commission and the industry anticipated that CMP would address.”) (emphasis added). Section 12.3.4.4 (second bullet point) of the Qwest-Covad Utah ICA includes a three business day interval during which Covad must report the repeat trouble. *See* Exhibit Eschelon 3.4 [Qwest-Covad Utah ICA, §12.3.4.4 (August, 18, 2005)].

⁴⁰ *See* Exhibit Eschelon 3.4.

⁴¹ *See* Exhibit Eschelon 3.4 [Qwest-Covad Utah ICA, §12.3.4.4 (August 18, 2005)].

1 through CMP, other CLECs would likewise be able to charge Qwest in such
2 circumstances using these procedures. The label of “procedures” applies, but
3 Qwest did not rush to CMP to implement this unfavorable ruling for Qwest or the
4 undesirable ICA terms for Qwest.

5 The second standard that Qwest puts forward in multiple Utah position statements
6 is that CMP applies when provisions “affect all CLECs, not just Eschelon.”⁴² A
7 review of the first list above, which contains the issues on which the companies
8 agree contract language should be included in the ICA, includes numerous
9 examples of terms that could affect all CLECs as much as those on the second list
10 (which contains the issues Qwest proposes to exclude from the ICA). Yet, Qwest
11 considers the issues on the first list to be contractual non-CMP issues. The ruling
12 discussed in the previous paragraph, which was unfavorable to Qwest, affected
13 multiple CLECs.⁴³ Still, Qwest did not implement those multiple-CLEC affecting
14 procedures through CMP.

15 As this and other examples in Eschelon’s direct testimony show, Qwest’s own
16 proposed criteria fail based upon Qwest’s past and current inconsistencies in
17 labeling an issue as a “process” or asking if “multiple CLECs are affected.” Both

⁴² See Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon’s Petition for Arbitration in the Eschelon-Qwest Oregon arbitration (Qwest position statements for Issues 1-1, 8-20, 8-24, 8-29, 9-32, 9-43, 12-64, 12-67, 12-70, 12-71 – 12-73, 12-74, 12-75, 12-76, 12-81, 12-86); see also Qwest Response, pp. 24, 30, and 35. Regarding issues for which Qwest made this CMP argument and then closed without CMP activity or CMP activity only as to a portion of the issue, see Exhibit Eschelon 3.2 to the Testimony of Ms. Johnson.

⁴³ See Exhibit Eschelon 1.4, p. 14 (MN 616 Order, 7/30/03). The Minnesota Commission ordered Qwest to develop procedures generally – not procedures specific only to Eschelon. See *id.*

1 alleged criteria allow Qwest too much room to maneuver to achieve its desired
2 results.

3 **Q. HAS QWEST IN THE PAST PROPOSED OTHER CRITERIA OR TESTS**
4 **FOR EXCLUDING ISSUES FROM AN APPROVED ICA?**

5 A. Yes. Qwest in the past proposed limiting interconnection agreements to the
6 schedule of itemized charges and associated descriptions of the services to which
7 the charges apply – *i.e.*, limited to terms that advantage Qwest by ensuring its
8 right to charge CLECs, without offering CLECs certainty as to what they will get
9 in return.⁴⁴ Several of the issues on Qwest’s non-CMP contractual list relate to
10 charges.⁴⁵ Qwest also points out that rates are outside the scope of CMP, when it
11 does not want to address an issue in CMP, even if it has at some point relied on
12 CMP for the same issue.⁴⁶

⁴⁴ *See e.g.*, Issue 12-67 (expedited orders – and specifically Integra’s comments, in Exhibit Eschelon 3.54, pp. 3-4, See also Exhibit Eschelon 3.53, that Integra did not know when signing the Qwest template expedite amendment that Qwest would later remove unbundled loops from the Expedites Requiring Approval process). *See also* the “CRUNEC” example discussed below and the Secret PCAT Chronology in Exhibit Eschelon 3.16 to the Testimony of Ms. Johnson (describing how Qwest required CLECs to sign the *TRRO* amendment before revealing password-protected terms to them).

⁴⁵ *See, e.g.*, Issue 9-51 (Application of UDF-IOF Termination (Fixed) Rate Element).

⁴⁶ *See, e.g.*, my discussion below of the Design Changes example; see also the discussion of Issue 4-5 (design changes) in the Testimony of Mr. Denney; See also the Exhibits to Ms. Johnson’s testimony relating to Issue 12-67 (expedited orders). *See* Exhibit Eschelon 3.53 and Exhibit Eschelon 3.54. See also Exhibits Eschelon 3.37 – Eschelon 3.40 (optional testing charges introduced through CMP).

1 **2. REJECTION OF QWEST’S PROPOSAL TO EXCLUDE**
2 **TERMS FROM ICA**

3 **Q. HAS THE FCC CONSIDERED THIS QWEST PROPOSAL FOR**
4 **LIMITING THE SCOPE OF INTERCONNECTION AGREEMENTS?**

5 A. Yes. The FCC expressly rejected Qwest’s argument. In its *Declaratory Ruling*,
6 the FCC addressed the scope of the mandatory filing requirement under Section
7 252(a)(1) of the Telecommunications Act. The FCC said:

8 [W]e find that an agreement that creates an ongoing obligation
9 pertaining to resale, number portability, dialing parity, access to
10 rights-of-way, reciprocal compensation, interconnection,
11 unbundled network elements, or collocation is an interconnection
12 agreement that must be filed pursuant to section 252(a)(1). This
13 interpretation, which directly flows from the language of the Act,
14 is consistent with the pro-competitive, deregulatory framework set
15 in the Act. This standard recognizes the statutory balance between
16 the rights of competitive LECs to obtain interconnection terms
17 pursuant to section 252(i) and removing unnecessary regulatory
18 impediments to commercial relations between incumbent and
19 competitive LECs. *We therefore disagree with Qwest that the*
20 *content of interconnection agreements should be limited to the*
21 *schedule of itemized charges and associated descriptions of the*
22 *services to which those charges apply.* Considering the *many and*
23 *complicated terms* of interconnection typically established
24 between an incumbent and competitive LEC, *we do not believe*
25 *that section 252(a)(1) can be given the cramped reading that*
26 *Qwest proposes.* Indeed, on its face, section 252(a)(1) does not
27 further limit the types of agreements that carriers must submit to
28 state commissions.⁴⁷

⁴⁷ *Declaratory Ruling* at ¶ 8 (footnotes omitted) (emphasis added).

1 **Q. CAN QWEST AVOID THE FCC’S RULING ABOUT THE CONTENT OF**
2 **INTERCONNECTION AGREEMENTS BY POSTING THE**
3 **INFORMATION ON ITS WEB-SITE, SUCH AS IN ITS PCAT OR SIG?**

4 A. No. In its *Forfeiture Order*,⁴⁸ the FCC also expressly rejected Qwest’s claim that
5 the *Declaratory Ruling* authorized posting of information regarding service
6 offerings on a website in lieu of an agreement filed with, and approved by, state
7 commissions. To that end, the FCC observed, “At no point did we create a
8 general ‘web-posting exception’ to section 252(a)...[A] ‘web-posting exception’
9 would render that provision meaningless, since CLECs could not rely on a
10 website to contain all agreements on a permanent basis. Moreover, unlike the
11 terms of an SGAT, web-posted materials are not subject to state commission
12 review, further undermining the congressionally established mechanisms of
13 section 252(e).”⁴⁹

14 **Q. WAS CMP IN PLACE WHEN THE FCC MADE THIS DECISION?**

15 A. Yes. Qwest’s CMP has been in place since at least the fall of 2002,⁵⁰ and the
16 FCC did not issue its *Forfeiture Order* until March of 2004. The FCC has created
17 no special “web-posting exception” for postings (such as PCAT or SIG) that are
18 made through CMP.

⁴⁸ Notice of Apparent Liability for Forfeiture, *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263 (March 11, 2004) (“*FCC Forfeiture Order*”).

⁴⁹ *FCC Forfeiture Order* at ¶ 32.

⁵⁰ See Exhibit Eschelon 3.10 to Ms. Johnson’s Testimony (Qwest CMP Document).

1 **3. CMP HISTORY ESTABLISHES ICA TERMS MAY VARY**
2 **AND, WHEN THEY DO, ICA CONTROLS OVER CMP**

3 **Q. QWEST HAS REFERRED TO THE CMP AS A COMMISSION-**
4 **APPROVED PROCESS, IMPLYING THAT IT HAS SOME SPECIAL**
5 **MERIT BECAUSE IT WAS CREATED AS A VEHICLE FOR HELPING**
6 **IMPLEMENT SECTION 271 OF THE ACT.⁵¹ WOULD YOU LIKE TO**
7 **RESPOND?**

8 **A.** While it is true that the CMP was developed related to Qwest's request for Section
9 271 relief, the FCC's later decision in the *Forfeiture Order* confirms that CMP has
10 no special merit that would allow it to supplant good-faith negotiations or
11 interconnection agreements that result from Section 252 of the Act. This is
12 especially true when a CLEC, like Eschelon, specifically identifies issues that are
13 important enough to its ongoing business and ability to compete to warrant
14 Commission oversight in the form of arbitration (as in this case).

15 CMP will continue to play a role in the relationship between Qwest and Eschelon,
16 because CMP is the vehicle that Qwest uses to announce changes related to terms
17 that are not addressed in the ICA. Further, certain terms may not be included in
18 the ICA by agreement and, in some cases, the issue may be left to CMP for
19 resolution (per ICA Section 12.1.6). However, none of the issues addressed by
20 the 25 remaining disputed Subject Matters are issues that Eschelon agrees to leave
21 to CMP. As I discussed earlier, there are a multitude of other day-to-day issues

⁵¹ See, e.g., Qwest Response, pp. 7-8.

1 that Eschelon has not brought forward in this arbitration, which are handled and
2 will continue to be handled through CMP, service management, billing disputes,
3 *etc.*

4 **Q. SINCE CMP WILL CONTINUE TO PLAY A ROLE, DO THE CMP**
5 **RULES, SET FORTH IN EXHIBIT G TO THE ICA⁵² (AND THE SGAT),⁵³**
6 **DICTATE THE RELATIONSHIP BETWEEN CMP AND THE**
7 **INTERCONNECTION AGREEMENT?**

8 A. Yes. The “CMP Document” outlines the rules and procedures governing conduct
9 of Qwest’s CMP. The following excerpt from Section 1.0 (“Introduction and
10 Scope”) of the CMP Document⁵⁴ addresses the relationship between the
11 interconnection agreement and CMP and clearly indicates that Commission-
12 approved interconnection agreement terms control:

13 In cases of conflict between the changes implemented through this
14 CMP and any CLEC interconnection agreement (whether based on
15 the Qwest SGAT or not), the rates, terms and conditions of such
16 interconnection agreement shall prevail as between Qwest and the
17 CLEC party to such interconnection agreement. In addition, if
18 changes implemented through this CMP do not necessarily present
19 a direct conflict with a CLEC interconnection agreement, but

⁵² Eschelon provides the CMP Document as Exhibit Eschelon 3.10 to the direct testimony of Bonnie Johnson.

⁵³ The CMP Document is also Exhibit G to the SGAT. As explained below (when discussing the Secret TRRO PCATs), despite repeated statements that Qwest would be updating the SGAT, Qwest recently distributed a Level 1 CMP notice on 1 day’s notice indicating that SGATs would no longer be available for CLEC opt-in. See Exhibit Eschelon 3.23, p. 1. Eschelon has objected to the notice, although CMP has no formal comment period for Level 1 notices. See Exhibit Eschelon 3.10, pp. 38-39 (CMP Document). 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.” *Id.* p. 38.

⁵⁴ See also Exhibit Eschelon 3.11, pp. 2-3 (Gap Analysis #150) (CMP redesign meeting minutes addressing CMP in relation to ICAs).

1 would abridge or expand the rights of a party to such agreement,
2 the rates, terms and conditions of such interconnection agreement
3 shall prevail as between Qwest and the CLEC party to such
4 agreement.

5 This requirement is so important and integral to CMP in relation to the ICA that
6 the same language must appear in all CMP notices to inform CLECs receiving the
7 notice that it does not apply to them if it conflicts with their interconnection
8 agreements.⁵⁵ In other words, per the CMP terms and conditions, CMP changes
9 may affect some, but not all, CLECs, depending on the terms of their
10 interconnection agreements and whether the change conflicts with those terms for
11 each CLEC. This built-in recognition in the governing CMP document that ICA
12 terms will vary from CMP disproves Qwest's claim repeated throughout its
13 position statements that the "entire purpose" of CMP is to create processes "that
14 are uniform among all CLECs."⁵⁶ Instead, Qwest is attempting to circumvent this
15 clearly defined hierarchy under which the ICA controls by preventing issues from
16 being included in the ICA. Qwest seeks to render this carefully crafted and
17 "Commission approved" hierarchy meaningless by making CMP the only source

⁵⁵ Qwest is required, per the CMP Document, to include this language in CMP notices. *See* Exhibit Eschelon 3.10, §5.4, which states (with emphasis added): "The following defines five levels of Qwest originated product/process changes and the process by which Qwest will originate and implement these changes. None of the following shall be construed to supersede timelines or provisions mandated by federal or state regulatory authorities, certain CLEC facing Web sites (*e.g.*, ICONN and Network Disclosures) or individual interconnection agreements. ***Each notification will state that it does not supersede individual interconnection agreements.***"

⁵⁶ *See e.g.*, Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon's Petition for Arbitration in the Eschelon-Qwest Oregon arbitration (Qwest position statements for Issues 1-1, 8-20, 8-24, 8-29, 9-32, 9-43, 12-64, 12-67, 12-70, 12-71 – 12-73, 12-74, 12-75, 12-76, 12-81, 12-86).

1 of terms for several of the arbitration issues, so that in the end Qwest's *CMP*
2 *controls* those issues through ever changing PCAT and SIG language.

3 Qwest received 271 approval, at least in part, based upon the availability of a
4 CMP that reflected the hierarchy reflected in Section 1.0 of the CMP Document.
5 The Commission should not allow Qwest, now that it has 271 approval, to use
6 that very CMP to undermine the CMP's own governing provision as to its scope.
7 Terms that rise to the level of being arbitrated and approved as part of an
8 interconnection agreement not only govern as between Qwest and Eschelon, but
9 also, per Section 1.0 of the CMP Document, are outside the scope of CMP.

10 The Minnesota Commission noted the integral role that the CMP scope provision
11 plays when it examined this issue in the Minnesota Eschelon-Qwest arbitration
12 case. The Minnesota Arbitrators, as affirmed by the Minnesota Commission,
13 found that: "The CMP document itself provides that in cases of conflict between
14 changes implemented through the CMP and any CLEC ICA, the rates, terms and
15 conditions of the ICA shall prevail. In addition, if changes implemented through
16 CMP do not necessarily present a direct conflict with an ICA but would abridge
17 or expand the rights of a party, the rates, terms, and conditions of the ICA shall
18 prevail. **Clearly, the CMP process would permit the provisions of an ICA**
19 **and the CMP to coexist, conflict, or potentially overlap.**"⁵⁷

⁵⁷ Minnesota Arbitrators' Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768, ¶ 21.
(emphasis added) The Minnesota Commission adopted the Arbitrators' Report in relevant part.

1 **Q. IN ADDITION TO THE APPROVED CMP DOCUMENT ITSELF, ARE**
2 **THERE OTHER INDICATIONS THAT CMP OR THE PCAT SHOULD**
3 **NOT GOVERN A CLEC’S RIGHTS?**

4 A. Yes. Before Qwest obtained 271 approval, it needed to have an SGAT in place
5 for requesting CLECs to adopt as their ICA. The Utah SGAT provides, in Section
6 2.3, that: “In cases of conflict between the SGAT and Qwest's Tariffs, PCAT,
7 methods and procedures, technical publications, policies, product notifications or
8 other Qwest documentation relating to Qwest's or CLEC's rights or obligation
9 under this SGAT, then the rates, terms and conditions of this SGAT shall prevail.
10 To the extent another document abridges or expands the rights or obligations of
11 either Party under this Agreement, the rates, terms and conditions of this
12 Agreement shall prevail.”⁵⁸ Consistent with this provision, the definition of
13 “Product Catalog” in Section 4 of the SGAT explicitly provides: “Qwest agrees
14 that CLEC shall not be held to the requirements of the PCAT.”

15 Both of these SGAT provisions recognize that there will be overlap between the
16 ICA and CMP, including different terms for different CLECs, and when that
17 happens, the ICA controls. After all, there would be no need for a provision

See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*. [“Minnesota Qwest-Eschelon ICA Arbitration”], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) [“MN PUC Arbitration Order”]. See Exhibits Eschelon 2.24 and 2.25.

⁵⁸ This clause is also found in Section 2.3 of the ICA. See, Eschelon’s Petition, p. 18. [“...in cases of conflict between the Agreement and Qwest’s Tariffs, PCAT, methods and procedures, technical publications, policies, product notifications...this Agreement shall prevail.”]

1 regarding “cases of conflict between the SGAT and Qwest’s . . . PCAT, methods
2 and procedures” if conflicts were not expected to occur because the CMP existed
3 to make all PCAT terms and methods and procedures uniform. Both of these
4 SGAT provisions, therefore, further disprove Qwest’s repeated claim that the
5 “entire purpose” of CMP is to create processes “that are uniform among all
6 CLECs.” If that were true, the CMP Document and the SGAT would both
7 provide that, in cases of conflict, the CMP Document controls to maintain
8 uniformity. They send the opposite message, however. The purpose of these
9 provisions⁵⁹ is defeated if Qwest is successful in excluding terms from the ICA so
10 no conflict may occur and CMP, by default, prevails.

11 **Q. DOES QWEST STILL MAKE SGATS AVAILABLE FOR CLEC OPT IN?**

12 A. No. Qwest recently unilaterally notified CLECs that, per Qwest, SGATs are no
13 longer available for opt-in by CLECs.⁶⁰ I discuss this new Qwest position below
14 in my discussion of the secret TRRO PCATs.

15 **Q. ARE UNIFORM TERMS AND CONDITIONS FOR CLECS REQUIRED**
16 **BY THE ACT?**

17 A. No. Nothing in the Telecommunications Act requires that terms and conditions of
18 an interconnection agreement be identical for all CLECs.⁶¹ To the contrary, the

⁵⁹ Both of these provisions are also part of the proposed ICA, as closed language in Section 2.3 and 4.0 (definition of “Product Catalog” or “PCAT”).

⁶⁰ See Exhibit Eschelon 3.23, p. 1.

1 structure of the Act reflects the exact opposite: that an interconnection agreement
2 should be tailored to accommodate specific needs of the CLEC in order to provide
3 a meaningful opportunity to compete.⁶² Had Congress intended that the
4 interconnection agreement be a “one size fits all” document, as Qwest is trying to
5 make it, Congress would have provided the SGAT as the sole means by which
6 terms and conditions of interconnection would be made available by the ILEC.
7 That Congress did not do so shows that it recognized the need for individual
8 CLECs to be able to enter into ICAs that are specific to their particular
9 competitive needs. Furthermore, when implementing the Act, the FCC defined an
10 “interconnection agreement” broadly, to include any “agreement that creates an
11 ongoing obligation pertaining to resale, number portability, dialing parity, access
12 to rights-of-way, reciprocal compensation, interconnection, unbundled network
13 elements, or collocation.”⁶³ This shows that neither Congress nor the FCC
14 intended the ICA to be as narrow as Qwest wants it to be.

⁶¹ Qwest claims (incorrectly) that processes and procedures should be “standardized” or made “uniform” across all CLECs through the CMP. *See, e.g.*, Qwest Response, pp. 6, 7, and 8 (“standardized”) and pp. 37, 38, 39, and 40 (“uniform”).

⁶² Indeed, the FCC has found that state commission implementation of the nondiscrimination requirements of the Act and FCC rules and orders is key. *See, First Report and Order* at ¶ 310 [“We expect that the states will implement the general nondiscriminatory rules set forth herein by adopting, inter alia, specific rules determining the timing in which incumbent LECs must provision certain elements, and any other specific conditions they deem necessary to provide new entrants, including small competitors, with a meaningful opportunity to compete in local exchange markets.” Emphasis added] *See also, US WEST Communications, Inc. v Hix*, 57 F. Supp. 2d 1112, 1119 (D. Colo. 1999).

⁶³ Declaratory Ruling, ¶ 8. *See also*, Forfeiture Order, ¶ 11.

1 **Q. HAVE OTHER STATE COMMISSIONS REJECTED QWEST'S**
2 **STANDARDIZATION ARGUMENT?**

3 A. Yes. The Washington Commission has twice rejected such claims of uniformity
4 or standardization and has found that asking for specific terms in an individual
5 ICA is not a request for preferential treatment. The arbitrator in the recent
6 Verizon arbitration case in Washington said:

7 The fact that there are differences in change of law provisions
8 among various agreements is not discriminatory: It reflects the
9 variations in negotiation and arbitration of terms in
10 interconnection agreements. The interconnection agreements
11 are filed with the Commission and available for review.
12 CLECs have opted into a number of agreements, including the
13 agreement originally arbitrated by MCI.⁶⁴

14 In the same order, the Washington Commission found it reasonable to include
15 “operational procedures to ensure customer service quality” in an interconnection
16 agreement.⁶⁵ Similarly, the arbitrator made the following observation in the
17 Qwest-Covad arbitration in Washington:

18 While Qwest relies heavily on “consensus” reached in the Section
19 271 proceeding as a strong reason for retaining the 30-day period,
20 that argument does not apply to an arbitration proceeding. Parties
21 engage in arbitration to enter into an agreement tailored to the
22 companies’ needs, not to adopt a standard agreement. Covad is not

⁶⁴ Washington State Utilities and Transportation Commission, Docket UT-043013, Order No. 17 *Arbitrator’s Report and Decision* dated July 8, 2005 at ¶ 79, [“*Washington ALJ Report*”], *affirmed in relevant part in “Washington Order No. 18.”*

⁶⁵ *Washington Order No. 18* at ¶ 61 (quoting Order No. 17 at ¶ 416, quoting *TRO* ¶ 586); *see also* ¶¶ 60-64, 112.

1 bound to the 30 day payment period simply because it was a party
2 to the SGAT negotiations and hearings.⁶⁶

3 Furthermore, in the recent Verizon/CLEC arbitration, the Washington
4 Commission pointed to the likelihood of reducing the opportunity for future
5 disputes as a basis for including specific contract language for issues addressed in
6 the order.⁶⁷

7 **Q. ARE PROCESSES AND PROCEDURES APPROPRIATE FOR**
8 **INCLUSION IN THE ICA?**

9 A. Yes. The FCC has said that processes and procedures are appropriate content for
10 interconnection agreements:

11 Individual incumbent LEC and competitive LEC arrangements
12 governing the *process and procedures* for obtaining access to an
13 UNE to which a competitive LEC is entitled, are more
14 appropriately addressed in the context of individual
15 interconnection agreements pursuant to section 252 of the Act.⁶⁸

16 **Q. HAS ANY BENEFIT OF INDIVIDUAL, NON-UNIFORM ICA TERMS**
17 **BEEN RECOGNIZED?**

18 A. Yes. And, ironically, Qwest is among those that have previously proclaimed the
19 benefits of unique interconnection agreements. On October 16, 2003, Qwest, in

⁶⁶ Arbitrator's Report and Decision, *In The Matter Of The Petition For Arbitration Of Covad Communications Company, With Qwest Corporation, Pursuant To 47 U.S.C. Section 252(B) And The Triennial Review Order*, WUTC Docket No. UT-043045, Order No. 04, Nov. 2, 2004 ["WA Covad Arbitration Order"], at note 16 to ¶ 100. Although the Commission rejected Covad's 30-day proposal (which is not an issue in this case), it did so on other grounds.

⁶⁷ *Washington Order No. 18* at ¶¶ 28, 31-32, 36, 42, 48, 58, 64; *see also* Conclusions of Law ¶¶ 102, 104, 105, 106, 111, 112.

⁶⁸ *TRRO* ¶ 358 (emphasis added).

1 opposing the then current application of the FCC’s “pick and choose” rule, filed
2 extensive comments extolling the virtues of negotiated interconnection
3 agreements and the importance of the “...dynamic, innovative interconnection
4 negotiations intended by the Telecommunications Act of 1996.”⁶⁹ Qwest
5 recognized that: “ILECs and CLECs have a fundamental interest in making the
6 interconnection process as cooperative and open as possible, since both parties
7 benefit from well-negotiated and mutually beneficial wholesale arrangements.”⁷⁰

8 Even more specific to the point here, Qwest argued that:

9 “...the pick-and-choose rule restricts the ILEC’s willingness to
10 **tailor negotiations and contracts to the specific needs of**
11 **CLECs and their business plans.** Further, the current rule does
12 not realistically reflect the ordinary trade-offs and give-and-take
13 that characterize free negotiations, in which an ILEC would
14 ordinarily be willing to give up one term of a contract in order to
15 get another.”⁷¹

16 Finally, Qwest summarized its arguments with the following opinion:

17 “The ability of carriers to negotiate binding agreements with each
18 other was a cornerstone of the Act.”⁷²

19 Now that Qwest has reaped the benefits of eliminating the pick-and-choose rule
20 by making these arguments, Qwest seeks to deny Eschelon the very ability to

⁶⁹ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, p. ii.

⁷⁰ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, pp. 3-4.

⁷¹ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, p. 4 [emphasis added]

⁷² *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003, p. 6.

1 “tailor negotiations and contracts” to Eschelon’s “specific needs” and “business
2 plans” upon which Qwest relied to defeat that rule.

3 **Q. DOES INCLUSION OF TERMS, INCLUDING POTENTIALLY UNIQUE**
4 **TERMS, IN AN INTERCONNECTION AGREEMENT MEAN THAT**
5 **ESCHELON ARGUES FOR EXCLUSIVE TERMS FOR ITSELF?**

6 A. No. Contract language in a Commission-approved interconnection agreement
7 allows the Commission to review the terms, decide disputed issues on the merits,
8 and approve changes before they are made to avoid disruption that may occur
9 without Commission oversight. The alternative, *i.e.*, a lack of contract language,
10 leaves Eschelon in a position in which it will likely be forced to approach the
11 Commission in crisis mode, after it is being faced with adverse consequences that
12 impact its End User Customers,⁷³ perhaps requesting expedited relief.⁷⁴ It simply
13 makes more sense to allow the Commission to consider the issues in an orderly
14 manner through ICA arbitration, as envisioned by Section 252 of the Act.
15 Further, if terms are arbitrated, the approved agreement is then available for opt-in
16 pursuant to Section 252(i), or for use as a negotiations template/proposal,⁷⁵ by
17 other, and potentially “multiple,” CLECs.

⁷³ See, *e.g.*, the “CRUNEC” example that I discuss below.

⁷⁴ This assumes resources are available to challenge individual issues on a piece-meal basis in every state affected. If that is not the case, Qwest may gain an unjust or anticompetitive advantage simply due to lack of resources rather than merit.

⁷⁵ Although the FCC eliminated the pick-and-choose rule in favor of the all-or-nothing rule, when it did so, the FCC clearly stated that doing so did not limit the nondiscrimination provisions of the Act, which remain available to protect CLECs. See Section Report and Order, *In re. Review of the*

1 CLECs should have a choice of opting into ICAs and ICA amendments that best
2 suit their business models, instead of all CLECs being forced to sign the same
3 agreement or amendment. Clearly, Section 252(i) of the Telecommunications Act
4 provides CLECs the ability to opt into other CLECs' ICAs:

5 AVAILABILITY TO OTHER TELECOMMUNICATIONS
6 CARRIERS.--A local exchange carrier shall make available any
7 interconnection, service, or network element provided under an
8 agreement approved under this section to which it is a party to any
9 other requesting telecommunications carrier upon the same terms
10 and conditions as those provided in the agreement.

11 This language recognizes that different CLECs have different business models
12 and needs.

13 **Q. IN ANY EVENT, IS ESCHELON IN THIS ARBITRATION TRYING TO**
14 **DEFEAT “UNIFORM PROCESSES?”**

15 A. No. Indeed, the majority of the contract language proposed by Eschelon for the
16 issues Qwest initially wanted to exclude from the ICA matches Qwest's current
17 practices, including language describing the same terms in the PCAT.⁷⁶
18 Therefore, Qwest's assertion in its position statements that developing processes
19 solely for Eschelon will cause Qwest to incur costs is a red-herring issue.
20 Eschelon is not seeking to make changes that would require Qwest to commit

Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (Rel. July 13, 2004), at ¶¶ 20-23.

⁷⁶ See Exhibit Eschelon 3.2. See also Exhibit Eschelon 2.24, MN Arbitrators' Report, ¶229 (PSOs); ¶¶ 244 & 246 (Fatal Rejection Notices); ¶¶ 249 & 251 (Loss and Completion Reports and Trouble Report Closure).

1 additional resources.⁷⁷ Eschelon is not attempting to gain some advantage or
2 make Qwest's processes more difficult to implement. Eschelon is simply
3 requesting, and is entitled to, contract language that sets forth terms that are
4 critical to its business and ability to compete.

5 **4. CMP BACKGROUND: REALITIES OF CMP AND PCAT**

6 **Q. EARLIER, YOU MENTIONED THAT YOU WOULD PROVIDE SOME**
7 **EXAMPLES. DO YOU NEED TO PROVIDE SOME BACKGROUND**
8 **BEFORE DOING SO?**

9 A. Yes, I need to describe some elements of CMP and the PCAT and related
10 terminology that will be useful for understanding the examples. As with much of
11 telecom, this area is also acronym and "techno-speak" dependent. Without some
12 explanation, it may be difficult to understand the import of events. For example,
13 with all of the talk about "change requests" in CMP, which is sometimes
14 described as an "industry forum," it may come as a surprise to learn that the vast
15 majority of changes in CMP occur through Qwest email announcements for

⁷⁷ For any issues for which Qwest claims that Eschelon is asking for a change that Qwest believes would generate additional costs, Qwest should, in this proceeding, quantify those additional costs to the extent they actually exist. *See, e.g.*, Section 5.1.6 of the ICA ("Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement."). General arguments heralding undisclosed costs or resources should be given little, if any, weight given that Qwest has, via this proceeding, an evidentiary vehicle by which to quantify those costs. Section 252(c) requires that a state commission, "in resolving by arbitration" any open issues and imposing conditions upon the parties to the agreement, "shall establish any rates for interconnection, services or network elements according to subsection (d) of this section." 47 U.S.C. § 252(c).

1 which there is no discussion on the CMP calls. There is no collaborative
2 development or even any mention of them. When reading the CMP Document
3 (which is Exhibit G to the ICA and SGAT and which I described earlier as the
4 document containing the governing rules and procedures for the conduct of
5 CMP),⁷⁸ this may not be immediately apparent. The reader has to get through the
6 description of the four “levels” of changes in the CMP Document (which I
7 describe more fully below) to discover that only the highest, fourth level requires
8 Qwest to submit a “request” rather than a notification. Even then, for product and
9 process changes (which are different from “systems” changes), Qwest does not
10 need any kind of vote on adoption of or consent to its “request” before
11 implementing it, provided that Qwest follows the applicable time periods. In
12 some cases, CLECs may comment, but Qwest may reject or “respectfully
13 decline”⁷⁹ the comment and proceed as planned, as though the CLEC had never
14 commented at all. In one of the examples below (“CRUNEC”), pretty much
15 every actively participating CLEC objected to the Qwest CMP notification, but
16 Qwest implemented it anyway. Qwest may have created a different impression
17 when, throughout its position statements in the Joint Disputed Issues Matrix, it
18 states that the purpose of CMP was to “ensure that the industry (not just Qwest or
19 one CLEC) is involved in creating and *approving* processes” (emphasis added).⁸⁰

⁷⁸ See Exhibit Eschelon 3.10 (“CMP Document”).

⁷⁹ See, e.g., Exhibit Eschelon 3.13, p. 1, entry for 5/21/03.

1 Qwest requires no approval from CLECs to implement product and process
2 changes in CMP. To the contrary, as the CRUNEC example described below
3 shows, Qwest will implement a process change in the face of clearly articulated
4 disapproval by multiple CLECs.

5 And, although much of the work of CMP is conducted through Qwest email
6 “notifications,” not all Qwest email notifications are “CMP” notifications.⁸¹
7 Carriers may choose among a variety of other notices, such as billing, contract,
8 and network notices, and those notices do not follow the CMP procedures, such as
9 assignment of “levels.” Similarly, with respect to Qwest’s PCAT, continual
10 reference to the PCAT in conjunction with CMP may suggest that all PCAT
11 changes are made through CMP. It is not the case that all Qwest PCAT changes
12 are generated as a result of CMP, as one of the five examples discussed below
13 (involving Secret TRRO PCATs) demonstrates quite clearly.

14 By recognizing these CMP and PCAT realities, Eschelon is not requesting
15 changes to CMP or suggesting that the Commission needs to make a finding that
16 CMP is flawed before it can find in Eschelon’s favor. Such findings are

⁸⁰ See Oregon Joint Disputed Issues Matrix, Exhibit 3 to Eschelon Petition for Arbitration in the Eschelon-Qwest Oregon arbitration (Qwest position statements for Issues 1-1, 8-20, 8-24, 8-29, 9-32, 9-43, 12-64, 12-67, 12-70, 12-71 – 12-73, 12-74, 12-75, 12-76, 12-81, 12-86).

⁸¹ See Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology, at footnote 5). The **SUBJECT** field of a Qwest announcement starts with “CMP” when it is a CMP notice. Not all Qwest customer “notices” and PCAT changes are generated as a result of CMP. Carriers may choose among a variety of notices, such as billing, contract, and network notices, that are not CMP notices. See <http://www.qwest.com/wholesale/notices/cnla/maillist.html>. In addition, if it is a CMP notice, the listed contact person is a CMP representative. If it is not a CMP notice, the contact person is the Qwest Service Manager or other contact. CMP notices with comment periods identify the timeframe for comment.

1 unnecessary for Eschelon to prevail. Eschelon's position on each issue is fully
2 supported by the facts and should prevail on the merits of that issue, as discussed
3 with respect to each individual issue throughout the direct testimony. The
4 purpose in relating these CMP and PCAT realities is to ensure that the facts about
5 CMP and the PCAT are known when evaluating claims made by Qwest and when
6 reviewing the examples and chronologies. Several chronologies are attached to
7 the testimony of Ms. Johnson, who was personally involved in those events.⁸²
8 Because the chronologies often relate to CMP events, they use a lot of CMP
9 terminology (such as references to CMP numbering, the "levels" of notices, *etc.*).
10 The absence of any reference in any of these chronologies to a vote being taken
11 on adoption or rejection of any of the requests is explained, for example, by the
12 discussion below explaining that there is no voting on adoption or rejection of
13 product and process changes in CMP.

14 Certainly, the realities of CMP and the PCAT shed some light on why, for critical
15 business issues, a CLEC may conclude it needs to exercise its Section 252 right to
16 negotiation and compulsory arbitration. This is particularly true when the manner

⁸² Exhibit 3.13 (CRUNEC); Exhibit Eschelon 3.16 (Secret TRRO PCATs); Exhibit Eschelon 3.36 (No Build Held Order/Delayed Order); Exhibit Eschelon 3.47 (Qwest Retail letter); Exhibit Eschelon 3.53 (Expedites); and Exhibit Eschelon 3.71 (Jeopardy and FOC). Mr. Denney also provides a CFA Design Change Chronology associated with Qwest's recent attempt to limit CFA changes to one per circuit at the time of the cut. *See*, Exhibit Eschelon 2.4. Two further examples are Exhibit Eschelon 3.36, the No Build Held Order (Delayed Order) Chronology, and Exhibit Eschelon 3.37, CMP Documentation, Qwest CR # PC100101-5 (Optional Testing). CLEC's escalation of PC100101-5 and Qwest's response to CLEC's escalation of this CR are provided as Exhibits Eschelon 3.38 – Eschelon 3.40 to the direct testimony of Ms. Johnson, respectively. These exhibits provide additional evidence of Qwest's inconsistent and improper use of the CMP process and the need for contractual certainty to govern Eschelon's relationship with Qwest.

1 in which Qwest has used CMP and the PCAT to achieve its objectives, as
2 demonstrated by the examples, is taken into account. Even though CMP may
3 inform Eschelon that Qwest is making changes that will be adverse to Eschelon's
4 business, CMP provides Eschelon no real ability to keep Qwest from unilaterally
5 making those changes.⁸³ Contract language appears to be the vehicle that will
6 give Eschelon the ability to "force Qwest to the table" to negotiate those types of
7 changes. As discussed above, Section 252 provides this ability to CLECs.
8 Qwest's proposal (*e.g.*, use CMP) does not.

9 Significantly, the realities of CMP and the PCAT also run counter to Qwest's
10 basic premise that some issues ("process" issues) are inherently CMP issues that
11 should be excluded from the ICA. After providing background information about
12 CMP and the PCAT, I describe five examples (CRUNEC, Design Changes,
13 Minnesota 616, Delayed Orders, and Secret TRRO PCATs)⁸⁴ that each in its own
14 way demonstrates how Qwest's own conduct is not in accord with that claim.
15 Instead, Qwest has the capability to use, and sometimes uses, CMP as either a
16 sword or a shield toward furthering its own policy initiatives.

17 a. CMP TERMINOLOGY AND PROCEDURES

18 **Q. PLEASE BRIEFLY DESCRIBE HOW CMP WORKS.**

⁸³ See MN Arbitrators' Report, ¶22 ("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.").

⁸⁴ Qwest's handling of Jeopardies is another excellent example. Ms. Johnson discusses this example in her testimony relating to Issues 12-71 – 12-73 and Exhibits Eschelon 3.71 - Eschelon 3.79.

1 A. CMP generally works through a series of change requests (“Change Requests” or
2 “CRs”) submitted by CLECs to Qwest (or, in some cases, by Qwest to Qwest) or
3 announcements by Qwest to CLECs in the form of “CMP notifications.” Change
4 Requests and a small sub-set of the Qwest CMP notifications are discussed on
5 CMP monthly and ad hoc calls among Qwest and participating CLECs. Qwest
6 maintains minutes of the calls and posts the minutes on its CMP web-site.⁸⁵ A
7 “change request” contains a description of the request for a new, or change to an
8 existing, product, process, or system. All CLEC proposed changes are submitted
9 as change requests because there are no CLEC CMP notifications. CLECs must
10 propose a change to Qwest, and Qwest may decide to either accept or reject a
11 CLEC request for product or process changes. While some Qwest changes are in
12 the form of change requests, Qwest generally announces its changes through its
13 email notification process. As indicated above, although much of the work of
14 CMP is conducted through Qwest email “notifications,” not all Qwest email
15 notifications are “CMP” notifications.⁸⁶

16 Each change (whether by request or notification) within CMP is classified by its
17 potential impact on carriers, or the time-critical nature of the change. Changes to
18 a product or process within CMP are assigned severity or “disposition” levels.
19 Each change is classified as a Level 0, 1, 2, 3, or 4 change. The following table

⁸⁵ See <http://www.qwest.com/wholesale/cmp/index.html>

⁸⁶ See Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology, footnote 5).

1 provides a high level overview of the disposition levels used in the CMP
2 notification process.⁸⁷

3

| | |
|---------|---|
| Level 0 | Level 0 changes are defined as changes that do not change the meaning of documentation and do not alter CLEC operating procedures. Level 0 changes are effective immediately without notification. [CMP Document, Section 5.4.2] |
| Level 1 | 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. [CMP Document, Section 5.4.2.1] |
| Level 2 | Level 2 changes are defined as changes that have minimal effect on CLEC operating procedures. Qwest will provide notification of Level 2 changes at least twenty-one (21) calendar days prior to implementation. [CMP Document, Section 5.4.3] |
| Level 3 | Level 3 changes are defined as changes that have moderate effect on CLEC operating procedures and require more lead-time before implementation than Level 2 changes. Qwest will provide initial notification of Level 3 changes at least thirty-one (31) calendar days prior to implementation. [CMP Document, Section 5.4.4] |
| Level 4 | Level 4 changes are defined as changes that have a major effect on existing CLEC operating procedures or that require the development of new procedures. Level 4 changes will be originated using the CMP Change Request process and provide CLECs an opportunity to have input into the development of the change prior to implementation. [CMP Document, Section 5.4.5] |

4

⁸⁷ A non-CMP Qwest notification (such as a billing, network, or contract notice) generally would not be assigned or contain these CMP disposition levels.

1 **Q. DO THE DESCRIPTIONS OF LEVEL 3 AND 4 CHANGES MEAN THAT**
2 **ALL CHANGES THAT HAVE A MODERATE OR MAJOR EFFECT ON**
3 **CLEC OPERATING PROCEDURES MUST GO THROUGH CMP?**

4 A. No. Many of the agreed upon ICA provisions, for example, have a moderate or
5 major effect on Eschelon's operating procedures, but many of them did not go
6 through CMP as they were negotiated or opted in to and publicly filed with the
7 Commission.⁸⁸ CMP is expressly limited by its "scope" provision.⁸⁹ As
8 discussed above, interconnection agreement terms are outside the scope of CMP
9 and, when they conflict with CMP, the ICA terms control.⁹⁰ Sections 251 and
10 252 of the Act, as well as state rules, apply to ICA negotiation and arbitration.

11 **Q. WHAT ARE PRODUCT, PROCESS, AND SYSTEM CHANGES?**

12 A. Change Requests and Qwest CMP notifications are classified by whether they
13 relate to a Qwest product or process or system.⁹¹ Changes to systems (such as
14 Interconnect Mediated Access or "IMA")⁹² are handled in CMP somewhat

⁸⁸ See Exhibits Eschelon 3.1 (table showing changes that were not noticed through CMP). See also Exhibit Eschelon 3.2.

⁸⁹ See Exhibit Eschelon 3.10 (CMP Document) at Section 1.0.

⁹⁰ See Exhibit Eschelon 3.10 (CMP Document) at Section 1.0.

⁹¹ Numbers are assigned to CMP notifications and change requests. Whether a CMP Change Request (Change Request) or notice is a product, process, or systems Change Request or notice is easily determined by looking at the assigned CMP number. If the number begins with "PROD" it is a product Change Request/notice, and if the number begins with "PROS," it is a process Change Request/notice. The CMP Document provides that changes that go through the process and product procedures "are not changes to OSS Interfaces" (*i.e.*, are not system changes). See CMP Document, §5.4.

⁹² These are changes to the "systems," as distinguished from other processes (such as manual processes, which are handled as "process" changes), for purposes of CMP. Although the term "Operations Support Systems" or "OSS" may come to mind as it is sometimes used in this sense,

1 differently from product and process changes. None of the relevant changes in
2 the five examples discussed below were systems changes. The notifications and
3 change requests discussed here are product and process (*i.e.*, not systems)
4 notifications and requests.⁹³

5 **Q. DO QWEST AND THE CLECS VOTE ON ADOPTION OR REJECTION**
6 **OF PRODUCT AND PROCESS CHANGE REQUESTS?**

7 A. No. Voting in the CMP occurs in only two narrow circumstances. First, voting
8 occurs for changes to the CMP Document itself and certain procedures within the
9 Document, *e.g.*, whether to change the disposition level of a Change Request⁹⁴ or
10 whether to grant an exception to the CMP Document's procedures.⁹⁵ Second,
11 voting occurs to prioritize (*i.e.*, rank) proposed systems changes.⁹⁶ If Qwest, in
12 CMP, chose to change terms affecting any of the issues Eschelon has included in

the term "OSS" is broader and also includes the associated business processes, including manual processes. In the Third Report and Order (at ¶ 425), the FCC said: "In the *Local Competition First Report and Order*, the Commission defined OSS as consisting of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. OSS includes the manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems." *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*. Third Report and Order and Fourth Further Notice of Proposed Rulemaking. CC Docket No. 96-98. FCC 99-238. Released 11/5/99.

⁹³ The only open issue relating to systems is Issue 12-87 (Controlled Production). For that issue, no change is required, as Eschelon's proposed language reflects Qwest's current practice documented in the Implementation Guidelines. *See* discussion of Issue 12-87 in Ms. Johnson's testimony. *See also* MN Arbitrators' Report ¶255 ("Qwest agrees that Eschelon's language accurately depicts its current practice, which does not require CLECs to recertify if they have successfully completed testing of a previous release; in addition, Qwest admits that Qwest can control whether a CLEC can access its OSS.")

⁹⁴ CMP Document Section 5.4.3.1.

⁹⁵ CMP Document Section 16.2.1.

⁹⁶ CMP Document Sections 5.2.1, 5.2.2, 10.3.3, 10.3.4 16.2, et al., and 17.0.

1 arbitration (as identified in the Disputed Issues Matrix), none of those changes
2 would be subject to voting as they relate to adoption or rejection of the changes.⁹⁷
3 In other words, no vote is taken on whether a particular product or process change
4 request should be implemented or not. Therefore, even if a change is universally
5 opposed by CLECs, Qwest is still free to implement the change after the time
6 period applicable to product and process changes has run its course. *See* CMP
7 Document (Exhibit Eschelon 3.10), Section 5.4. Although a CLEC may request
8 that Qwest postpone a change, Qwest is the sole decision maker as to whether a
9 postponement request is granted. If Qwest determines that it will not postpone
10 the implementation of a proposed change, Qwest may implement the change
11 thirty days after giving notice of its decision to deny the request to postpone.⁹⁸

12 **Q. DOES QWEST IMPLEMENT MOST OF ITS OWN CHANGES**
13 **THROUGH CHANGE REQUESTS?**

14 A. No. The vast majority of Qwest-initiated CMP changes are accomplished
15 through Level 0-3 email notifications. When Qwest issues a Level 3 “Notice” to
16 CLECs, indicating that it intends to implement a change, Qwest provides CLEC
17 15 days to provide written comment on the proposed change. Qwest then
18 responds to the CLECs’ comments. The CMP rules (in the CMP Document)

⁹⁷ Eschelon would have thought that Issue 12-87 would be an exception to this, as it relates to a systems issue and systems changes are at least ranked in CMP. Qwest has recently claimed that the Implementation Guidelines are not subject to CMP, despite CMP redesign history to the contrary. *See* discussion of Issue 12-87 in Ms. Johnson’s testimony.

⁹⁸ CMP Document Section 5.5.3.3.

1 allow Qwest to implement the proposed change no fewer than 15 days after it has
2 provided its response to CLEC comments. If Qwest responds to CLEC
3 comments immediately following the close of the CLEC comment period, Qwest
4 can implement its proposed changes (notwithstanding any CLEC objections), 31
5 days following its initial notification.

6 Therefore, CMP affords Qwest a “Notice and Go” capability, *i.e.*, if Qwest wants
7 to make a change, it simply notices CLECs, solicits and then may deny their
8 requests for modifications, and implements its proposed change in as little as 31
9 days after initial notice.⁹⁹ At times, this can be the “sword” that Qwest wields
10 through CMP, such as when Qwest dramatically restricted Eschelon’s ability to
11 successfully order DS1 capable loops, simply by changing one-word in its PCAT
12 through a Level 3 email notification (see the CRUNEC example discussed
13 below). Specific contract language in the interconnection agreement would offer
14 Eschelon some defense against this type of behavior on the part of Qwest and
15 provide Eschelon with some much needed measure of control over its own
16 business.

⁹⁹ As I use the term “notice and go,” the “go” in the “notice and go” allows Qwest to implement its proposed product or process change once the notice period is over (which is 31 days for a Level 3 Notice). No vote is taken regarding the product or process change and Qwest can reject objections from CLECs and implement the change. In other words, Qwest may “go” forward after the applicable notice period. Comments and objections are ineffectual if Qwest disagrees because it can implement its product and process changes even over unanimous CLEC opposition. [See CMP Document (Exhibit Eschelon 3.10), Section 5.4. For example, in the CRUNEC example discussed below, the twelve active CLECs all unanimously objected, and Qwest moved forward anyway, until a state commission became involved. See Exhibit Eschelon 3.13, pp. 3-4] The issue is the ability of Qwest to move forward (*i.e.*, “go”) with its changes after issuing a notice of a product or process change, regardless of the comments or objections it may receive from CLECs.

1 **Q. CAN CLECS EMPLOY THE SAME “NOTICE AND GO” APPROACH**
2 **TO CHANGES THEY REQUEST IN CMP, OR IN DISPUTING A**
3 **CHANGE ANNOUNCED BY QWEST?**

4 A. No.¹⁰⁰ In contrast to the relatively quick “notice and go” process that is available
5 to Qwest, if a CLEC disagrees with a change implemented by Qwest and desires a
6 Commission determination to reverse the change, it may seek dispute resolution
7 in each state affected by the change, but that is expensive and time consuming.¹⁰¹
8 As part of a CMP dispute resolution, Eschelon filed a complaint against Qwest
9 before the Arizona state commission in April of 2006.¹⁰² In that case, Qwest
10 argued vigorously against an October hearing date, citing its intent to conduct
11 multiple depositions and other discovery as well as scheduling conflicts. On
12 Qwest’s motion for reconsideration of the schedule, Qwest argued that six months
13 to hear the single issue presented by the Complaint was so short an amount of
14 time that Qwest had not even heard of rocket dockets proceeding that fast.¹⁰³ The

¹⁰⁰ CMP Document Sections 5.4.5, 5.4.5.1.

¹⁰¹ CMP Document Sections 5.4, 15.0. Any recourse within CMP that has Qwest as a decision maker, regardless of format (escalation, *etc.*), does not accomplish the goal of obtaining an outside, enforceable decision to resolve the dispute between Qwest and Eschelon. A third party decision maker is available through Alternative Dispute Resolution, but the CMP Document expressly provides: “***Without the necessity 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.” *Id.* (emphasis added).”

¹⁰² See Complaint, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (April 14, 2006) [“Arizona Complaint Docket”].

¹⁰³ AZ Complaint Docket, Transcript, Procedural Conference (July 27, 2006), at p. 18, lines 20-24 (Counsel for Qwest stated: "So the whole point is, we look at this scheduling question as one that is perplexing; that why is it that we are moving -- I mean I've been involved in rocket dockets. I've

1 hearing date was extended to February of 2007 – ten months after filing of the
2 Complaint – with Qwest expressing an intention to conduct additional discovery
3 during the intervening months. It has been extended again until August of 2007.
4 This is a far cry from the 31 day notice-and-go process available only to Qwest.
5 This case exemplifies that time required for a CLEC to obtain a result through
6 CMP dispute resolution is much longer than the time in which Qwest can
7 accomplish changes through Level 3 CMP notifications. Qwest’s expressed
8 intent to conduct multiple depositions and other discovery in that case is also an
9 example of the expense and resources that a CLEC in dispute resolution will
10 experience that Qwest does not with its quick and easy notification process. It is
11 clear that CMP dispute resolution is not a salve for all ills, particularly for issues
12 that a CLEC has already spent the time and resources necessary to bring before
13 the Commission through arbitration in an exercise of its Section 252 rights (as is
14 the case here).

15 In addition, there may be some misimpression that there is a “special” process for
16 CMP dispute resolution that offers benefits beyond a typical individual complaint
17 case. That is not the case, as dispute resolution under CMP works much like
18 dispute resolution under other provisions of the ICA, and may result in an
19 individual CLEC filing a complaint against Qwest before the Commission, as
20 with any other complaint. Any reference to “CMP” dispute resolution for issues

never seen a case that goes from beginning to end within this period of time that we've proposed in this case, and maybe there's cases here that I'm unaware of. None in my experience.")

1 involving “multiple” CLECs should not be construed to mean there is a special
2 “multiple CLEC” CMP dispute resolution process. While companies may opt to
3 jointly bring complaints or intervene in them under Commission rules, those rules
4 are no different for CMP.

5 The dispute resolution terms of the CMP Document are few and simple. When an
6 individual CLEC disagrees with a Qwest action in CMP, the CMP Document
7 contains dispute resolution procedures that provide that an individual CLEC “*may*
8 pursue the dispute resolution processes...”¹⁰⁴ The dispute resolution procedures
9 in the CMP Document are expressly qualified by the following statement: “This
10 process does not limit any party’s right to seek remedies in a regulatory or legal
11 arena at any time.”¹⁰⁵ Section 252 arbitration, for example, is one such
12 “regulatory or legal arena” that a CLEC may pursue unhindered by the dispute
13 resolution provisions of the CMP Document.

14 b. EXAMPLES: QWEST VACILLATES OR MANEUVERS
15 ON CMP

16 **Q. WITH THAT BACKGROUND INFORMATION TO HELP EXPLAIN**
17 **THE CMP TERMINOLOGY AND PROCEDURES, PLEASE PROVIDE**
18 **THE FIVE EXAMPLES YOU MENTIONED EARLIER.**

¹⁰⁴ CMP Document Section 15.0 (emphasis added).

¹⁰⁵ CMP Document Section 15.0.

1 A. As I mentioned previously, the five examples below illustrate that Qwest either
2 has had trouble in the past identifying issues that are inherently tied to CMP, or
3 Qwest chooses when to label certain issues as inherently relating to CMP for its
4 own convenience or to achieve a particular purpose. I will refer to the five
5 examples as CRUNEC, Design Changes, Minnesota 616, Delayed Orders, and
6 Secret TRRO PCATs.¹⁰⁶ I present an accurate explanation of each example and
7 Ms. Johnson provides supporting documentation, including detailed chronologies,
8 for three of these examples (*see* Exhibits Eschelon 3.13 and Eschelon 3.16
9 attached to Ms. Johnson's direct testimony and Exhibit Eschelon 2.4 attached to
10 Mr. Denney's direct testimony), which allows for an independent review of the
11 facts of these examples. To avoid voluminous filings of many exhibits, Eschelon
12 has made efficient and proper use of summary information (such as chronologies)
13 and excerpts (such as quotations from documents in those chronologies), while
14 providing sufficient information (including URLs to information on Qwest's own
15 website) to allow further review of the entire documents (many of which were
16 prepared by Qwest) if desired.

17 **i. CRUNEC EXAMPLE**

18 **Q. PLEASE DESCRIBE THE CRUNEC EXAMPLE RELATING TO**
19 **SPECIAL CONSTRUCTION CHARGES.**

¹⁰⁶ As indicated above, Qwest's handling of Jeopardies is another excellent example. Ms. Johnson discusses this example in her testimony relating to Issues 12-71 – 12-73.

1 A. The first example involves a change that Qwest implemented through CMP
2 relating to special construction charges, which Qwest calls “CLEC Requested
3 UNE Construction” or “CRUNEC.”¹⁰⁷ Generally, special construction is not
4 required to provide UNEs except in those situations when other alternatives have
5 been exhausted and no facilities are available to provide the requested service.
6 The other alternatives that Qwest must perform before indicating there are no
7 facilities include work that has been referred to as “Incremental Facility Work.”
8 For example, Section 9.1.2.1.2 of the SGAT provides: “If cable capacity is
9 available, Qwest will complete incremental facility work (*i.e.*, conditioning, place
10 a drop, add a network interface device, card existing subscriber Loop carrier
11 systems at the Central Office and remote terminal, add Central Office tie pairs,
12 add field cross jumpers) in order to complete facilities to the Customer premises.”

13 If, after exploring all alternatives including “Incremental Facility Work,” facilities
14 are still not available, these are “no-build situations.” No-build situations exist
15 when Qwest will not build for CLECs because it would likewise not build for
16 itself for the normal charges assessed to its customers. However, for “special”
17 additional charges associated with the cost of building facilities, Qwest will build
18 facilities when the CLEC submits an application and agrees to pay those higher
19 charges through the process that Qwest calls “CRUNEC.” Eschelon does not use

¹⁰⁷ See Exhibits Eschelon 3.13 – 3.15.

1 the relatively time-consuming and expensive special construction, or CRUNEC,
2 process.

3 On April 30, 2003, Qwest sent to all participating CLECs a Level 3 (“notice and
4 go”) CMP notification, indicating an effective date of June 16, 2003, for a one-
5 word change to its PCAT. The notice said:

6 Qwest is modifying/changing the existing manual process by
7 removing conditioning as a limiting factor of the CRUNEC
8 [“CLEC Requested UNE Construction”] process as it relates to
9 DS1 Capable Loops when facilities are not available.¹⁰⁸

10 Specifically, via this email notification, Qwest revised the PCAT dealing with
11 special construction for UNEs so as to remove the word “conditioning” from the
12 definition of “Incremental Facility Work” as follows:

13 Incremental Facility Work: Completing facilities to an end-user’s
14 premises (e.g., ~~Conditioning~~, pPlace a drop, add a Network
15 Interface Device (NID), Central Office (CO) tie pairs, field cross-
16 connect jumpers, or card in existing Subscriber Loop Carrier
17 systems at the CO and Remote Terminal).¹⁰⁹

18 Qwest sends a substantial number of email notifications about a wide variety of
19 issues and products (some of which, like CRUNEC, Eschelon generally does not
20 order). Eschelon has to sift through the Qwest notifications for those impacting
21 its business and has little reason to review those relating to CRUNEC (so was

¹⁰⁸ PROS.04.30.03.F.011071.CRUNEC. For further details, see Exhibits Eschelon 3.13 and 3.14 to the Testimony of Ms. Johnson.

¹⁰⁹ http://www.qwest.com/wholesale/downloads/2003/030430/PCAT_CRUNEC_V4_1.doc

1 surprised, as discussed below, to find that such a notice could significantly impact
2 its business).

3 On May 13, 2003, Covad objected to Qwest's revision, expressing concerns as to
4 how this relatively minor-looking change might be implemented by Qwest in
5 undertaking conditioning activities used by Covad on a regular basis. Covad
6 indicated its concerns were rooted in the fact that the section of the PCAT from
7 which the word "conditioning" was being removed was a list of activities Qwest
8 would undertake *without* the need for the special construction (CRUNEC) process
9 – *i.e.*, activities Qwest would perform in the normal course of providing UNEs *at*
10 *no additional charge*.¹¹⁰ Therefore, the likely impact of Qwest's change would be
11 to require additional costly special construction (CRUNEC) charges for
12 conditioning activities in situations in which CRUNEC-related charges were not
13 required before (*i.e.*, previously, Qwest had conditioned loops in the normal
14 course of provisioning without additional charge).

15 On May 21, 2003, Qwest "respectfully declined" Covad's comments. Instead of
16 answering Covad's concern, Qwest's response to Covad in its entirety said:

17 Removal of the word "conditioning" from the PCAT language
18 allows the CLEC to use CRUNEC for the build process of
19 products where before they could not. Current products that have
20 conditioning at no charge will not be affected. Qwest respectfully
21 declines this comment.¹¹¹

¹¹⁰ http://www.qwest.com/wholesale/downloads/2003/030521/CNL3_response_CRUNEC_V4.doc

¹¹¹ http://www.qwest.com/wholesale/downloads/2003/030521/CNL3_response_CRUNEC_V4.doc

1 Qwest's proposed change went into effect, as Qwest planned, on April 30, 2003,
2 with no delay as a result of Covad's expressed concerns. As indicated below,
3 only later did Eschelon and other CLECs learn that, by extending the so-called
4 opportunity to CLECs "to use CRUNEC for the build process of products where
5 before they could not," Qwest was, through its CMP email notification, actually
6 requiring CLECs to pay special construction charges (*i.e.*, "use CRUNEC") in
7 situations when before they paid no additional charges pursuant to their
8 interconnection agreements.

9 **Q. DID QWEST'S CHANGE TO ITS PCAT CAUSE UNEXPECTED**
10 **PROBLEMS FOR ESCHELON AND ITS END USER CUSTOMERS?**

11 A. Yes, though at first it was unclear that Qwest's CMP notice was the cause of the
12 problem. There was no apparent reason to associate the two events. As I said
13 earlier, Eschelon did not use the special construction (CRUNEC) process, so it did
14 not expect changes in that process to affect its business. Almost immediately
15 after the effective date of Qwest's unilateral email notification, however,
16 Eschelon began experiencing a dramatic spike in the number of held orders
17 relative to DS1 loops ordered from Qwest. Early on, Eschelon reported receiving
18 more than *four times* the number of these held order notices in 25 days than it had
19 received in the previous 170 days.¹¹² When an order goes "held," it is delayed, so
20 the End User Customer does not receive service on the expected due date or, if

¹¹² Eschelon's Comments Regarding Staff Second Report, ACC Docket No. T-00000A-97-0238 (July 18, 2003), p. 5.

1 cancelled, not at all. Therefore, inappropriate held orders are a serious
2 competitive issue.

3 **Q. DID ESCHELON IMMEDIATELY NOTIFY QWEST WHEN IT**
4 **NOTICED THAT THE NUMBER OF DS1 HELD ORDERS HAD SPIKED?**

5 A Yes. Eschelon queried Qwest as to the substantial increase in held orders via
6 several emails, such as those attached to Ms. Johnson's testimony. Qwest
7 responded that the increase was likely due to the CMP change identified above,
8 and admitted that the effect of its CMP notice was to implement a new Qwest
9 policy related to "charging" for certain activities for which it had assessed no
10 charges in the past. Qwest said:

11 Qwest has in the past not fully enforced our contractual right to
12 collect on the charges incurred when completing DS1 level
13 unbundled services. Charging is the specific change that has
14 occurred.¹¹³

15 Recall that rates and the application of rates are outside the scope of Qwest's
16 CMP process. Although Eschelon and Qwest disagree about what all this means
17 and how Qwest implements it, Qwest admits that "discussion around rates
18 associated with an Interconnection Agreement are outside the scope of the CMP
19 process."¹¹⁴ In addition, Qwest has acknowledged that, in the meetings in which

¹¹³ Qwest (Teresa Taylor) email to Eschelon (July 3, 2003).

¹¹⁴ See Exhibit Eschelon 3.53 (Expedite Chronology, quoting Qwest's response sent by email on November 7, 2005 (and dated November 4, 2005), to McLeod-Eschelon escalation. See

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

1 CMP procedures were developed (known as CMP “Re-Design”), “it was agreed
2 that discussions on rate change were not in the scope of CMP.”¹¹⁵ Nonetheless,
3 through its email notification, Qwest had revised the PCAT, via CMP, so that it
4 could “enforce [its] contractual rights” to assess charges by requiring use of
5 Qwest’s CRUNEC process that it had not, in the past, assessed. I find it
6 interesting here that Qwest used its CMP notice to enforce “contractual” rights
7 that can only be interpreted as referring to an ICA (that is the primary contract
8 dictating terms between Qwest and CLECs). In other words, even though the
9 ICA is meant to govern when there are conflicts between an ICA and a CMP
10 notice, Qwest purposefully used a CMP notice to implement a change in policy
11 related to interpreting its ICAs.

12 Perhaps more importantly, however, is the fact that Qwest’s use of CMP held up
13 Eschelon’s DS1 End User Customers relative to their normally-scheduled due
14 dates. The orders went on hold, even though the ICA under which Eschelon and
15 Qwest were operating had not changed (nor had the SGAT, quoted above). As
16 leverage to obtain those higher charges, Qwest refused to provide facilities unless
17 Eschelon and other CLECs requested special construction through “CRUNEC.”
18 The interval for a DS1 capable loop is five business days in Utah. Under Qwest’s
19 “CRUNEC” process, there are 3-, 2-, 5-, and 30-day intervals for various

¹¹⁵ See CMP Meeting Minutes (May 12, 2002); see <http://www.qwest.com/wholesale/downloads/2002/020614/ProductProcessCMPMeetingDistributionPackage06-19-02.pdf>

1 activities associated with obtaining a quote before construction even begins.¹¹⁶

2 The interval to actually construct the facilities is unknown because the interval is
3 Individual Case Basis (“ICB”).¹¹⁷ Even assuming a CLEC were willing to pay
4 the expensive CRUNEC charges, the impact on serving the customer in a timely
5 fashion is unacceptable when the CRUNEC process should not be required at all.

6 Before issuing its CMP notice, Qwest routinely performed “Incremental Facility
7 Work” using UNE intervals and at no additional charge. This shows that Qwest
8 had the capability to make facilities available in this way but had, through its
9 “notice,” simply chosen not to. Qwest’s one-word CMP notice was just a means
10 by which Qwest implemented a rate hike – using CMP as the vehicle to do so and
11 causing End User Customer delays for Eschelon’s customers as the manner by
12 which to force payment.

13 **Q. WERE COVAD AND ESCHELON THE ONLY CLECS TO OBJECT?**

14 A. No. Twelve CLECs were active in CMP, and all twelve joined in escalating
15 Qwest’s conduct in CMP.¹¹⁸ Qwest implemented the change in its notice in CMP
16 over the strenuous objection of all of these active CLEC CMP participants.

¹¹⁶ See <http://www.qwest.com/wholesale/clecs/crunec.html>

¹¹⁷ See *id.*

¹¹⁸ On August 15, 2003, Allegiance, AT&T, Cbeyond, Contact Communications, Covad, Eschelon, MCI, McLeodUSA, MTI, Tel-West, Time Warner Telecom, and US Link proposed a resolution (the "12-CLEC Proposal"), to be discussed on the August 15th ad hoc CMP conference call, with respect to the CMP process, CRUNEC and CMP notices PROS.04.30.03.F.01071.CRUNEC_V4.0, PROS.05.21.03.F.01089.FNL_CRUNEC, PROD.07.11.03.F.03468.UNECCRUNEC_V5.0, and PROD.08.06.03.F.03494.DelayedResponseCRUNEC.

1 CLECs then had to complain to the Arizona commission, which still had an open
2 271 proceeding at the time.

3 **Q. DID THE ARIZONA COMMISSION AGREE WITH ESCHELON?**

4 A. Yes. In a September 16, 2003 Order in the 271 Docket, Docket No. T-00000A-
5 97-0238 (Decision No. 66242), the Arizona commission agreed with its Staff's
6 position, as outlined in a Staff report, that Qwest should suspend its new policy
7 and not change rates in this manner, in the context of CMP. Specifically, the
8 Commission said:

9 109. Staff agrees with Eschelon with respect to the recently
10 imposed construction charges on CLECs for line conditioning.
11 Staff is extremely concerned that Qwest would implement such a
12 significant change through its CMP process without prior
13 Commission approval. As noted by AT&T, during the Section 271
14 proceeding, the issue of conditioning charges was a contested
15 issue. Language was painstakingly worked out in the Qwest SGAT
16 dealing with the issue of line conditioning which Qwest's new
17 policy is at odds with. Staff recommends that Qwest be ordered to
18 immediately suspend its policy of assessing construction charges
19 on CLECs for line conditioning and reconditioning and
20 immediately provide refunds to any CLECs relating to these
21 unauthorized charges. Qwest should reinstitute its prior policy on
22 these issues as reflected in its current SGAT. If Qwest desires to
23 implement this change, then it should notify the Commission in
24 Phase III of the Cost Docket, but must obtain Commission
25 approval of such a change prior to its implementation. To the
26 extent Qwest does not agree to these conditions, Staff recommends
27 that Qwest's compliance with Checklist Items 2 and 4 be reopened.
28 We agree with Staff.

29 **Q. SINCE THE TIME OF THIS EXAMPLE, HAS THE FCC CONFIRMED**
30 **THAT QWEST MUST PERFORM THIS TYPE OF INCREMENTAL**
31 **FACILITY WORK FOR ESCHELON AND OTHER CLECS?**

1 A. Yes. In its *Triennial Review Order* (“TRO”), the FCC confirmed that Qwest (and
2 other ILECs) must make “routine network modifications” on behalf of CLECs
3 ordering UNEs, under the same terms and conditions by which they undertake
4 those same types of modifications for themselves and their own retail
5 customers.¹¹⁹ In other words, only if Qwest forces its own customers into a time
6 consuming and expensive construction process to build new facilities in the same
7 circumstances (which it does not), would the same treatment for CLECs be
8 justified. Therefore, Qwest’s initial observation that it was not “fully enforcing”
9 its rights to hold orders and apply charges for these types of “conditioning”
10 activities¹²⁰ was mistaken from the outset – an issue Eschelon would almost
11 certainly have raised if Qwest had been required to address the issue with
12 Eschelon via negotiations or a contract amendment.

13 **Q. WHAT SHOULD THE COMMISSION TAKE AWAY FROM THIS**
14 **EXAMPLE WITH RESPECT TO ADOPTION OF ICA LANGUAGE?**

15 A. Qwest, through its CMP notice described above, knew it was changing the
16 manner in which it processed and assessed charges related to CLEC orders. It is
17 clear that the process Qwest wanted to implement (*i.e.*, assessing additional
18 charges for conditioning) was inconsistent with the current language in its PCAT

¹¹⁹ Report and Order and Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003), *vacated in part and remanded*, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004) (“TRO”) at ¶¶ 630-648.

¹²⁰ Qwest (Teresa Taylor) email to Eschelon (July 3, 2003).

1 – language that needed to be changed in order to square with Qwest’s intentions.
2 Because that language was in the PCAT, and not specified in an ICA at a
3 necessary level of detail, Qwest was able to implement that change unilaterally
4 and over the objection of its multiple CLECs. This change substantially
5 undermined Eschelon’s existing business processes and caused real-world orders
6 to fail and Eschelon End User Customers to be delayed or go without service. If
7 contract language in an ICA had governed this issue in more detail, Qwest could
8 not so easily, or independently, have changed its policy (or its “contractual
9 rights”) regarding this issue. Qwest would have had to offer the change in
10 language to Eschelon, explain its intentions, and negotiate or arbitrate an
11 amendment with Eschelon. Had Qwest been required to follow this approach,
12 Eschelon’s End User Customers would not have been held up and the dramatic
13 spike in Eschelon’s DS1 related “held orders” (each one representing an Eschelon
14 End User Customer whose service is delayed) could have been avoided while the
15 issue was debated.

16 Instead, Eschelon and other CLECs had to rush to a state commission in a crisis
17 mode, while End User Customers were being negatively affected, and request
18 speedy relief. Fortunately, Arizona happened to have an open 271 proceeding in
19 which comments were soon due. The alternative today, without 271 proceedings,
20 would be for each objecting CLEC to incur the expense of filing one or more
21 complaints before the state commissions, under the CMP or ICA dispute
22 resolution provisions (or both), asking the commissions for expedited relief.

1 Inclusion of specific ICA language in the contract on open issues as a result of
2 this arbitration will help avoid disputes and these kinds of crisis situations that
3 require expedited action from the Commission.

4 **ii. DESIGN CHANGES EXAMPLE**

5 **Q. PLEASE DESCRIBE THE DESIGN CHANGES EXAMPLE.**

6 A. The substantive discussion of Issue 4-5, Design Changes, is contained in the
7 testimony of Mr. Denney. I discuss the issue here because Qwest's treatment of
8 its proposed language for Issue 4-5 Design Changes is another example of
9 Qwest's directing – or, inconsistently, not directing – issues to CMP, to its own
10 advantage (and the corresponding disadvantage) of CLECs. Consequently, the
11 issue highlights the need for the certainty of ICA language to govern the
12 Qwest/Eschelon business relationship for the years to come.

13 A design change is a change in circuit design after engineering review that allows
14 a CLEC to change a service previously requested without the unnecessary delay
15 and cost involved in canceling and re-submitting the request. Qwest provided
16 design changes to Eschelon without additional charge from the inception of the
17 Qwest/Eschelon ICA until September 1, 2005. On that date, Qwest issued a
18 unilateral, non-CMP announcement addressing two things that would occur in one
19 month's time: (1) Qwest would commence billing CLECs new (non-Commission-
20 approved) non-recurring charges for design changes to Unbundled Loop

1 circuits;¹²¹ and (2) Qwest would use a new definition of “design change.”¹²²
2 When Eschelon inquired about these changes, Qwest CMP personnel responded
3 that “this item is outside the scope of CMP.”¹²³ While this statement would be
4 correct regarding rates (which clearly do not belong in CMP), it does not answer
5 the fact that Qwest chose to address the *definition* of design changes (a non-rate or
6 rate application issue) outside the CMP, and also chose to unilaterally establish
7 new rates not only outside CMP but without benefit of Commission review or
8 approval.

9 Qwest then changed its position when it developed its position on design changes
10 for arbitration. In its Minnesota position statement for the definition of design
11 change (which was an open issue at the time) submitted with the first Disputed
12 Issues Matrix submitted in arbitration, Qwest stated that:

13 Qwest agrees that there needs to be a common understanding of
14 this definition, but this definition concerns a process that affects all
15 CLECs, not just Eschelon. The entire purpose of CMP was to
16 ensure that the industry (not just Qwest or one CLEC) is involved
17 in creating and approving processes so that processes are uniform
18 among all CLECs. Processes that affect all CLECs should be
19 addressed through CMP, not through an arbitration involving a
20 single CLEC. Further, implementing a unique process for Eschelon
21 that Qwest does not follow for other CLECs would require Qwest

¹²¹ Exhibit Eschelon 2.1, September 1, 2005 letter from Qwest with the subject line “Billing for design changes on Unbundled Loop.”

¹²² In its September 1, 2005 letter, Qwest stated that design changes include the following activities: Connecting Facility Assignments (CFA) change, Circuit Reference (CKR) change, CKL 2 end user address change on a pending LSR, Service Name (SN) change, and NC/NCI Code change on a pending LSR.

¹²³ See, Exhibit Eschelon 2.2 (Denney), p. 3.

1 to modify its systems or processes and would cause Qwest to incur
2 costs it is entitled to recover under the Act.

3 Despite taking this position, Qwest then proceeded to agree to a definition of
4 “design change” in the Eschelon arbitration – outside of the CMP – that differs
5 markedly from the definition that it introduced in its September 2005 non-CMP
6 letter to all CLECs.¹²⁴ Qwest’s vacillation on the treatment of a significant issue
7 such as the governing definition for design changes illustrates the need for ICA
8 contract language to govern dealings between Eschelon and its wholesale
9 provider.

10 Qwest’s treatment of the design change rate issue that arose in its unexpected
11 non-CMP notice in September, 2005, is similarly illustrative of the need for
12 certainty that only contract language can bring. In the September 1, 2005, notice,
13 Qwest stated that it would “commence billing CLECs non-recurring charges for
14 design changes to Unbundled Loop circuits” beginning in one month’s time.¹²⁵
15 Qwest provided no basis for the sudden imposition of a new rate, indicating only
16 that it would bill CLECs “at the rate found in the miscellaneous elements of

¹²⁴ *Compare*, the closed definition of Design Changes, which states in part that, “Design change does not include modifications to records without physical changes to facilities or services, such as changes in the circuit reference (CKR)...or Service Name (NM)...” *with* the definition in Qwest’s September 1, 2005 letter, which states in part: “Among the charges for the design changes that will be billed, the following activities will generate a non-recurring design change charge per occurrence:...”Circuit Reference (CKR) change”...”Service Name (SN) change...” As Mr. Denney discusses further in his testimony, the jury is still out regarding Qwest’s actual application of the agreed upon new definition.

¹²⁵ Exhibit Eschelon 2.1 (Denney), September 1, 2005 letter from Qwest with the subject line “Billing for design changes on Unbundled Loop.”

1 Exhibit A or the specific rate sheet in your Interconnection agreement.”¹²⁶ Such a
2 reference would seem to presuppose support for the rate in the ICA, but, in fact,
3 the only mention of design change charges in relevant governing documents is at
4 Section 9.6.4.1.4 of the SGAT, which provides for design change charges not for
5 loops but for “Unbundled Dedicated Interoffice Transport” (UDIT). In
6 Minnesota, Qwest then admitted that there is no rate for design changes for loops.
7 Ms. Stewart’s rebuttal testimony in the Minnesota arbitration confirmed that the
8 rates for design changes for loops Qwest implemented via a mere letter leapt
9 straight from Qwest’s business plans to its CLEC billings: “...neither Qwest’s
10 SGAT nor the parties’ current ICA includes a design change charge for loops.”¹²⁷
11 As Mr. Denney explains in his testimony, such an admission warrants Qwest’s
12 promptly crediting CLECs for the unsupported design change charges it has billed
13 CLECs since October, 2005. Yet, despite Qwest’s admission, Qwest continues to
14 bill those charges, which Eschelon disputes.

15 **Q. WHAT SHOULD THE COMMISSION CONCLUDE FROM THIS**
16 **EXAMPLE?**

17 A. Qwest’s treatment of design change definition and charges shows that Eschelon
18 must have contract language upon which it may fairly depend in its dealings with

¹²⁶ *Id.*

¹²⁷ Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp. Minnesota PUC Docket No. P-5340, 421/IC-06-768; OAH Docket No. 3-2500-17369-2. September 22, 2006, p. 6, lines 27-28 (“Mr. Denney is correct in stating that neither Qwest's SGAT nor the parties' current ICA includes a design change charge for loops.”).

1 Qwest, and that Qwest’s on-again, off-again reliance on CMP is in no way a
2 substitute.

3 **iii. MINNESOTA 616 EXAMPLE**

4 **Q. TO WHAT DOES THE TERM “MINNESOTA 616” REFER?**

5 A. “Minnesota 616” refers to the last digits of the docket number for two Minnesota
6 Public Utilities Commission (“PUC”) orders dated 7/31/03 and 11/12/03 from the
7 docket entitled *In The Matter of a Request by Eschelon Telecom for an*
8 *Investigation Regarding Customer Conversion by Qwest and Regulatory*
9 *Procedures* [Minnesota PUC Docket P-4211C-03-616 (“MN 616 orders”)]. The
10 abbreviated docket number is any easy, shorthand way to refer to the case that
11 also avoids use of confidential customer-identifying information (as the name of
12 the end user customer involved in that case is confidential information).

13 Eschelon has proposed contract provisions for its Utah ICA that reflect
14 procedures adopted in the Minnesota 616 case by the Minnesota commission,¹²⁸
15 which also adopted Eschelon’s language for Issue 12-64 and subparts in the

¹²⁸ See the discussion of Issue 12-64 in the testimony of Ms. Johnson. *See also* Exhibits Eschelon 3.44 – 3.52 (attached to the testimony of Ms. Johnson). In its position statement, Qwest argued that Eschelon’s proposed language is inappropriately expands the scope of the Minnesota 616 Orders, stating: “the Minnesota ruling Eschelon relies upon is flawed, Eschelon’s proposed language significantly expands the effect of the ruling by encompassing not just problems involving orders, but multiple other potential situations.” *See* Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon’s Petition for Arbitration in the Eschelon-Qwest Oregon arbitration, Qwest position statement, pp. 162-163. The Minnesota commission’s adoption of Eschelon’s language indicates the commission disagrees regarding the scope of its own order. *See* Exhibit Eschelon 2.24, Denney (MN Arbitrators’ Report ¶208). In any event, there is no reason that an ICA provision that will apply on a going forward basis needs to be limited to the scope of the single example in that case. The example demonstrates the need for ICA language.

1 Minnesota arbitration.¹²⁹ The Minnesota Commission ordered Qwest to create
2 procedures for acknowledging mistakes related to Qwest's errors that affect
3 CLEC's End User Customers. Specifically, the Minnesota Commission said:

4 Within 30 days of the date of this Order, Qwest shall make a
5 compliance filing detailing its proposal for remedying the service
6 inadequacies identified in this Order. This proposal shall include
7 ... (b) procedures for promptly acknowledging and taking
8 responsibility for mistakes in processing wholesale orders; (c)
9 procedures for reducing errors in processing wholesale orders,
10 including a report on the feasibility of maximizing reliance on
11 electronic processing, with an explanation of the necessity for each
12 manual operation required for wholesale order processing.¹³⁰

13 In a situation in which the End User Customer requests a written
14 acknowledgement of the error causing the service disruption, Qwest should be
15 required to acknowledge its mistake. As the Minnesota Commission observed,
16 "Providing adequate wholesale service includes taking responsibility when the
17 wholesale provider's actions harm customers who could reasonably conclude that
18 a competing carrier was at fault. Without this kind of accountability and
19 transparency, retail competition cannot thrive. Telecommunications is an

¹²⁹ Exhibit Eschelon 2.25 (Denney) [MN PUC Arbitration Order, p. 23, ¶4 (Topic 27)]. See the discussion of Issue 12-64 in the testimony of Ms. Johnson. See also Exhibits Eschelon 3.44 – 3.52 (attached to the testimony of Ms. Johnson).

¹³⁰ 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.

1 essential service, and few customers will transfer their service to a competitive
2 carrier whose service quality appears to be inferior to the incumbent's.”¹³¹

3 Eschelon’s need to protect against harm to its business and its reputation is as
4 great in Utah as it is in Minnesota; the Utah Commission should therefore
5 consider and adopt the reasonable measures proposed by Eschelon, for the
6 reasons further described by Ms. Johnson regarding Issues 12-64 and subparts
7 (Root Cause and Acknowledgement of Mistakes). I raise the Minnesota 616 case
8 here with respect to Qwest’s position on CMP. Ms. Johnson describes the facts
9 of the case in her direct testimony.¹³²

10 **Q. ARE THE FACTS OF THE MINNESOTA 616 CASE UNUSUAL?**

11 A. The unusual aspect of these facts is the “smoking gun” nature of the evidence.
12 Usually, a CLEC may learn of such Qwest Wholesale-Qwest Retail contacts, or
13 believe based on a course of events that they have occurred, but cannot prove
14 Qwest’s conduct. Rarely are the contacts in writing (as happened in the
15 Minnesota 616 case) or, if they are written and provided to Customers, the
16 Customers may not want to be caught in the middle by providing copies to the
17 CLEC. The absence of the “smoking gun” evidence in these more typical cases,
18 however, does not mean that Qwest’s errors and improper Wholesale-Retail
19 contacts, such as those demonstrated in the above example, do not occur.

¹³¹ Exhibit Eschelon 1.4, p. 13.

¹³² The 616 case is also described in the Minnesota Arbitrators’ Report ¶¶204-208 (Exhibit Eschelon 2.24 (Denney), pp. 50-52).

1 Another example occurred just recently, when a Qwest End User Customer
2 decided to switch to Eschelon. After Eschelon submitted the conversion order to
3 Qwest Wholesale, this Customer received a letter from Qwest’s Retail group¹³³--
4 while its order to switch to Eschelon was still pending. The letter begins: “Thank
5 you for once again putting your trust in Qwest. We’re pleased to continue
6 bringing you the quality and reliability you demand” It then asked the End
7 User Customer to “please verify your order details listed at left and review the
8 enclosed instructions.” The order number given in the letter is the *Eschelon* order
9 number for Eschelon’s order submitted to Qwest to switch the Customer to
10 Eschelon. (In other words, Qwest is asking the Customer switching to Eschelon
11 to verify whether Eschelon placed the order correctly.)

12 Carriers cannot use Customer Proprietary Network Information (“CPNI”) to
13 attempt to retain a customer “during the time subsequent to the customer’s
14 placement of an order to change carriers and prior to the change actually taking
15 place.” The FCC has specifically found that this is anti-competitive:
16 “[C]ompetition is harmed if *any* carrier uses carrier-to-carrier information, *such*
17 *as switch or PIC orders*, to trigger retention marketing campaigns.”¹³⁴

¹³³ See Exhibit Eschelon 3.45 to the Testimony of Ms. Johnson (Qwest’s Retail letter to Eschelon’s End User Customer) and Exhibits Eschelon 3.46 and Eschelon 3.47 (Email exchange and chronology of the events associated with this incident).

¹³⁴ See Order on Reconsideration and Petitions for Forbearance, FCC 99-223, CC Docket No. 96-149; Adopted August 16, 1999; Released September 3, 1999 (“CPNI Order”), at ¶69, 76.

1 Furthermore, at a minimum, if Qwest’s letter ended with the above quoted request
2 for order verification from Qwest Retail, it would still create customer confusion.
3 The letter proceeds, however, with a fairly undisguised winback message: “As
4 your communications needs expand and change, you know you can call us at 1-
5 800-997-9378.” Although the letter invited the End User Customer to call Qwest,
6 the End User Customer in this case did not initiate contact with Qwest. Instead,
7 *Qwest’s Retail Business Office called the End User Customer directly about*
8 *Eschelon’s wholesale order.* Qwest’s Retail Business Office told the End User
9 Customer that the service would be disconnected at Eschelon’s request. Qwest’s
10 Retail Business Office neglected to tell the End User Customer that his service
11 would be transferred to Eschelon, so service disruption would *not* occur.
12 Naturally, the End User Customer was extremely concerned and informed
13 Eschelon that he was considering canceling his request of the service transfer to
14 Eschelon. Only after Eschelon explained to the Customer that the Customer
15 would not be losing service, despite Qwest’s use of the term “disconnect,” did the
16 Customer agree to proceed with the service transfer. Clearly, had the Customer
17 not contacted Eschelon to check the distorted “facts” presented by Qwest’s Retail
18 group, Eschelon would not know why the Customer changed his mind, and why
19 Qwest accomplished an improper “winback” so quickly. Eschelon requested a
20 root cause analysis on this incident, to which Qwest responded that Qwest’s
21 contact with this customer switching to Eschelon was incorrect and the result of

1 “human error.”¹³⁵ Although Qwest proposes exclusion of all of Eschelon’s
2 proposed language for Issue 12-64 and subparts from the ICA, incidents like this
3 further bolster the need for inclusion of Eschelon’s language in the ICA to prevent
4 such incidents.

5 **Q. IS QWEST’S HANDLING OF THE PROCEDURES ORDERED BY THE**
6 **MINNESOTA COMMISSION IN THE 616 CASE CONSISTENT WITH**
7 **ITS POSITION ON CMP?**

8 A. No. Qwest chose not to implement the Minnesota Commission-ordered product
9 and process procedures through CMP (for Minnesota or any state) or to inform
10 other CLECs via CMP of the availability of such acknowledgments and how and
11 when to obtain them. The CMP Document outlines procedures for initiating a
12 Change Request (known as a “Regulatory CR”) in CMP when a regulatory
13 agency orders Qwest to make a change,¹³⁶ as well as for Qwest to voluntarily
14 initiate a change request if not mandated.¹³⁷ A change may be implemented on a
15 state-specific basis.¹³⁸ Eschelon is *not* advocating use of the CMP procedures, as

¹³⁵ See Exhibit Eschelon 3.47, p. 3 (8/24/06 entry).

¹³⁶ The CMP Document defined a regulatory change request as follows: “A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may originate the Change Request.” See Exhibit Eschelon 3.10 to Ms. Johnson’s testimony (CMP Document) at §4.1. If the requirements for a Regulatory CR are not met, a company may submit a regular change request. Consistent with its position that this issue should be addressed in the ICA, Eschelon did not initiate a Change Request.

¹³⁷ CMP Document (Exhibit Eschelon 3.10), §5.4.

¹³⁸ A process affecting “all CLECs” that Qwest contends belongs in CMP may be specific to one state. See, e.g., the Washington-only expedite terms. See Exhibit Eschelon 3.65, p. 3 [Qwest’s PCAT,

1 it has consistently maintained that this issue should be addressed in the
2 interconnection agreement. In contrast, Qwest’s stated position is that processes,
3 procedures, and business practices should be handled in CMP and not in
4 interconnection agreements to avoid “one-off” processes.¹³⁹ Yet, for this
5 particular issue of acknowledging Qwest mistakes, Qwest did not use CMP even
6 though Qwest later admitted its decision not to do so has resulted in a “one-off”
7 process.¹⁴⁰ The inconsistency in Qwest’s position may reflect the fact that the
8 results of the Minnesota Commission’s order were unfavorable to Qwest. Qwest
9 simply chose not to implement them through CMP. While CMP is apparently
10 optional for Qwest when issues affect multiple CLECs,¹⁴¹ Qwest does not propose
11 to give Eschelon that option.

Expedites and Escalations Overview – V. 44.0, stating: “The Expedites Requiring Approval section of this procedure does not apply to any of the products listed below (unless you are ordering services in the state of WA).”].

¹³⁹ See, e.g., Albersheim Colorado Rebuttal, p. 6, lines 3-7 (“Eschelon seeks to expand Qwest's obligations and create **one-off, unique processes** for CMP-related ICA issues in dispute: Issue 1-1: service intervals, Issues 12-71 through 12-73: jeopardy notices, and Issue 12-67: expedited orders. Eschelon's approach to these issues has a **dire effect** on the CMP”) (emphasis added). See also Qwest-Eschelon ICA MN Arbitration, Qwest (Mr. Linse) MN Direct, p. 12, lines 12-19 (“Even if Eschelon were to agree that its language constitutes a standing request to tag whenever necessary, this would still represent a significant ‘one-off’ from Qwest's existing process. Eschelon's proposed language would create a unique process that would apply only to Eschelon and other CLECs that may opt into Eschelon's agreement. Qwest's technicians on service calls would be unreasonably burdened with the responsibility of understanding this one-off process and keeping straight for which CLECs it applied. This would create significant administrative and logistical difficulties.”) (Issue 12-75, now closed).

¹⁴⁰ Ms. Albersheim admitted its proposal of a Minnesota-only provision for Issue 12-64 is a “one-off” process. Qwest-Eschelon Minnesota arbitration, Transcript, Vol. I, p. 15, line 17 – p. 16, line 3 (Albersheim) (Exhibit Eschelon 1.5).

¹⁴¹ In its order finding Qwest’s compliance filing inadequate, the Minnesota Commission’s fourteen ordering paragraphs (a-n) regarding the required contents of Qwest’s next compliance filing included, for example, the following items that referred to “all” Qwest wholesale orders and CLECs generally (not only Eschelon): “(f) Procedures for extending the error acknowledgment procedures

1 **Q. IN ADDITION TO REFERRING TO CMP, QWEST ARGUES THAT**
2 **ESCHELON’S PROPOSAL TO REQUIRE ACKNOWLEDGEMENT OF**
3 **MISTAKES IS UNNECESSARY BECAUSE OF THE EXISTENCE OF**
4 **PERFORMANCE INDICATOR DEFINITIONS (“PIDs”). IS QWEST**
5 **CORRECT?**¹⁴²

6 A. No. Qwest’s argument is incorrect for a number of reasons. First, PIDs do not
7 capture all types of Qwest’s inadequate service. Ms. Johnson’s direct testimony
8 contains Exhibit Eschelon 3.44 that provides several real-life examples in which
9 Qwest’s mistakes affected Eschelon’s End User Customers and for which
10 Eschelon requested (and Qwest provided) root cause analysis. In one of these
11 examples, Qwest’s technician insulted Eschelon’s End User Customer with
12 profanity.¹⁴³ In another example, Eschelon’s End User Customer was
13 unnecessarily called to the customer premises at 10 p.m., while Qwest’s
14 technician did not show up (and did not need the Customer’s presence at the
15 customer premises).¹⁴⁴ PIDs do not measure these types of mistakes. Similarly,
16 PIDs do not measure the harm to Eschelon’s reputation done by Qwest’s mistakes
17 in situations in which the End User is led to believe that Eschelon was at fault. In
18 the specific incident that prompted the Minnesota Commission to direct Qwest to

set forth in part (e) to *all* Qwest errors in processing wholesale orders.” Order, *MN 616 Case* (Nov. 13, 2003) p. 4] (emphasis added).

¹⁴² Qwest Response, pp. 40-41.

¹⁴³ Exhibit Eschelon 3.44, Example 1.

¹⁴⁴ Exhibit Eschelon 3.44, Example 4.

1 create procedures for the acknowledgement of its mistakes, it was not the outage
2 of service itself, but Qwest's conduct, that caused Eschelon to lose the End User
3 Customer. The PIDs would capture the outage, but not Qwest's inappropriate
4 conduct that misrepresented the outage as caused by Eschelon.

5 Further, even if Qwest is penalized for a specific instance of inadequate service
6 via PIDs, Qwest may still have incentives to commit a mistake because gains
7 from winning back a large End User Customer may exceed PID penalties. The
8 specific incident that prompted Minnesota Docket No. P-421/C-03-616, for
9 example, illustrates this problem: Qwest's conduct in that case caused Eschelon
10 to lose, and Qwest to win back, a large End User Customer. The Commission's
11 order notes that annual telecommunications bills from this End User Customer
12 were approximately \$463,655 per year.¹⁴⁵ In this instance, Qwest's stream of
13 recurring revenues is likely to far exceed one-time PID penalties from causing
14 outage to the customer.

15 **Q. IS QWEST'S POSITION REFLECTED IN ITS POSITION STATEMENT**
16 **IN THIS CASE CONSISTENT WITH THE POSITION IT HAS TAKEN IN**
17 **LATER STAGES OF THE QWEST-ESCHELON ARBITRATIONS IN**
18 **OTHER STATES?**

19 A. No. In Minnesota, Qwest agreed to the majority of Eschelon's language for Issue
20 12-64 and subparts. In Utah, Qwest objects in its position statement to Eschelon's

¹⁴⁵ Exhibit Eschelon 1.4, p. 7.

1 proposed language for Issue 12-64 and subparts in its entirety, arguing, as it does
2 with a number of other issues:

3 Further, this issue involves processes that affect all CLECs, not
4 just Eschelon. The entire purpose of CMP was to ensure that the
5 industry (not just Qwest or one CLEC) is involved in creating and
6 approving processes so that processes are uniform among all
7 CLECs. Processes that affect all CLECs should be addressed
8 through CMP, not through an arbitration involving a single CLEC.
9 Further, implementing a unique process for Eschelon that Qwest
10 does not follow for other CLECs would require Qwest to modify
11 its systems or processes and would cause Qwest to incur costs it is
12 entitled to recover under the Act.¹⁴⁶

13 Qwest's previous conduct, however, shows that Qwest has excluded this issue not
14 only from the ICA but also from CMP. When Eschelon has pointed this out in
15 other states, Qwest changed its position (from the one quoted above) and testified:
16 "This process is not one that requires Qwest to alter its procedures overall, nor
17 does it apply to all CLECs."¹⁴⁷

18 As Qwest's inconsistent conduct in the Minnesota 616 example shows, Qwest's
19 proposed tests of labeling an issue as a "process" or asking if "multiple CLECs
20 are affected" are results oriented and do not provide a legitimate basis for
21 excluding language from the ICA. Both proposed tests allow Qwest to
22 pigeonhole an issue as CMP or not (as in this case it did on different occasions for
23 the same issue) at its unilateral discretion.

¹⁴⁶ See Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon's Petition for Arbitration in the Eschelon-Qwest Oregon arbitration, Qwest position statement, p. 163.

¹⁴⁷ Albersheim Arizona Rebuttal, p. 40, lines 9-11; Albersheim Minnesota Rebuttal, p. 40, lines 13-15; Albersheim Washington Rebuttal, p. 39, lines 9-11 (same quote in all three states).

1 **iv. DELAYED ORDER EXAMPLE**
2

3 **Q. PLEASE DESCRIBE THE DELAYED ORDER EXAMPLE.**

4 A. The fourth example is “Delayed Orders when Facilities are Not Available.” A
5 detailed chronology on this issue is attached to the direct testimony of Ms.
6 Johnson.¹⁴⁸ The underlying substantive disagreement regarding this issue has
7 been closed,¹⁴⁹ but this example still typifies the manner in which Qwest can, and
8 has, used CMP inconsistently and to its advantage. It is also a particularly good
9 example of Qwest’s inconsistency with respect to whether terms should be
10 excluded from the ICA and whether, if included in the ICA, the terms must be
11 uniform with those in the PCAT. Today, more than a year after Qwest changed
12 its PCAT to reflect a change from 30 to 90 days before cancellation of a held
13 order (after commencement of the Minnesota arbitration), Qwest’s own ICA
14 proposal for CLECs (*i.e.*, the Qwest negotiations template) provides for a 30-day

¹⁴⁸ See Exhibit Eschelon 3.36; see Change Request (“CR”) 5263637.

¹⁴⁹ Issue 9-32 (Delayed Orders When Facilities Not Available), Joint Disputed Issues Matrix, Exhibit 2 to Eschelon Minnesota arbitration Petition, pp. 60-61 (In Qwest Position Statement, Qwest said: “This issue involves processes that affect all CLECs, not just Eschelon. Eschelon is attempting to import PCAT-like process language into the ICA and thereby undermine the Commission approved CMP process. The entire purpose of CMP was to ensure that the industry (not just Qwest or one CLEC) is involved in creating and approving processes so that processes are uniform among all CLECs. Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC. Eschelon's proposal also implies that Qwest could be required to build facilities for Eschelon to support secondary services, which Qwest is not obligated to do. Further, implementing a unique process for Eschelon that Qwest does not follow for other CLECs would require Qwest to modify its systems or processes and would cause Qwest to incur costs it is entitled to recover under the Act.”).

1 period¹⁵⁰ that is both in the Qwest-proposed ICA and different from Qwest’s own
2 PCAT,¹⁵¹ as further discussed below.

3 **Q. PLEASE SUMMARIZE THE DELAYED ORDER EVENTS IN CMP.**

4 A. On December 1, 2000, Eschelon submitted a Change Request via CMP. The
5 purpose of Eschelon’s Change Request was to request changes in Qwest’s “held
6 order” policy. At that time, Eschelon was experiencing a substantial number of
7 “held” (*i.e.*, delayed) orders in situations when Qwest described the necessary
8 facilities as “not available.” Eschelon’s Change Request was submitted in an
9 attempt to prompt Qwest to adopt a policy related to facilities unavailability so
10 that the substantial backlog of Eschelon held orders could be fulfilled. However,
11 Qwest did not develop a policy that would provide for non-discriminatory access
12 to UNEs and fulfill the numerous Eschelon held orders. Qwest, instead, revised its
13 held order policy so that all orders held (or pending) for 30 days would be
14 cancelled. Stated differently, rather than help solve the underlying facilities
15 availability problem, Qwest changed its held order policy in a way that cancelled
16 all of Eschelon’s backlog of delayed orders – ensuring that those orders would

¹⁵⁰ Qwest current ICA Negotiations Template (dated 4/30/07): “9.2.2.16 Lack of Facilities; Priority Right to Facilities. In the event Qwest notifies CLEC that facilities ordered are not available from Qwest at the time of the order, Qwest shall maintain the order as pending for a period of thirty (30) business days. If facilities become available to fill the order within that thirty (30) business day period, Qwest shall notify CLEC of such availability.” Available at: http://www.qwest.com/wholesale/downloads/2007/070511/NegotiationTemplateV3_1_04-30-07.doc

¹⁵¹ Qwest current Unbundled Loop PCAT (Version 79.0): “If facilities can not be located and there is No Planned Engineering Job, your service request will be held for 90 business days. . . . If at the conclusion of the 90-business day hold, facilities are still unavailable, your service request will be rejected.” Available at: <http://www.qwest.com/wholesale/pcat/unloop.html>

1 never be filled. It also removed those orders from the queue of orders to which
2 facilities would be assigned were they to become available in the future. This
3 subverts the non-discriminatory “first come, first served” provisioning policy.
4 Ironically, Qwest then dubbed Eschelon’s Change Request as “completed.”
5 However, based upon Eschelon’s objection to this clearly erroneous designation,
6 Qwest ultimately changed the resolution of the matter to a “denial” of Eschelon’s
7 request. Completion of Eschelon’s Change Request in CMP, from submission to
8 this unsatisfactory closure, took 469 days.

9 **Q. DOES THE ISSUE STOP THERE?**

10 A. No. Given the manner by which Qwest had “resolved” this issue in CMP,
11 Eschelon determined that progress could be made on this issue only in the form of
12 contract negotiations directly between Qwest and Eschelon. Eschelon began
13 negotiations with Qwest in early 2001. Eschelon’s initial multi-state proposal was
14 simply to not cancel the orders until they are filled or CLEC cancels them, as had
15 been the practice and as occurs in the state of Washington still today.¹⁵² Those
16 negotiations culminated ultimately in Eschelon bringing the issue to the state
17 commission for arbitration in Minnesota. Toward resolution of the matter,
18 Eschelon in early 2005 offered to Qwest two alternative proposals. Specifically,

¹⁵² Although this is the requirement in Washington, and even though the Qwest ICA negotiations template reflects state-specific language for other issues, there is no Washington state-specific language for Section 9.2.2.16. The Qwest negotiations template provides that delayed orders will be cancelled after 30 days even in Washington (where the order should not be cancelled by Qwest at all, but should be fulfilled whenever facilities become available, if CLEC has not cancelled the order).

1 Eschelon first proposed that orders should be able to rest in a “held” fashion for
2 90, as opposed to 30, days. As part of this alternative, the language on delayed
3 orders when facilities are unavailable would remain the same, except for the
4 change from 30 to 90 days. As an additional alternative, Eschelon offered that,
5 after 30 days, it re-issue the order and be allowed to maintain its place in the
6 queue related to facilities when/if they did become available. Qwest would not
7 agree to either proposal. Eschelon later provided Qwest with two additional
8 alternatives, bringing the total number of alternatives offered by Eschelon to four.
9 Qwest refused to agree to any of Eschelon’s four proposals before Eschelon filed
10 an arbitration petition.

11 Instead, on June 1, 2006 (after Eschelon filed its arbitration petition in Minnesota
12 asking regulators to review Qwest’s conduct), Qwest, via CMP, issued a Level 3
13 notice adopting, in part, the extension from 30 days to 90 days that Eschelon had
14 originally proposed. Eschelon responded in CMP by requesting that Qwest
15 include all four of Eschelon’s alternative proposals for CLEC consideration. The
16 following is an excerpt from Eschelon’s request:

17 “...Qwest indicates that this change may impact the arbitration of
18 Eschelon’s Interconnection Agreement. If Qwest is serious about
19 dealing with the issue of orders held for no local facilities in CMP,
20 Eschelon believes that Qwest should provide the CLEC
21 community the opportunity to have meaningful dialogue on this
22 topic. Qwest said in the Minnesota arbitration that: “The entire
23 purpose of CMP was to ensure that the industry (not just Qwest or
24 one CLEC) is involved in creating and approving processes.” If
25 so, Qwest should include in its proposal, at least, the following 4

1 options to facilitate a full discussion with the CLEC
2 community.”¹⁵³

3 The CMP Document allows Qwest several alternatives for responding to such a
4 comment, such as placing it on a meeting agenda or scheduling an ad hoc call to
5 discuss. Instead, Qwest merely “acknowledged” Eschelon’s comment. Qwest
6 said: “With a Change Management Process level 3 change, Qwest is utilizing the
7 formal comment process *which is what is required*.”¹⁵⁴ On July 14, 2006, Qwest
8 implemented in CMP the one alternative it preferred (if it were to change the 30
9 days at all), the 90 day hold policy described in its original notice (*i.e.*, “Notice
10 and Go”) without discussion of the other alternatives.

11 **Q. DID THIS RESOLVE THE ISSUE IN THE MINNESOTA**
12 **ARBITRATION?**

13 A. Not initially. Rather than offer Eschelon this same 90 day held order alternative
14 in its arbitration in Minnesota, Qwest insisted that in the arbitration the 90 day
15 held order policy must be tied to another provision allowing Qwest to
16 automatically cancel Eschelon’s order if Qwest determined that “copper is not in
17 the ground.” In other words, if Qwest unilaterally determined that copper is not
18 currently “in the ground” (however Qwest is using that term) it appeared Qwest
19 would not even leave Eschelon’s order in a “held” status pending the availability

¹⁵³ Eschelon June 7th, 2006 Response to Qwest Product and Process Notice: PROD.06.01.06.F.03974.Held_Order_30_to_90_Day, p. 1.

¹⁵⁴ See Exhibit Eschelon 3.36 (Delayed Order Chronology) at p. 9 (6/29/06) (emphasis added). This might as well say “because that is all that is required.”

1 of future facilities for 90 days, but would, instead, cancel that order outright.
2 Nowhere is this “in the ground” language found in the SGAT or other ICAs.

3 **Q. WAS QWEST’S PROPOSAL IN MINNESOTA WITH RESPECT TO**
4 **INSERTION OF THE “IN THE GROUND” LANGUAGE IN THE ICA**
5 **CONSISTENT WITH QWEST’S POSITION ON CMP?**

6 A. No. In its Response to Eschelon’s Arbitration Petition in Minnesota, Qwest said
7 that it would agree to Eschelon’s 90 day held order policy if the delayed order
8 issue “...is fully considered and adopted through the CMP.” When Qwest
9 announced its change through CMP, Eschelon suggested doing that very thing –
10 fully considering the issue in CMP by sharing all four options and opening up the
11 issue for discussion with multiple CLECs. Instead, Qwest implemented its one-
12 dimensional notice without regard for Eschelon’s comment. Therefore, there was
13 no full consideration of the issue. Once Qwest wanted a change, it took Qwest 43
14 days to implement it in CMP.

15 Even more significant, Qwest *did not include* in its CMP notice its new, later
16 proposal to Eschelon in Minnesota to change the long standing language relating
17 to “unavailability” of facilities (which is part of its current practice as still
18 reflected in its current PCAT) to Qwest’s then proposed “in the ground” ICA
19 language. In other words, interestingly, the only change that Qwest put through
20 CMP, to support its arbitration position that CMP is where the issue belongs, is
21 the issue of 30 versus 90 days. This is a CLEC friendly position and got no real

1 opposition, other than Eschelon's comment. In contrast, *after* Qwest submitted
2 the 90-day issue to CMP, Qwest provided its brand new proposal in Minnesota to
3 change "available" to "in the ground" in Section 9.2.2.3.2 in the ICA negotiations,
4 without any CMP activity. This shows Qwest is willing to accept ICA language
5 that is not "uniform," even though it claims an issue affects multiple CLECs,
6 when the non-uniform provision benefits Qwest. Qwest should not be able to
7 pick and choose when an issue belongs in ICA or CMP in this results-oriented
8 manner.

9 If Qwest's claims about the mutual development of processes and the value of
10 CMP for CLECs were meaningful, Qwest would have not only included the new
11 language altering the availability terminology in its notice but also explained its
12 proposal and opened it up for discussion. After all, Qwest states repeatedly
13 throughout its position statements in the Joint Disputed Issues Matrixes filed in
14 multiple states that the purpose of CMP is to "ensure that the industry (and not
15 just Qwest or one CLEC) is involved in creating and approving processes so that
16 processes are uniform among CLECs." That concept works great for Qwest when
17 using CMP as a shield against ICA changes, but it is less handy for Qwest when it
18 slows down something that Qwest wants to get done quickly before regulators
19 take a hard look at it. Introducing the entirely new "in the ground" language
20 through CMP would have risked CLEC objections, potentially slowing down
21 Qwest's desired implementation. So, Qwest just skipped the CMP route for the
22 "in the ground" proposal and went directly to ICA negotiations – something it

1 opposes for CLECs. After Eschelon pointed out this inconsistency, Qwest later
2 dropped its request to insert the “in the ground” language and closed the language
3 in the Qwest-Eschelon ICA for five states (including Utah) with the 90-day period
4 and without the “in the ground” language. In Washington, the Qwest-Eschelon
5 ICA reflects Eschelon’s proposal number one (which had no time limit).

6 **Q. IS QWEST’S ARBITRATION POSITION THAT THE CMP IS WHERE**
7 **THE ISSUE BELONGS CONSISTENT WITH ITS OWN CONDUCT?**

8 A. No. Qwest offers a different process in negotiations with other CLECs from the
9 one described in its PCATs. Today, more than a year after Qwest changed its
10 PCAT to reflect a change from 30 to 90 days before cancellation of a held
11 order,¹⁵⁵ Qwest’s own ICA proposal for CLECs (*i.e.*, the Qwest negotiations
12 template) provides for a 30-day time period.¹⁵⁶ The 30-day period is both
13 included in the Qwest-proposed ICA (*e.g.*, as opposed to using a cross reference
14 to the PCAT) and is different from Qwest’s own PCAT (which provides for 90
15 days).¹⁵⁷ This also shows Qwest is willing to accept ICA language that is not
16 “uniform” even though it claims an issue affects multiple CLECs and is different
17 from the PCAT, when the non-uniform provision benefits Qwest.

¹⁵⁵ Qwest changed the PCAT time period from 30 to 90 days on July 14, 2006. See
PROS.06.26.06.F.04022.Final-Held_Order_30_to_90, Line #99 at
http://www.qwest.com/wholesale/downloads/2007/070601/HL_P_and%20I_V106.doc

¹⁵⁶ Qwest current ICA Negotiations Template (dated 4/30/07), Section 9.2.2.16 (quoted in above
footnote).

¹⁵⁷ Qwest current Unbundled Loop PCAT (Version 79.0) (90 days) (quoted in above footnote).

1

v. SECRET TRRO PCATS EXAMPLE

2 **Q. WHY DO YOU REFER TO THE FIFTH EXAMPLE AS THE “SECRET**
3 **TRRO PCATS” EXAMPLE?**

4 A. After the FCC issued its *TRO*, Qwest developed a PCAT document intended to
5 implement terms of the *TRO* in a fashion Qwest claimed to be most consistent
6 with its newly-defined obligations relating to UNEs. Qwest attempted to force
7 CLECs to execute amendments reflecting Qwest’s interpretation of its post-
8 *TRO/TRRO* obligations (when read in conjunction with its TRRO PCAT) without
9 allowing CLECs the ability to review the PCAT documents in which Qwest
10 placed operative language regarding Qwest’s interpretation. Qwest password
11 protected the PCAT changes and initially refused to provide the password until
12 after a CLEC signed Qwest’s *TRRO* amendment, so the CLEC would learn the
13 full effect of those amendment terms only after signing it. Although the password
14 is now available, these PCATs remain password protected. The term “secret” is
15 used to distinguish them from the portions of the PCAT that are not password
16 protected.

17 **Q. PLEASE ELABORATE ON THE “SECRET TRRO PCATS” EXAMPLE.**

18 A. On October 27, 2004, Qwest issued a change request entitled, “FCC Triennial
19 Review Order CC 01-338 (TRO), U.S. Court of Appeals for the DC Circuit
20 decision (USTA II) Decision No. 00-1012, and FCC Interim Rules Compliance:

1 Certain Unbundled Network Elements (UNE) Product Discontinuance.”¹⁵⁸ A
2 chronology of events relating to this Change Request is attached to the testimony
3 of Ms. Johnson.¹⁵⁹

4 Qwest’s Change Request dealt with the availability of UNEs pursuant to Qwest’s
5 interpretation of the *TRO*, USTA II Decision, and the FCC’s Interim Order. This
6 notice said it was to inform CLECs that whatever UNEs Qwest claimed were
7 “declassified” pursuant to these rulings would no longer be available through the
8 PCAT or for CLECs without an ICA. Qwest indicated that there would be no
9 transition for these changes and that the impacts of this notice would be
10 retroactive.¹⁶⁰ On November 8, 2004, Covad escalated the issue in CMP, asking
11 Qwest to withdraw the TRO/USTA II Change Request.¹⁶¹ Covad objected on
12 numerous grounds, including: (i) it was premature for Qwest to make these
13 determinations about UNE availability since there were pending proceedings
14 before the FCC and state commissions dealing with these exact issues; (ii) it was
15 inappropriate for Qwest to implement its legal rights and obligations through
16 CMP instead of ICAs; (iii) Qwest’s interpretation of the FCC’s rules and court
17 orders was incorrect; (iv) and Qwest did not follow the proper steps for issuing a

¹⁵⁸ Change Request No. SCR102704-1RG. Qwest originally filed this Change Request as a “systems” Change Request, but later changed that designation to a “product/process” Change Request.

¹⁵⁹ See Exhibit Eschelon 3.16.

¹⁶⁰ Note that when the FCC’s *TRRO* came out, it included very specific transition timeframes for UNEs that are declassified.

¹⁶¹ Covad Escalation No. PC102704-1E32.

1 regulatory Change Request.¹⁶² Eschelon joined Covad's escalation in November
2 2004. Importantly, in its binding response to Covad's escalation, Qwest on
3 November 16, 2004, stated that the "Change Request is not superseding the
4 language in the CLEC ICA" and that because "this is a change to limit the
5 availability of certain products only, Qwest believes this is a Level 4 change and
6 belongs in CMP."¹⁶³ Eschelon and CLECs continued to raise concerns about
7 Qwest's Change Request in CMP monthly meetings and oversight committee
8 meetings, stating that changes that affect UNE availability should be addressed in
9 negotiation/arbitration and not in CMP.¹⁶⁴

10 On January 7, 2005, Qwest refused to withdraw the TRO/USTA II PCAT. When
11 the permanent rules were released in the *TRRO*,¹⁶⁵ it was evident that Qwest's

¹⁶² *See id.*

¹⁶³ *See* Exhibit Eschelon 3.18 (11/16/04 Qwest binding response to Covad). Qwest's entire response to Covad's escalation is provided in Exhibit Eschelon 3.18, and Covad's escalation is provided as Exhibit Eschelon 3.17.

¹⁶⁴ *See* Exhibit Eschelon 3.16 (11/17/04 CMP November monthly meeting - Eschelon stated that "this should not be discussed in CMP. We do not discuss legal interpretation in CMP. This should be done in a different forum." At the same CMP meeting, Covad stated, "this is an ICA negotiation discussion." TelWest said "It should be arbitrated and not unilaterally implemented by Qwest."); *see also id.* (1/4/05 CMP Oversight Committee Meeting - Eschelon indicated that "if Qwest will limit product availability in its existing ICA, Qwest would need to notify Eschelon through the change in law provisions of its contract and not through a PCAT CMP notice." Bill Campbell from Qwest agreed.); *see also id.* (1/10/05 CMP Oversight Committee meeting - Eschelon expressed concern about dealing with these issues in CMP: "Bonnie Johnson said that product availability is based on the ICA and even though Qwest notices about product availability, CLECs can't get the products without an agreement including the product." Also "Liz Balvin [Covad] and Bonnie Johnson stated that the Change Request should not have defaulted to CMP as it was not the appropriate approach and the importance of keeping the CMP guidelines in tact." Covad, Eschelon AT&T, TDS/Metrocom and MCI all recommended that the Change Request be deferred until permanent rules are issued.)

¹⁶⁵ Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, FCC 04-290 (rel. February 4, 2005) ("*TRRO*").

1 interpretation of its obligations set out in its premature PCATs did not comport
2 with the permanent rules. Qwest indicated that it would withdraw its previous
3 PCATs that were inconsistent with the permanent rules and “*would notify via the*
4 *same Change Request.*”¹⁶⁶ Although CLECs requested ICA negotiations rather
5 than use of CMP, Qwest at least indicated it would do one or the other. At a June
6 30, 2005 CMP ad hoc meeting, Qwest then indicated that it would negotiate ICAs
7 with CLECs and that “no *TRO/TRRO* changes to its products and processes will
8 be made across the board until such language is final.”

9 **Q. DID QWEST GO FORWARD WITH EITHER THE CMP APPROACH OR**
10 **ICA NEGOTIATIONS FOR IMPLEMENTING ITS TRRO PCAT**
11 **CHANGES?**

12 A. No. Qwest made matters even worse. Qwest initially told CLECs in CMP
13 meetings that Qwest will negotiate the *TRRO* changes with CLECs and will not
14 update the PCATs until language is finalized and PCAT changes are brought
15 through CMP.¹⁶⁷ However, on September 12, 2005, Qwest issued a wholesale
16 notification, entitled “Triennial Review Remand Order (*TRRO*) Products &
17 Services.”¹⁶⁸ Contrary to Qwest’s statements in CMP, this notification was not a
18 CMP notice, which means that it did not go through CMP and there was no
19 opportunity for CLEC comment, input, or other participation. Qwest made this

¹⁶⁶ See Exhibit Eschelon 3.16, p. 7 (2/16/05 CMP February monthly meeting minutes).

¹⁶⁷ Exhibit Eschelon 3.16. pp. 7-9 (Meeting Minutes from 6/30/05 AdHoc CMP meeting).

¹⁶⁸ Product Notice Document No. PROS.09.12.05.F.03236.TRRO_Login_Product_Page

1 non-CMP notice effective three weeks after the issuance date – even quicker than
2 the “notice and go” notifications Qwest issues through CMP. But Qwest’s non-
3 CMP notice¹⁶⁹ was even more egregious: *Qwest posted its proposed TRO/TRRO-*
4 *related documents on a password protected website, and refused to provide*
5 *CLECs with the necessary username/password to access the documents until*
6 *after the CLEC executed the TRO/TRRO amendments.*¹⁷⁰ This is the secrecy
7 referred to in “Secret” TRRO PCAT.¹⁷¹

8 **Q. DID ESCHELON RAISE CONCERNS ABOUT THE SECRET TRRO**
9 **PCAT?**

10 A. Yes. On September 12, 2005, Eschelon requested a copy of the secret TRRO
11 PCAT, and also raised concerns about Qwest’s intentions with respect to the non-
12 CMP secret TRRO PCAT:

13 Does Qwest intend to try to take a similar approach, in which
14 Qwest does not include terms in the ICA but then attempts to
15 impose them through a PCAT (one that has not even been through
16 CMP), after Eschelon has signed an Agreement?...the language
17 described in the enclosed notice did not go through
18 CMP...Qwest’s notice does not even allow for a comment

¹⁶⁹ See Exhibit Eschelon 3.16, p. 11 (1/18/06 CMP monthly meetings - Jill Martain (Qwest) stated that the *TRRO* notice “was separate and that it was a non-CMP notice.”)

¹⁷⁰ See Exhibit Eschelon 3.16, pp. 9-10 (9/12/05 - Qwest’s non-CMP announcement stated: “When the CLEC receives a copy of their signed amendment Qwest will also include a letter that advises them how to access the web site using an assigned USERID and Password to access the PCATs.” Qwest’s non-CMP notice included a similar “Note” that is included on CMP documentation stating that “in cases of conflict between the changes implemented through this notification 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.”)

¹⁷¹ Password-protected PCATs are referred to as “Secret” PCATs to distinguish them from generally available PCATs accessible without a password distributed through Qwest’s notice process.

1 period...This notice/conduct appears to be yet another reason to
2 limit any reference to the PCAT in the ICA and deal with any
3 terms that need to be negotiated in the ICA. The ICA controls; not
4 the PCAT...If you want such terms with Eschelon, you need to
5 propose them in negotiations and negotiate with us.¹⁷²

6 On September 29, 2005, Qwest announced that “[a]s a result of customer
7 feedback” the password for the secret TRRO PCAT was being made available to
8 CLECs, but that it would continue to be distributed outside of CMP and would
9 remain password-protected or “secret.”¹⁷³ Qwest continues to issue additional
10 secret PCATs.¹⁷⁴ Additional users that want to review secret PCATs have to
11 obtain the password before being able to do so.

12 **Q. DID QWEST EVER OFFER ANY REASON FOR ISSUING THE SECRET**
13 **PCAT AS A NON-CMP NOTICE?**

14 A. Amazingly, Qwest claimed that there was agreement among Qwest and CLECs in
15 CMP that Qwest could make changes *unaccompanied by any ICA negotiations,*
16 *SGAT review, or any other method for CLEC input and participation and/or*
17 *Commission oversight.* Qwest ignores that, when this issue was discussed in
18 CMP, CLECs said the proper alternative to CMP was to handle TRRO changes in
19 law through ICA negotiations that, if unsuccessful, would be decided by state

¹⁷² See Exhibit Eschelon 3.16, p. 10 (9/12/05 – Eschelon email to Qwest).

¹⁷³ See Exhibit Eschelon 3.16, p. 11 (9/29/05 Qwest announcement).

¹⁷⁴ See, e.g., Exhibit Eschelon 3.21 (7/21/06 non-CMP Product notice document number PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1). There are now 99 secret TRRO PCAT versions. See, Exhibit Eschelon 3.34.

1 commissions in ICA arbitrations.¹⁷⁵ Qwest also ignores its own statements
2 afterward that it would pursue its Change Request in CMP and to bring PCAT
3 changes through CMP.¹⁷⁶

4 Qwest claims that CLEC opposition to addressing these issues in CMP rather than
5 ICA negotiations can somehow be construed as CLEC consent for Qwest to
6 unilaterally impose its *TRRO* view “outside the scope of CMP”¹⁷⁷ with no
7 negotiation or arbitration. No reasonable interpretation of CLEC comments leads
8 to this result. For example, TelWest specifically said in CMP that the issues
9 “should be arbitrated *and not unilaterally implemented by Qwest.*”¹⁷⁸ Qwest’s
10 claim now that CLECs’ position on ICA negotiations meant that Qwest can
11 unilaterally implement the *TRRO* PCATs flies in the face of such clear statements
12 to the contrary.

13 CLECs, including Eschelon, maintained that Qwest should negotiate *TRRO*
14 issues, including operational and conversion issues, in ICA negotiations,¹⁷⁹ as
15 recommended by the FCC.¹⁸⁰ To the extent that there was any “agreement” to
16 deal with issues later, it was to deal with them after the permanent rules were

¹⁷⁵ See, e.g., Exhibit Eschelon 3.16, pp. 4-5 (11/17/04 CMP November monthly meeting minutes).

¹⁷⁶ See, e.g., Exhibit Eschelon 3.16, pp. 7-9 (6/30/05).

¹⁷⁷ See Exhibit Eschelon 3.16, pp. 11-12 (3/29/06 – Qwest service management email to Eschelon)

¹⁷⁸ See Exhibit Eschelon 3.16, pp. 4-5 (11/17/04 CMP November monthly meeting minutes)

¹⁷⁹ See, e.g., Exhibit Eschelon 3.16, pp. 4-5 (11/17/04 CMP November monthly meeting minutes).

¹⁸⁰ E.g., *TRRO*, ¶¶ 196 and 227.

1 issued.¹⁸¹ On February 16, 2005, Qwest said in CMP that, once it determined
2 what the final rulings are, Qwest “would notify via this same CR” in CMP (*i.e.*,
3 not outside of CMP).¹⁸² The final rules were effective on March 11, 2005.
4 Although Qwest has made unsupported assertions since then that there is some
5 kind of agreement,¹⁸³ Qwest has provided no evidence at all of any agreement (or
6 the time, place, date, parties to the agreement, or alleged content of any
7 agreement) at any later date on this issue.

8 Qwest has said over time that the alleged agreement is specific to the Statement
9 of Generally Available Terms (SGAT) and that changes will be made in
10 conjunction with SGAT updates. Qwest has taken this position in CMP, through
11 its service management team, and in ICA negotiations. On June 30, 2005, Qwest
12 committed in CMP:

13 *... as SGAT language changes, we will have a comment period*
14 *and that the States will engage you when decisions are made.*
15 *Cindy also said that PCAT changes will be brought through*
16 *CMP.*¹⁸⁴

17 On March 29, 2006, Qwest service management similarly told Eschelon:

18 As agreed to at CMP, the PCATs/Business Procedures associated
19 specifically to TRRO are handled outside the scope of CMP *until*

¹⁸¹ Exhibit Eschelon 3.16, pp. 6-7 (1/10/05); Exhibit Eschelon 3.28 (1/10/05 CMP Oversight Committee minutes).

¹⁸² Exhibit Eschelon 3.16, p. 7 (2/16/05).

¹⁸³ *See, e.g.*, Exhibit Eschelon 3.20, p. 1 (Qwest 9/7/06 email).

¹⁸⁴ Exhibit Eschelon 3.16, pp. 8-9 (6/30/05) (emphasis added).

1 *such time that there is an approved SGAT*, which is why the
2 change was noticed as a non-CMP document.¹⁸⁵

3 On April 6, 2006, the Qwest ICA negotiations team similarly told Eschelon:

4 From those discussions it was agreed that *until such time that a*
5 *SGAT is filed* and the TRRO related issues were finalized that all
6 of the TRRO processes and issues would be deferred from a CMP
7 perspective.¹⁸⁶

8 **Q. DO RECENT ACTIONS BY QWEST TELL A DIFFERENT STORY?**

9 A. Yes. Despite these assurances over more than a year's time from every one of
10 these groups within Qwest that Qwest would update the SGATs and deal with
11 "TRRO" issues (including those that Eschelon was asking Qwest to negotiate
12 under Section 252) in CMP as Qwest did so, Qwest recently said that it had

¹⁸⁵ Exhibit Eschelon 3.16, p. 11; *see also* Exhibit Eschelon 3.20 (full text) (emphasis added).

¹⁸⁶ Exhibit Eschelon 3.16, p. 12 (4/6/06) (emphasis added). At the time this statement was made (4/6/06), Qwest had already filed its comments in the Oregon and Colorado wire center proceedings and its petition in the Minnesota wire center proceeding. *See, e.g.*, Conference Report, *In re. Covad, Eschelon, Integra, McLeodUSA, and XO Request for Commission Approval of Non-Impairment Wire Center List*, Docket No. UM 1251 (March 15, 2006); Qwest Corporation's Comments in Response to Commission Order Opening a Docket and Allowing a Response, Docket No. 06M-080T (March 1, 2006); Qwest's "Petition for Commission Investigation and Expedited Proceeding to Verify Qwest Wire Center Data and Resolve Related Issues," MPUC Docket No. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 (March 3, 2006). That Qwest made this statement more than a month *after* Qwest made its filings in the wire center proceedings shows that Ms. Stewart's claim that TRRO change request is deferred by "agreement" pending the completion of the wire center proceedings is false. *See* Stewart Minnesota Rebuttal, p. 72, lines 22-25. As the above quotation shows (*see also* full paragraph quoted at Exhibit Eschelon 3.16, p. 12), in April of 2006, Qwest was still promising to raise the separate, business impacting "processes and issues" with the Commission in association with SGAT filings. Qwest made the latter statement in response to Eschelon's Section 252 request to negotiate collocation and APOT issues (*see id.* & Exhibit Eschelon 3.21), which are not being addressed in the wire center proceedings. Yet, Qwest responded that it is "premature to initiate TRRO discussion at this time." *See* Exhibit Eschelon 3.16, p. 12. Given that Eschelon asked to negotiate TRRO issues years ago (*see, e.g.*, Exhibit Eschelon 3.16, pp. 4-5, 11/17/04) and also the APOT issue promptly when Qwest finally disclosed it (*see* Exhibit Eschelon 3.21), the Commission should not allow Qwest to exclude these issues from this arbitration because Qwest had steadfastly refused to take up the issues in negotiations (or even CMP) in the intervening months and years. Eschelon has properly brought them to negotiation and before this Commission in arbitration. [*See* Subject Matters 18 (Conversions) and 26 (Commingled Arrangements).]

1 “*stopped updating its SGATs.*”¹⁸⁷ Qwest added that, “Indeed, the SGATs have
2 not been updated to incorporate changes in law since 2003 and are therefore
3 outdated documents.”¹⁸⁸ Then, on November 15, 2006, Qwest issued a Level 1
4 CMP notice – effective on 1 day’s notice¹⁸⁹ – that informed CLECs that SGATs
5 will *no longer be available for opt in.*¹⁹⁰ Qwest is attempting to address some of
6 the inherent inconsistencies in its position by eliminating SGAT terms and
7 conditions established in 271 proceedings so that these terms and conditions do
8 not conflict with the terms and conditions Qwest has unilaterally established in its
9 Negotiations Template Agreement. Qwest’s move to eliminate the SGAT
10 without any Commission involvement is in direct conflict with the CMP
11 Document’s scope provision (Section 1.0), which addresses potential conflict
12 between the CMP and SGATs as well as ICAs. It is a prime example of why the

¹⁸⁷ Stewart Minnesota Rebuttal, p. 36, line 14 (emphasis added).

¹⁸⁸ Stewart Minnesota Rebuttal, p. 36, lines 14-15.

¹⁸⁹ PROS.11.15.06.F.04322.MultLangChangeforSGATs (effective 11/16/06). As a result of this change, SGATs are no longer available for opt-in by CLECs and are available on Qwest’s website only as reference documents. See, Exhibits Eschelon 3.22, Eschelon 3.23, and Eschelon 3.24. These exhibits show that Qwest provides SGATs on its website for “Reference Only.”

¹⁹⁰ Process Notification PROS.11.15.06.F.04322.MultLangChangeforSGATs (dated 11/15/06, effective 11/16/06) is provided in Exhibit Eschelon 3.23. In addition to Qwest’s 11/15/06 notice, this exhibit contains Qwest’s testimony from the companion Minnesota arbitration proceeding (Ms. Stewart) indicating that Qwest has not updated its SGATs for a number of years and has no intention to do so. This exhibit also contains screen shots from Qwest’s website showing that Qwest has replaced SGATs on its website with Qwest’s Negotiations Template Agreements and now provides SGATs only as reference documents (in PDF). The link for “SGATs” takes the user to the Qwest template, not the SGAT. Then, the user has to use another link to get to the SGATs, which are identified as reference documents.

1 FCC rejected Qwest's proposed reliance on web-postings instead of 251/252
2 ICAs.¹⁹¹

3 As the above quotations illustrate, Qwest has consistently pushed out dealing with
4 business-impacting issues that have resulted from the TRO/TRRO based on its
5 promise to deal with them collaboratively when the time is right – and when it
6 updated its SGATs. At the same time, Qwest has been busily churning out
7 business-affecting¹⁹² secret (*i.e.*, password-protected) PCATs¹⁹³ that do not go
8 through any collaborative process at all – not ICA negotiations (as requested by
9 Eschelon and other CLECs),¹⁹⁴ not CMP (as promised by Qwest),¹⁹⁵ and not
10 Commission proceedings (as also promised by Qwest).¹⁹⁶ Qwest implements its
11 own “TRRO” view of the world through notifications that it chose *not to send*
12 *through the CMP* notification or change request processes, while at the same time

¹⁹¹ The fact that Qwest withdrew its SGATs on one day's notice supports the FCC's finding that CLECs “could not rely on a website to contain all agreements on a permanent basis.”

¹⁹² See Exhibit Eschelon 3.34 (showing Qwest has implemented 103 non-CMP secret TRRO PCATs).

¹⁹³ Exhibit Eschelon 3.16, pp. 9 & 12-14.

¹⁹⁴ See, *e.g.*, Exhibit Eschelon 3.16, pp. 4-5 (11/17/04 CMP November monthly meeting minutes).

¹⁹⁵ See, *e.g.*, Exhibit Eschelon 3.16, pp. 8-9 (6/30/05).

¹⁹⁶ Exhibit Eschelon 3.16, pp. 8-9 (6/30/05). Not only is there no such agreement, but also these business-affecting issues will not be decided in the wire center proceedings. Despite the above-quoted promises by Qwest that it would bring such issues to the Commission, Qwest asked the Commission in that proceeding only to identify the non-impaired wire centers, “confirm Qwest's right” to assess non-recurring charges (“NRCs”) at tariffed rates, and establish a process for future updates of non-impaired wire centers. See Qwest's “Statement of Issues,” Colorado Docket No. 06M-080T (April 28, 2006). Although circuit identification is discussed in that case, for example, it is in the context of costs if the circuit id is changed and not whether it should be changed. Given Qwest's above-quoted statements about updating the SGATs with the state commissions and bringing issues to the CMP, CLECs could not have anticipated that Qwest would later argue that this narrow proceeding was the one place that CLECs should have raised the issues that Qwest itself promised to raise elsewhere. Consistent with this, this Commission did not address all of these business-affecting issues in its Order.

1 refusing to negotiate these issues under Section 252 on the grounds that *Eschelon*
2 should take the issue to CMP or that it would do so when it updated the SGATs.
3 Then, Qwest declared it would not update the SGATs at all. Eschelon has
4 exercised its Section 252 right to raise these issues in negotiation and arbitration.
5 Qwest, as the party advocating they belong in CMP, elected not to raise them
6 there (or in any regulatory proceeding) before commencement of arbitration and
7 should not be allowed to benefit from its contradictory statements and conducts
8 by avoiding an arbitration ruling. This arbitration is the appropriate place to deal
9 with the business impacting aspects of the TRO/TRRO.

10 **Q. BRIEFLY, WHY SHOULDN'T QWEST IMPLEMENT TRRO PCATS**
11 **UNILATERALLY?**

12 A. Aside from the fact that Qwest agreed to negotiate these issues before making
13 *TRRO* changes across the board and said it would at least bring TRRO PCATs
14 through CMP,¹⁹⁷ the law and current interconnection agreements require Qwest to
15 negotiate changes of law (such as *TRRO*) through interconnection agreement
16 negotiation and arbitration.

17 While Qwest may argue that it has unilateral control over provisioning of
18 elements that are no longer required to be unbundled, the transition away from
19 UNEs is subject to Section 252, including its provisions giving authority to the
20 Commission to decide these issues. In the Verizon arbitration in Washington, for

¹⁹⁷ See Exhibit Eschelon 3.16 (6/30/05 CMP ad hoc meeting minutes)

1 example, the ALJ found that “the Commission specifically provided that the
2 parties address through the Section 252 process the transition away from
3 provisioning elements on an unbundled basis that the FCC has determined are no
4 longer required to be unbundled.”¹⁹⁸

5 In any event, Qwest’s so-called “TRRO” PCATs are not limited to provisioning
6 of elements that are no longer required to be unbundled and address or at least
7 impact UNEs and other Section 251 services. Qwest recently issued another non-
8 CMP, secret PCAT notice about new Qwest terms for converting UNEs to
9 alternative or analogous services.¹⁹⁹ This recent secret PCAT is discussed in
10 Issues 9-43 and 9-44 (conversions). Although Qwest refers to it as a “TRRO”
11 PCAT, it relates to collocation and contains terms that affect UNEs (such as a
12 freeze on ordering and changing UNEs for a time). Eschelon has requested
13 negotiation of these issues with Qwest and specifically asked for participation of
14 Qwest subject matter experts to facilitate the discussion. Qwest has rejected
15 Eschelon’s request, indicating that this issue should be addressed in CMP –
16 despite the fact that Qwest did not issue a CMP notice on this change to begin
17 with, and has refused to address this issue in CMP. Information is sketchy, but
18 there appear to be significant problems (not the least of which is a freeze on any
19 new orders or moves, adds, changes in affected collocations for a time) with

¹⁹⁸ See Verizon WA ALJ Arbitration Order, ¶105, citing *TRO*, ¶¶ 700, 701; *TRRO*, ¶ 142 n.399, ¶ 198 n.524, ¶ 228 n.630, ¶ 233.

¹⁹⁹ See Exhibit Eschelon 3.21 (7/21/06 - “TRRO-Reclassification of Terminations for Unbundled Network Element (UNE) Conversions – V1.0”).

1 Qwest's new changes (for which the Qwest effective date has passed). These
2 issues should be negotiated and reflected in ICA language.

3 **Q. WHAT DOES QWEST'S INSISTENCE ON ACTING UNILATERALLY**
4 **SAY ABOUT ITS TRUE VIEW OF ICA NEGOTIATIONS AND CMP?**

5 A. When Qwest's objective was to defeat the pick-and-choose rule, as I mentioned
6 earlier, Qwest extolled the virtues of negotiated interconnection agreements and
7 the importance of "...*dynamic, innovative interconnection negotiations*."²⁰⁰
8 Qwest recognized that: "ILECs and CLECs have a fundamental interest in
9 making the interconnection process as *cooperative and open* as possible, since
10 *both parties benefit* from well-negotiated and mutually beneficial wholesale
11 arrangements."²⁰¹ Qwest added that the "ability of carriers to negotiate binding
12 agreements with each other was a cornerstone of the Act."²⁰² Similarly,
13 regarding CMP, Qwest has time and again asserted the benefits of ensuring that
14 Qwest and multiple CLECs collectively create processes, suggesting this is to the
15 benefit of all.²⁰³

16 Here, we have another situation in which multiple CLECs are entreating Qwest to
17 join each of them in that "cooperative and open" ICA negotiations process to

²⁰⁰ *Comments of Qwest Communications International Inc.*, CC Docket Nos. 01-338, 96-98, 98-147, October 16, 2003 at page ii (emphasis added).

²⁰¹ *Id.*, pp. 3-4 (emphasis added). See also Exhibit Eschelon 3.6 and Ms. Johnson's description of Exhibit Eschelon 3.3 and Exhibit Eschelon 3.6 in her direct testimony.

²⁰² *Id.*, p. 6.

²⁰³ See, e.g., Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon's Petition for Arbitration in the Eschelon-Qwest arbitration.

1 negotiate *TRRO* changes to obtain a mutual benefit.²⁰⁴ Previously, Qwest at least
2 said it would bring the *TRRO* PCATs through CMP, which in this case it claims
3 is the appropriate forum for “processes” and “procedures.” Despite the benefits
4 that Qwest has, when convenient, extolled as to each of these procedures, Qwest
5 has refused to use either of them with respect to the *TRRO* PCATs. Significant
6 business issues, that may affect End User Customers and impose resource
7 burdens associated with implementation, require exchange of information,
8 discussion, and negotiation. But, Qwest has provided no forum for this, despite
9 significant passage of time and multiple requests from multiple CLECs, including
10 Eschelon. Instead, Qwest has operated in secret behind the scenes to devise its
11 own plan of implementing those changes in law, which it has presented as a fait
12 accompli.

13 **Q. DID QWEST RECENTLY AGREE TO TAKE AT LEAST SOME OF**
14 **THESE SECRET TRRO PCATS THAT QWEST UNILATERALLY**
15 **DEVELOPED TO CMP?**

16 A. On October 16, 2006, Qwest sent Eschelon a letter advising Eschelon of “a
17 policy-related decision Qwest has reached” to take the issue discussion under
18 Issue 9-58 in this arbitration to CMP “within the next two months” (*see*,
19 testimony of Mr. Denney for Issue 9-58).²⁰⁵ Despite its previous protestations

²⁰⁴ Regarding additional Eschelon requests for Qwest to involve other CLECs in the negotiations and implementation of the Qwest template and *TRO* provisions, see Exhibits Eschelon 3.8 and 3.9.

²⁰⁵ Qwest’s 10/16/06 letter and Eschelon’s 10/17/06 response letter are attached to Ms. Johnson’s testimony as Exhibit Eschelon 3.35.

1 that there was an alleged “agreement” preventing Qwest from taking issues to
2 CMP, Qwest made this policy decision on its own, without collaboration with or
3 agreement from other companies to amend any alleged previous agreement. This
4 shows that Qwest could have made this policy decision at any time. It does so
5 now to avoid a Commission ruling when it prefers a forum without Commission
6 scrutiny.

7 Then, at the Minnesota hearing, Qwest testified that it planned on taking *all* of the
8 secret TRRO PCATs to CMP.²⁰⁶ But, at the CMP Monthly Meeting held on
9 November 15, 2006, Qwest announced that it was bringing only a sub-set of those
10 secret TRRO PCATs to CMP. It said it would bring its former *TRO/TRRO*
11 change request²⁰⁷ out of deferred status to address *some* (but not all) TRO/TRRO
12 issues in CMP.²⁰⁸ Qwest was unable to provide any additional information on
13 which PCATs it intended to take to CMP at the following ad hoc call. Later,
14 Qwest indicated that it will not address issues that are in litigation and asked
15 CLEC CMP participants to sort out what is in litigation and what is not. When
16 re-designing CMP, New Edge pointed out that CLEC CMP participants are
17 operational business people, not attorneys who could address “regulatory, legal

²⁰⁶ Exhibit Eschelon 1.5 [Minnesota Transcript, Vol. III, p. 57, line 5 – p. 58, line 4 (Oct. 18, 2006) (Ms. Stewart)].

²⁰⁷ CR (PC102704-1ES). See Exhibit Eschelon 3.16 (Secret TRRO PCAT Chronology).

²⁰⁸ Qwest stated that “TRRO issues that are being addressed by Qwest and CLECs in arbitrations of their ICAs or items being challenged by law will not immediately be processed through CMP.” (11/15/06 CMP Monthly Meeting Minutes). However, as shown in Exhibit Eschelon 3.35, Qwest has indicated its intention to take to CMP issues being addressed between Eschelon and Qwest in this arbitration under Issue 9-58.

1 type processes” and changes that “impacts an ICA.”²⁰⁹ Qwest replied that CLECs
2 should not be concerned about this because: (1) this has been addressed with
3 language in the CMP Document that states the ICA controls over CMP; and (2)
4 “contractual issues, themselves, would not be addressed” in CMP.²¹⁰
5 Implementation of the TRO/TRRO is a legal and contractual²¹¹ issue. Recently,
6 Qwest again asked CLECs to identify and discuss legal issues in CMP relating to
7 the FCC’s TRO/TRRO orders. CLECs indicated that Qwest’s PCAT deals with
8 legal issues (such as when a product is legally available under the FCC’s rulings)
9 that should be dealt with in ICAs and negotiation of those agreements. In
10 response, Qwest agreed on a CMP ad hoc call to circulate to CLECs a redlined
11 version of at least one non-CMP TRRO PCAT to show which issues it believed
12 were “process” issues that should be dealt with in CMP and were not redundant
13 of ICA or template ICA terms. At a later monthly CMP meeting, however, Qwest
14 reneged on that commitment.

15 Now that Qwest has unilaterally developed terms outside of ICA negotiations
16 (despite requests by Eschelon and other CLECs),²¹² CMP (despite promises by

²⁰⁹ Transcript of 271CMP Workshop Number 6, Colorado Public Utilities Commission Docket Number 97I-198T (Aug. 22, 2001), pp. 291-292.

²¹⁰ Transcript of 271CMP Workshop Number 6, Colorado Public Utilities Commission Docket Number 97I-198T (Aug. 22, 2001), pp. 291-292 (Andrew Crain of Qwest and Penny Bewick of New Edge); *see id.* p. 292, lines 14-15 (Mr. Crain) (“Contractual issues, themselves, would not be addressed in the Change Management Process.”)

²¹¹ *See, e.g.*, TRRO ¶196 & note 519 & ¶198.

²¹² *See, e.g.*, Exhibit Eschelon 3.16, pp. 4-5 (11/17/04 CMP November monthly meeting minutes).

1 Qwest),²¹³ and Commission proceedings (also despite promises by Qwest),²¹⁴ it is
2 considering these terms and conditions as Qwest's "existing" process and Qwest
3 is claiming that it is too costly or time-consuming to change them.²¹⁵ Qwest
4 should not have been implementing *TRO/TRRO* terms and conditions unilaterally
5 in the first place. If it ultimately incurs costs in changing processes that it should
6 not have put in place unilaterally and over Eschelon's objections, Qwest is the
7 cost causer and should bear those alleged costs.²¹⁶

8 **Q. WHAT INFORMATION CAN BE TAKEN FROM THE SECRET TRRO**
9 **PCATS EXAMPLE?**

10 A. This example demonstrates a continuing need for Commission oversight and
11 involvement. While Qwest may have learned its lesson with respect to this
12 particular tactic, the possibilities available to Qwest in unilaterally implementing
13 terms and conditions consistent with its own policy objectives seem endless.

14 This example also typifies my contention that Qwest has a tendency to use CMP
15 as a "shield" or "sword," whichever benefits Qwest at that particular time. Qwest
16 imposed its unilateral view, in CMP, of the *TRO*, *USTA II*, and FCC's Interim

²¹³ See, e.g., Exhibit Eschelon 3.16, pp. 8-9 (6/30/05).

²¹⁴ Exhibit Eschelon 3.16, pp. 8-9 (6/30/05).

²¹⁵ Now that Eschelon has expended the money and resources to arbitrate Issue 9-58, Qwest is attempting to pull the decision away from the Commission and belatedly decide for itself in CMP. If the result is unsatisfactory, Qwest would send Eschelon back to "square one" to expend more money and resources to litigate the issues again.

²¹⁶ Qwest has implemented no fewer than 103 non-CMP TRRO PCAT versions. See, Exhibit Eschelon 3.34 (list of Qwest non-CMP TRRO PCATs).

1 Rules, which proved to be premature and a poor reflection of the permanent rules
2 that were ultimately established (*i.e.*, the sword). This was done over the strong
3 objection of CLECs, who disagreed with Qwest's use of CMP to implement
4 changes in law as well as Qwest's interpretation of those changes. Then, after
5 permanent rules are issued, Qwest sends a notice notifying CLECs about new
6 "secret" PCATs that are being established unilaterally outside the scope of the
7 CMP to define Qwest's legal obligations (*i.e.*, the shield), without any
8 participation by CLECs, and without CLECs even being afforded the opportunity
9 to review the initial *TRRO* PCAT language before being asked to execute the
10 *TRRO* amendment.

11 **Q. IF ESCHELON DID NOT SIGN THE AMENDMENT RELYING ON THE**
12 **"SECRET PCAT," WHY IS IT RELEVANT IN THIS ARBITRATION?**

13 A. Qwest in this arbitration attempts to relegate to CMP a number of the issues
14 brought forward by Eschelon, purportedly because those issues have some
15 inherent relationship to the CMP process. Yet, Qwest's own actions indicate that
16 it views CMP as a vehicle that can be used to suit Qwest's purpose, and that any
17 inherent relationship between an issue and CMP appears to be defined solely by
18 Qwest's decision to pursue the issue there or not. Qwest stated in CMP before it
19 issued the first secret PCAT that it would negotiate *TRO/TRRO* changes with
20 CLECs, yet Qwest has in its negotiations with Eschelon again punted these issues
21 back to CMP. Qwest then takes the position that an "agreement" exists between
22 itself and CLECs not to act on those issues in CMP, so it refuses to address those

1 issues in CMP, and establishes TRO/TRRO PCAT changes through non-CMP
2 notices. Finally, once Qwest unilaterally establishes TRO/TRRO PCATs, Qwest
3 decides to take some of the issues to CMP (after refusing to do so) with no
4 indication that it will deviate from what it unilaterally established. If Qwest
5 believed that CMP was the appropriate forum (which presumably explains Qwest
6 referring Eschelon back to CMP again), Qwest would have issued its notice
7 through CMP and followed the rules laid out for CMP. Now that Qwest has
8 developed dozens of unilateral, non-CMP secret TRRO PCATs, it now claims
9 that that is has “existing” processes, some of which it may now take to CMP and
10 argue that it would be costly and unnecessary to modify the “existing” processes
11 Qwest unilaterally developed.

12 **Q. ANY FINAL OBSERVATON FROM THESE EXAMPLES?**

13 A. Yes. Qwest may attempt to claim that these examples are isolated incidents that
14 may not occur again. In some respects, however, the significance of these
15 examples is that they occurred at all. If CMP were the disciplined process Qwest
16 claims it is, or if the line between ICA issues and CMP were as clear as Qwest
17 suggests, these examples would not have occurred at all. The examples
18 demonstrate, however, how much play there is in the process and how much room
19 Qwest has to maneuver – and the fact that Qwest has used that room to advantage
20 itself relative to its own policy positions. After reviewing these same examples in
21 the Minnesota Eschelon-Qwest arbitration case, the Minnesota Arbitrators, as
22 affirmed by the Minnesota Commission, found that “Eschelon has provided

1 convincing evidence that the CMP process does not always provide CLECs with
2 adequate protection from Qwest making important unilateral changes in the terms
3 and conditions of interconnection.”²¹⁷This shows that the potential for abuse in
4 the future (*i.e.*, during the new ICA term) is real. Qwest is still the dominant
5 competitor in the markets in which Eschelon competes, as well as Eschelon’s
6 largest supplier. As such, safeguards are needed to protect against the capability
7 that Qwest has to wield CMP as a shield and sword. Section 252 affords these
8 safeguards through arbitrated interconnection agreement terms. Eschelon has
9 exercised its right to bring certain terms and conditions to the Commission for
10 review and to obtain a dispositive decision. By dispositive, I mean a decision that
11 meets Eschelon’s business need for certainty to plan its business and remain
12 competitive and also helps avoid disputes in the future by providing clear
13 contractual terms on important issues. Relegating those issues to CMP, rather
14 than providing commercial certainty by deciding each issue on the merits of the
15 disputed contract language, would not meet that need.

16 As these examples show, participating in CMP can be much like playing cards
17 with a big brother. It’s frustrating when, because he’s bigger and has more access

²¹⁷ Minnesota Arbitrators’ Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768, ¶ 22. The Minnesota Commission adopted the Arbitrators’ Report in relevant part. See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*. [“Minnesota Qwest-Eschelon ICA Arbitration”], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) [“MN PUC Arbitration Order”].

1 to information, he makes up the rules of the game as he goes along.²¹⁸ Eschelon's
2 ability to compete is at stake, while Qwest as the dominant carrier holds the cards.
3 Nonetheless, Congress has decided that it is the Commission who should set the
4 "rules" by establishing interconnection agreement terms and conditions that must
5 be filed, approved, and amended if changed.

6 **5. ESCHELON'S POSITION IS CONSISTENT WITH**
7 **SECTION 252 AND CMP SCOPE AND EACH ISSUE**
8 **REQUIRES DISPOSITIVE ICA LANGUAGE**

9 **Q. IS ESCHELON TRYING TO CIRCUMVENT CMP OR OTHERWISE**
10 **"END RUN" THE PROCESS ENVISIONED BY THIS COMMISSION OR**
11 **THE FCC IN ESTABLISHING CMP?**

12 A. No. Eschelon's position is fully consistent with the terms and procedures
13 developed by the Commission and the FCC during the 271 proceedings, as shown
14 by the above discussion of the hierarchy adopted as part of the Scope of CMP and
15 in the SGAT, and with terms and purposes of Section 252(i) and the all-or-
16 nothing rule, also described above.

17 Although CMP has weaknesses that become self-evident when describing CMP
18 procedures and providing examples of how Qwest has used CMP, the
19 Commission does not have to find that CMP is "bad" or "broken" to determine
20 any of the disputed issues in Eschelon's favor. The Commission simply has to

²¹⁸ See, Exhibit Eschelon 3.71 to the testimony of Ms. Johnson.

1 recognize, as it did when addressing the scope of CMP,²¹⁹ that interconnection
2 agreement terms may vary and, when issues warrant arbitration and inclusion of
3 language in the contract, the resulting publicly available terms govern. The issue
4 then becomes whether each arbitrated issue, on its own merits, warrants inclusion
5 in the contract, and if so, whether Eschelon's or Qwest's proposed language better
6 fits the bill. As I understand it, according to Section 252 of the Act, the
7 Commission must decide each issue in the arbitration petition and respond
8 individually on the merits of that issue.²²⁰ In the remainder of Eschelon's direct
9 testimony, Eschelon lays out each open issue and the reasons that Eschelon's
10 position and proposed contract language on each issue should be adopted on the
11 merits, starting with Issue No. 1-1 and moving through the Issues by Subject
12 Matter List.

13 **III. SUBJECT MATTER NO. 1: INTERVAL CHANGES AND PLACEMENT**

14 *Issue No. 1-1 and subparts: ICA Sections 1.7.2; 7.4.7, 9.23.9.4.3, Exhibit C*
15 *(Group 2.0 & Group 9.0), Exhibit I (Section 3), Exhibit N, Exhibit O*

16 **Q. PLEASE DESCRIBE THE BUSINESS REASON REGARDING INTERVAL**
17 **CHANGES AND PLACEMENT (ISSUE 1-1 AND SUBPARTS (A)-(E)).**

²¹⁹ The Scope of CMP is Section 1.0 of Exhibit G to the ICA. The Commission also allowed the SGAT to go into effect, including Exhibit G containing this provision.

²²⁰ See 47 U.S.C. §252(b)(4). *See also* MN Arbitrators' Report ¶21 ("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.") (Exhibit Eschelon 2.24).

1 A. Provisioning intervals are critical to Eschelon's ability to provide timely service
2 to its End User Customers on the date they expect service. These provisioning
3 intervals dictate the timing of service delivery to the End User Customer, as well
4 as timing of the activities that the CLEC must perform in preparation for service
5 provisioning. When provisioning intervals are lengthened, the End User
6 Customer is forced to wait longer to receive service, and Eschelon is forced to
7 incur costs and dedicate personnel to adjust its internal systems and processes to
8 the longer interval. Shortened intervals, on the other hand, often benefit
9 customers by allowing them to receive service more quickly, yet allow the CLEC
10 to keep the longer interval to the point necessary to effect necessary internal
11 adjustments.

12 The Interval Changes issues (Issue 1-1 and subparts (a)-(e)) will determine
13 whether provisioning intervals for the products that Eschelon purchases from
14 Qwest will reside in the ICA and require negotiation and Commission approval
15 for critical changes, as proposed by Eschelon, or whether, as proposed by Qwest,
16 the ICA will point to non-contractual sources (such as CMP/PCAT/SIG) for
17 provisioning intervals that can be changed by Qwest over CLEC objection.

18 There are established intervals in place today for Qwest products. CLECs who
19 have built systems and products to support these intervals, and customers who
20 depend on those intervals to receive service, have come to rely on these
21 established intervals. Inclusion of intervals in the ICA is the logical way to

1 ensure End User Customers and their providers such as Eschelon an orderly and
2 reliable provisioning process. In contrast, relegating these provisioning intervals
3 to non-contractual sources, as proposed by Qwest, would result in (1) no binding
4 commitment on the part of Qwest to continue to provision service within the
5 existing intervals, (2) no certainty for Eschelon to rely on future provisioning
6 intervals for its business planning because its ability to deliver timely services to
7 its customers could change at Qwest's will, and (3) no vehicle for Commission
8 filing. In other words, Qwest's proposal would defeat the purpose of a contract.

9 It is important to note that Eschelon is not asking for different intervals in this
10 arbitration than what Qwest already provides. Eschelon is only seeking stability,
11 unless and until the interval is changed through an orderly process. Qwest's
12 resistance to including currently-existing intervals in the contract signals that
13 Qwest will, indeed, change those intervals if and when it sees fit, regardless of the
14 negative effects on Eschelon and its End User Customers.

15 **Q. WHAT IS ESCHELON'S PROPOSAL ON ISSUE 1-1?**

16 A. Eschelon proposes alternative ICA language modifications (Eschelon proposed
17 language shown in underline) for Issue 1-1. The first option would: (i) include
18 provisioning intervals in Exhibit C to the ICA; (ii) require ICA Amendment
19 (using a streamlined process) and Commission approval to lengthen provisioning
20 intervals; and (iii) allow shortening of intervals to be implemented through CMP.
21 Eschelon's second option for Issue 1-1 also includes provisioning intervals in

1 Exhibit C but provides that ICA Amendment (using the streamlined process) and
2 Commission approval would be needed for all interval changes, not just when
3 intervals are lengthened.

4 **Issue 1-1 (1st of 2 options)**

5
6 1.7.2 If the Commission orders, or Qwest chooses to offer and
7 CLEC desires to accept intervals longer than those set forth
8 in this Agreement, including Exhibit C, the Parties shall
9 amend this Agreement under one (1) of the two (2) options
10 set forth in Section 1.7.1 (an interval Advice Adoption
11 Letter or interval interim Advice Adoption Letter
12 terminating with approval of negotiated Amendment)
13 pertaining to the new interval (rather than new product) (or
14 as otherwise ordered by the Commission). The forms of
15 such letters are attached hereto as Exhibits N -O).

16
17 1.7.2.1 Notwithstanding any other provision in this
18 Agreement, the intervals in Exhibit C may be
19 shortened pursuant to the Change Management
20 Process (CMP) without requiring the execution or
21 filing of any amendment to this Agreement.

22
23 **Issue 1-1 (2nd of 2 options)**

24
25 1.7.2 If the Commission orders, or Qwest chooses to offer and
26 CLEC desires to accept intervals different from those set
27 forth in this Agreement, including Exhibit C, the Parties
28 shall amend this Agreement under one (1) of the two (2)
29 options set forth in Section 1.7.1 (an interval Advice
30 Adoption Letter or interval interim Advice Adoption Letter
31 terminating with approval of negotiated Amendment)
32 pertaining to the new interval (rather than new product) (or
33 as otherwise ordered by the Commission). The forms of
34 such letters are attached hereto as Exhibits N -O).

35 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 1-1(A) THROUGH**
36 **(E)?**

1 A. In Issues 1-1(a) through (e), Eschelon addresses the same issues as 1-1 (*i.e.*,
2 intervals should be in the ICA and changed through amendment and Commission
3 approval) in the appropriate ICA sections regarding specific products Eschelon
4 may purchase from Qwest pursuant to the ICA. Issue 1-1(a) applies to
5 interconnection trunk intervals; 1-1(b) applies to UDIT rearrangement intervals;
6 1-1(c) applies to Local Interconnection Services (LIS) Trunking intervals; 1-1(d)
7 applies to Individual Case Basis intervals; and 1-1(e) applies to LMC (Loop-Mux
8 Combinations) intervals.

9 **Issue 1-1(a)**

10 7.4.7 Intervals for the provision of Interconnection trunks will
11 conform to the performance objectives set forth in Section
12 20. Intervals are set forth in Exhibit C. Any changes to the
13 Interconnection trunk intervals will be made as described in
14 Section 1.7.2 through the Change Management Process
15 (CMP) applicable to the PCAT, pursuant to the procedures
16 set forth in Exhibit G. Operational processes within Qwest
17 work centers are discussed as part of the CMP. Qwest
18 agrees that CLEC shall not be held to the requirements of
19 the PCAT.
20

21 **Issue 1-1(b)**: [Eschelon proposes deletion of Qwest's proposed footnote regarding
22 UDIT rearrangements from Exhibit C, and include intervals in
23 Exhibit C].

24 **Issue 1-1(c)**: [Eschelon proposes to include the LIS Trunking intervals in Exhibit
25 C].

1 **Issue 1-1(d)**²²¹

2 3.1.1 For the following products and services, for which the
3 interval is ICB, Qwest shall provide the ICB due date
4 interval to CLEC as follows:

5
6 3.1.1.1 No later than seventy-two (72) hours after the application
7 date for:

- 8 a) 25 or more 2/4 wire analog loops;
9 b) 25 or more 2-wire non-loaded loops;
10 c) 25 or more 4-wire non-loaded loops;
11 d) 25 or more xDSL-I capable loops;
12 e) 9 or more conditioned loops for 2/4 wire non-loaded,
13 ADSL compatible, xDSL-I, ISDN; and
14 f) 25 or more lines Quick Loop and Quick Loop with LNP.

15
16 3.1.1.2 No later than one-hundred and ninety two (192) hours after
17 the application date for:

- 18 a) 25 or more DS0 UDITs;
19 b) 25 or more DS0 EEL/Loop Mux;
20 c) 4 or more DS3 UDITs; and
21 d) 4 or more DS3 EEL/Loop Mux

22 **Issue 1-1(e)**²²²

23 ~~9.23.9.4.3 Standard s~~Service intervals for LMC(s) are set forth in
24 ~~Exhibit C. in the Service Interval Guide (SIG) available at~~
25 ~~www.qwest.com/wholesale~~
26

27 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUES 1-1 AND (A)-(E)?**

28 A. Qwest proposes the following language for these issues:

29 **Issue 1-1**

30 1.7.2 Notwithstanding any other provision in this agreement, the
31 attached Exhibit C will be modified pursuant to the CMP
32 process without requiring the execution of an amendment.

²²¹ The language for Issue 1-1(d) resides in Section 3 of Exhibit I (ICB intervals) to the ICA.

²²² The remainder of Section 9.23.9.4.3 not shown under Issue 1-1(e) is addressed under Issue 9-61(a) and 9-61(b) below.

1

2 **Issue 1-1(a)**

3 7.4.7 Intervals for the provision of Interconnection trunks will
4 conform to the performance objectives set forth in Section
5 20. ~~Intervals are set forth in Exhibit C.~~ Any changes to the
6 Interconnection trunk intervals will be made through the
7 Change Management Process (CMP) applicable to the
8 PCAT, pursuant to the procedures set forth in Exhibit G as
9 ~~described in Section 1.7.2.~~ Operational processes within
10 Qwest work centers are discussed as part of the CMP. Qwest
11 agrees that CLEC shall not be held to the requirements of the
12 PCAT.
13

14 **Issue 1-1(b)**

15 Qwest proposed footnote in Exhibit C: “For UDIT rearrangements
16 see Qwest’s wholesale website for the Service Interval guide.”
17

18 **Issue 1-1(c)** [Qwest proposes deletion of entire Section 9.0 of Exhibit C (LIS
19 Trunking Service Intervals).]
20

21 **Issue 1-1(d)**²²³

22 3.2 For ICB intervals for those standard products and services
23 that require negotiated project time lines for installation,
24 such as 2/4 wire analog loop for more than twenty-five (25)
25 loops, Qwest shall make every attempt to provide an FOC
26 to CLEC pursuant to the guidelines contained in the
27 Service Interval Guide.
28

29 **Issue 1-1(e)**

30 [24.4.4.3] Standard Service intervals for LMC(s) Loops

²²³ Qwest’s proposed language for Issue 1-1(d) resides in Exhibit I (ICB intervals) to the ICA.

1 are in the Service Interval Guide (SIG) available at
2 www.qwest.com/wholesale ~~set forth in Exhibit C.~~

3 Qwest's proposal for Issues 1-1 and 1-1 (a) through (e) are designed to address
4 provisioning intervals in non-contractual sources such as CMP, PCAT, and SIG,
5 rather than in the ICA. Qwest's language for Issue 1-1 makes clear that changes
6 will be made to these intervals as Qwest desires, without ICA amendment or
7 Commission approval. Qwest makes several arguments in support of its
8 proposals on Issue 1-1 and (a)-(e), most of which relate to its overarching position
9 that the CMP process should be used to ensure uniformity among CLECs.²²⁴

10 Issue No. 1-1: Changes to Intervals – Section 1.7.2 and Exhibits N and O

11 **Q. WHAT ARE THE KEY REASONS THAT YOU RECOMMEND**
12 **ADOPTION OF ESCHELON'S LANGUAGE OVER QWEST'S FOR**
13 **ISSUE 1-1 "INTERVAL CHANGES"?**

14 A. Eschelon's proposed language offers the reliability and consistency necessary for
15 End User Customers and their providers such as Eschelon to plan for their
16 business needs. The ability to look to the ICA for an essential term of each
17 product – the interval in which it will be provisioned – is consistent with the
18 scheme of the ICA and also with pronouncements of the FCC, as discussed more
19 fully below. The Eschelon language offers the Commission the opportunity to
20 use its regulatory oversight in a manner that is consistent with the Commission's

²²⁴ See, e.g., Qwest Response, p. 38. I address Qwest's position on the CMP process and the extent to which it should be relied upon in the ICA in place of contractual certainty above.

1 mission, yet streamlined. And Eschelon’s proposed language would not create a
2 system that is unduly burdensome for either Qwest or regulators.

3 **Q. YOU MENTIONED THAT ESCHELON’S LANGUAGE CREATES THE**
4 **OPPORTUNITY FOR THE COMMISSION TO ASSERT ITS**
5 **REGULATORY OVERSIGHT. CAN YOU EXPAND ON THIS?**

6 A. Eschelon’s language is necessary to ensure that the Commission considers and
7 approves a longer interval before it goes into effect. This would allow the
8 Commission to consider the effects that these longer service intervals will have on
9 CLECs and their End User Customers and weigh that against Qwest’s reasons for
10 lengthening the intervals. The Commission will also be able to consider whether
11 Qwest’s new provisioning intervals meet applicable rules and regulations. For
12 example, the Commission must determine that the longer interval still meets the
13 FCC’s requirement that UNEs be provided on terms that are just, reasonable, and
14 nondiscriminatory, and that the UNE is provided in “substantially the same time
15 and manner” (for an element with a retail analogue) and in a way that provides a
16 “meaningful opportunity to compete” (for an element with no retail analogue).²²⁵
17 The Commission would have no opportunity to make these determinations before
18 Qwest makes these changes if Qwest has its way.

²²⁵ 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 (rel. December 22, 1999) (“NY271 Order”) at ¶ 125.

1 **Q. HAS ANY STATE COMMISSION RECOGNIZED THE POTENTIALLY**
2 **HARMFUL EFFECTS OF QWEST LENGTHENING PROVISIONING**
3 **INTERVALS?**

4 A. Yes. The Washington Commission recognized this in the context of its review of
5 Qwest's request for Section 271 authorization. In that case, Qwest proposed an
6 interval for DS1 loops that was longer than the interval that the Commission had
7 established when it approved US WEST's merger with Qwest, and the
8 Washington Commission directed that the proposed interval be reduced to that
9 which the Commission had previously approved.²²⁶ In addition, in the recent
10 Verizon/CLEC arbitration in Washington, the Washington Commission found it
11 appropriate to include an interval in the ICA to protect both ILEC and CLECs
12 "from unnecessary delay and gamesmanship."²²⁷

13 **Q. HAS ANOTHER STATE COMMISSION FOUND THE NEED TO EXERT**
14 **ITS AUTHORITY WITH REGARD TO QWEST INTERVAL CHANGES?**

15 A. Yes. When Qwest previously tried to move from a 5-day to a 9-day loop interval
16 by simultaneously lengthening the interval for its retail customers, the Minnesota
17 Commission rejected Qwest's parity argument and found that the 5-day loop

²²⁶ Twentieth Supplemental Order, Initial Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272, *In the Matter of the Investigation into US WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996 and In the Matter of US WEST COMMUNICATIONS INC.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*. Washington Docket Nos. UT-003022 and UT-003040 (November 14, 2001) ("WA 271 Order"), ¶ 125.

²²⁷ Washington Order No. 18, ¶¶ 70, 114.

1 interval allowed competitors a meaningful opportunity to compete.²²⁸ The
2 Minnesota Commission found that Qwest cannot make intervals “unreasonable by
3 lengthening the intervals for provision of retail service.”²²⁹

4 **Q. WOULD ESCHELON’S PROPOSAL #1 REQUIRE COMMISSION**
5 **APPROVAL FOR ALL INTERVAL CHANGES?**

6 A. No. Eschelon’s language will allow Qwest to shorten intervals without amending
7 the ICA, only requiring negotiation and amendment for lengthening the intervals.
8 According to Qwest’s website, Qwest shortened service intervals in its SIG 39
9 times from July 2002 to June 2006. In contrast, according to Qwest, it has not
10 lengthened any service intervals during this same time frame.²³⁰ Based on past
11 Qwest experience,²³¹ a vast majority of interval changes (if not all changes)
12 would not require ICA amendments under Eschelon’s proposed language.
13 Therefore, Eschelon’s proposal would not be burdensome because it would rarely,

²²⁸ Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest’s Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1,2,4,5,6,11,13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) (“*MN ALJ 271 Order*”), ¶125.

²²⁹ *MN ALJ 271 Order*, ¶ 125.

²³⁰ Qwest Response, p. 38, lines 22-24. Qwest states “To date, since Qwest obtained 271 approval, all such modifications have been reductions in the lengths of service intervals for various services and have been for the benefit of CLECs.” Qwest also states at page 39 of its Response: “Eschelon seeks protection against modifications that have not occurred even once since 271 approval, that is, the lengthening of service intervals...” Eschelon counted two lengthened intervals during this time frame, but these lengthened intervals were to make corrections and comply with state service quality rules. Qwest “Service Interval Guide for Resale, UNE & Interconnection Services History Log” http://www.qwest.com/wholesale/downloads/2006/060615/HL_SIG_V71.doc

²³¹ Though Qwest points out that all interval changes have been shortened intervals, it has not made any commitment to continue this trend. And, unlike in previous years, no 271 approvals are pending to incent Qwest to shorten intervals.

1 if ever, be used, and would be used only when there is a disagreement between
2 the CLEC and Qwest. Qwest's proposal, on the other hand, would first require
3 CLECs to address this issue in CMP, during which time Qwest can implement
4 longer intervals over the challenge of CLECs, and then require the CLECs to
5 come to the Commission when Qwest's changes affect the service provisioned to
6 CLEC End User Customers.

7 **Q. YOU STATED THAT ESCHELON'S PROPOSAL FOR THIS ISSUE IS**
8 **CONSISTENT WITH THE SCHEME OF THE ICA. IS IT TRUE, AS**
9 **QWEST IMPLIES, THAT CMP CONTROLS SERVICE INTERVALS**
10 **THAT ARE CONTAINED IN ICAS?**

11 A. No. According to the CMP Document, the only interval changes required by
12 CMP to go through CMP are interval changes to Qwest's SIG.²³² If an interval in
13 the contract conflicts with an interval in the SIG, the CMP Document is very clear
14 that the ICA controls.²³³ Qwest's assertion that these intervals should be
15 relegated to CMP to ensure uniformity is belied by Qwest's CMP documentation
16 that discusses potential differences between the intervals established in SIG and
17 those negotiated or arbitrated between Qwest and the CLEC in an ICA.

18 **Q. YOU ALSO TESTIFIED THAT ESCHELON'S PROPOSAL FOR**
19 **INTERVALS IS CONSISTENT WITH FCC FINDINGS. HAS THE FCC**

²³² CMP Document, Exhibit Eschelon 3.10, p. 40, §5.4.3 ("Reduction to an interval in Qwest's SIG"); and Johnson/44, §5.4.5 ("Increase to an interval in Qwest's Service Interval Guide (SIG)").

²³³ Exhibit Eschelon 3.10, CMP Document at §1.0.

1 **ADDRESSED RELIANCE ON NON-CONTRACTUAL WEBSITE**
2 **POSTINGS, AS ADVOCATED BY QWEST IN ITS PROPOSAL?**

3 A. Yes. In its *Forfeiture Order*, the FCC held that at “no point did we create a
4 general ‘web-posting exception’ to section 252(a).”²³⁴ In other words, the FCC
5 has made clear that Qwest cannot avoid negotiation or arbitration simply by
6 posting changes (in this instance, changes to intervals) to the internet – which is
7 what Qwest is attempting to do here.

8 **Q. YOU EXPLAINED ABOVE THAT COMMISSION APPROVAL WOULD**
9 **RARELY, IF EVER, BE NEEDED BECAUSE LENGTHENED**
10 **INTERVALS HAVE NOT OCCURRED IN THE PAST. HAS ESCHELON**
11 **DESIGNED ITS PROPOSAL SUCH THAT IT IS NOT UNDULY**
12 **BURDENSOME ON THE RARE OCCASION THAT COMMISSION**
13 **APPROVAL IS SOUGHT FOR A LONGER INTERVAL?**

14 A. Yes. Amending the contract for changes in intervals is an efficient process
15 because Eschelon’s language uses established streamlined procedures to amend.
16 Eschelon’s proposed Section 1.7.2 and Exhibits N and O largely mirror Section
17 1.7.1 and Exhibits L and M, which contain streamlined procedures agreed to by
18 Eschelon and Qwest, to implement new products in the ICA.²³⁵ And, assuming

²³⁴ *FCC Forfeiture Order*, ¶32.

²³⁵ Compare closed Exhibits L (Advice Adoption Letter) and M (Interim Advice Adoption Letter) that apply to new products to Eschelon-proposed Exhibits N (Interval Advice Adoption Letter) and O (Interval Interim Advice Adoption Letter) that apply to new intervals. The differences between the agreed-to Advice Adoption Letters and the Eschelon-proposed Advice Adoption Letters is that Eschelon’s proposed Advice Adoption Letters use the term “new interval for product/service”

1 Qwest does not radically change past policy to pursue longer intervals, ICA
2 amendments would not be necessary for interval changes under Eschelon's
3 Proposal #1.

4 **Q. GIVEN THE IMPORTANCE OF INTERVALS, SHOULDN'T THE ICA**
5 **STATE THAT ALL INTERVAL CHANGES REQUIRE COMMISSION**
6 **APPROVAL?**

7 A. Eschelon's Proposal #1 does not require Commission approval for shortened
8 intervals because shortened intervals can benefit the CLEC and its End User
9 Customers, and a longer due date can be obtained, if needed. Since changes to
10 shorten intervals would almost certainly be agreed to, and occur much more
11 frequently than lengthened intervals, Eschelon's proposal efficiently utilizes
12 resources of the Commission, Qwest and CLECs by requiring Commission
13 approval only when disagreement about the change in interval may occur.

14 However, given the importance of intervals, the Commission may desire that all
15 interval changes require Commission-approved amendments. If so, Eschelon
16 proposes a second language option (Proposal #2), which requires ICA amendment
17 whether an interval is lengthened or shortened. This option also uses the

instead of the term "new product" (with a few additional textual changes to refer to intervals instead of "rates, terms and conditions" for a new product). The agreed-to Advice Adoption Letters also require the rates, terms and conditions related to the new product be attached to the Letter, whereas the Eschelon-proposed Letter would refer to the new interval in the body of the Letter.

1 established, streamlined procedures that have been applicable in the past to new
2 products (see proposed ICA Section 1.7.1)²³⁶ to expedite these amendments.

3 Issue No. 1-1(a): Interconnection Trunks – Section 7.4.7; Issue 1-1(b): UDIT
4 Rearrangements—Exhibit C, Group 2.0; Issue 1-1(c): LIS Trunking—Exhibit C,
5 Group 9.0; Issue 1-1(e): Intervals for Loop Mux Combinations (LMC)—Section
6 9.23.9.4.3 (Eschelon)/ Section 24.4.4.3 (Qwest)

7 **Q. WHAT IS THE RATIONALE BEHIND ESCHELON’S PROPOSALS ON**
8 **ISSUES 1-1(A) INTERCONNECTION TRUNKS, 1-1(B) UDIT**
9 **REARRANGEMENTS,²³⁷ 1-1(C) LIS TRUNKING, AND 1-1(E) LOOP-**
10 **MUX COMBINATIONS?**

11 A. These issues also relate to whether intervals for various products that Eschelon
12 purchases from Qwest must be contained in the contract, or whether it is sufficient
13 for the contract to include references to Qwest’s PCAT, SIG or its website.

²³⁶ See also SGAT Section 1.7.1 and subparts & Exhibits L and M. Qwest has recently removed these exhibits from its negotiations template. Qwest implemented this change with a non-CMP notice effective the next business day. See Exhibit Eschelon 3.84. These exhibits are closed in the Eschelon-Qwest proposed ICA. Eschelon requested their inclusion because Eschelon values the streamlined process and intends to use it. As this language is closed, it will be in Eschelon’s ICA and the ICA of any CLEC which opts into the ICA. CLECs that may be unaware of these terms in Eschelon’s ICA and use the negotiations template will not have the streamlined process available to them. Through Qwest’s notice, therefore, it is creating the type of “one-off” process that it has claimed it opposes. See, e.g., Colorado arbitration, Rebuttal Testimony of Renee Albersheim, p. 6, lines 3-7 (“Eschelon seeks to expand Qwest’s obligations and create *one-off, unique processes* for CMP-related ICA issues in dispute: Issue 1-1: service intervals, Issues 12-71 through 12-73: jeopardy notices, and Issue 12-67: expedited orders.”) (emphasis added)

²³⁷ Qwest’s website describes a UDIT Rearrangement as follows: Rearrangement allows you to move or rearrange your UDIT or E-UDIT terminations on your demarcation point or change your UDIT or E-UDIT options. These Rearrangements are available through a single office or dual office request. Single office Rearrangements are limited to the movement of terminations within a single wire center. Dual office Rearrangements are used to change options or movement of terminations in two wire centers. Rearrangement is only available for existing and working UDITs or E-UDITs. <http://www.qwest.com/wholesale/pcat/udit.html>

1 The intervals proposed by Eschelon in Exhibit C for each of these products are
2 identical to the intervals that Qwest provides for the products today. Therefore,
3 Eschelon's proposal requires no change by Qwest; Eschelon seeks only the
4 inclusion of the current intervals in the Eschelon / Qwest contract, with the ability
5 of Qwest to lengthen intervals through the amendment process. Indeed,
6 Eschelon's proposed language virtually mirrors SGAT Section 9.23.5.3 (which is
7 also the same language as in the Qwest-AT&T ICA approved by this
8 Commission). In contrast, a unilateral lengthening of product intervals by Qwest
9 could significantly adversely affect Eschelon's business and its ability to compete.
10 And Qwest has identified no business reason, new circumstance or other basis for
11 varying from what is in the SGAT or ICAs with other carriers.

12 Issue No. 1-1(d): ICB Provisioning Intervals – Exhibit I, Section 3

13 **Q. WHAT IS ESCHELON'S RATIONALE FOR ITS PROPOSAL FOR ISSUE**
14 **1-1(D)?**

15 A. Again, Qwest's language points to non-contractual sources (here the SIG) for the
16 timeframe in which Qwest will provide ICB intervals. Eschelon's proposal, on
17 the other hand, includes the ICB due date intervals in the ICA.

18 **Q. ARE THERE OTHER REASONS THAT ESCHELON'S LANGUAGE**
19 **SHOULD BE ADOPTED FOR ISSUE 1-1(D), BESIDES ESCHELON'S**
20 **OVERALL REASONING THAT INTERVALS SHOULD BE INCLUDED**
21 **IN THE ICA?**

1 A. Yes. Section 3.1 of Exhibit I (“Individual Case Basis”) states that Qwest will
2 provide an ICB interval within 20 business days, unless the ICA contains a
3 “specific provision” for when the ICB interval will be provided. Qwest provides
4 an ICB interval for certain products in the Firm Order Confirmation (FOC), which
5 arrives in much less than 20 days. Therefore, Eschelon’s proposal for Issue 1-
6 1(d) is designed to include in the ICA the same ICB provisioning intervals for
7 certain products that Qwest provides via FOCs in less than 20 business days
8 today.²³⁸ Eschelon’s proposal requires no change by Qwest in its ICB due date
9 intervals²³⁹ and, unlike Qwest’s proposal, gives meaning to Section 3.1 of Exhibit
10 I.

11 **Q. PLEASE ELABORATE ON HOW ESCHELON’S PROPOSAL GIVES**
12 **MEANING TO SECTION 3.1 OF EXHIBIT I.**

13 A. Section 3 of Exhibit I discusses “specific provision(s)” in which ICB intervals
14 will be less than 20 business days. Eschelon’s proposed language only spells out
15 some of those specific provisions – provisions that exist today – to ensure that
16 Qwest provides these ICB intervals in the FOC as it does today and not the much
17 longer 20 business day interval.

18 In addition, Section 9.2.4.3.1.2 of the ICA provides in agreed upon language that,
19 for certain loop products, Qwest will return a FOC to CLEC within 72 hours from

²³⁸ These products and intervals are found in Eschelon’s proposed language for Issue 1-1(d), shown above.

²³⁹ http://www.qwest.com/wholesale/downloads/2006/060615/InterconnSIG_V71.doc

1 order receipt. It states that “[s]uch FOC will provide CLEC with a firm Due Date
2 commitment...” There is no exception for ICB due dates. Eschelon’s proposed
3 language would therefore connect the dots between Section 3.1 of Exhibit I,
4 which discusses specific provisions in which Qwest will provide ICB intervals
5 within the FOC period, and Section 9.2.4.3.1.2, which discusses FOC intervals of
6 72 hours.

7 **Q. DID THE MINNESOTA COMMISSION AGREE WITH ESCHELON’S**
8 **POSITIONS ON ISSUES 1-1 AND SUBPARTS WHEN THESE SAME**
9 **ISSUES WERE EXAMINED IN THE MINNESOTA ARBITRATION**
10 **PROCEEDING?**

11 A. Yes. The Minnesota Arbitrators’ Report, as affirmed by the Minnesota
12 Commission, ruled in favor of Eschelon on Issues 1-1 and subparts, finding:

13 22. Eschelon has provided convincing evidence that the CMP
14 process does not always provide CLECs with adequate
15 protection from Qwest making important unilateral changes in
16 the terms and conditions of interconnection. Service intervals
17 are critically important to CLECs, and Qwest has only
18 shortened them in the last four years. Qwest has identified no
19 compelling reason why inclusion of the current intervals in the
20 ICA would harm the effectiveness of the CMP process or
21 impair Qwest’s ability to respond to industry changes. The
22 Administrative Law Judges recommend that Eschelon’s first
23 proposal for Issue 1-1 be adopted and that its language for
24 Issues 1-1(a)-(e) also be adopted.²⁴⁰

²⁴⁰ Exhibit Eschelon 2.24 (Minnesota Arbitrators’ Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768, ¶ 22). The Minnesota Commission adopted the Arbitrators’ Report in relevant part. See, Exhibit Eschelon 2.25, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an*

1 The Minnesota Commission agreed with Eschelon that Qwest can make unilateral
2 changes to intervals in CMP, and that adopting Eschelon's proposal (the same
3 proposal Eschelon has offered in this proceeding for Issues 1-1 and subparts)
4 would not harm the effectiveness of CMP or Qwest's ability to respond to
5 industry changes. Furthermore, as I discuss above in my discussion of CMP and
6 the need for contractual certainty, the CMP Document's scope provision
7 recognizes potential differences in terms between ICAs and CMP, and says that
8 when these differences arise, the ICAs rule. Though Qwest has recognized and
9 discussed the CMP scope provision,²⁴¹ Qwest argues that including terms in ICAs
10 that are different from the CMP would "subvert"²⁴² or "undermine"²⁴³ the CMP.
11 The Minnesota Arbitrators, as affirmed by the Minnesota Commission, found that
12 Qwest is wrong:

13 The CMP document itself provides that in cases of conflict
14 between changes implemented through the CMP and any CLEC
15 ICA, the rates, terms and conditions of the ICA shall prevail. In
16 addition, if changes implemented through CMP do not necessarily
17 present a direct conflict with an ICA but would abridge or expand
18 the rights of a party, the rates, terms, and conditions of the ICA
19 shall prevail. Clearly, the CMP process would permit the
20 provisions of an ICA and the CMP to coexist, conflict, or
21 potentially overlap. The Administrative Law Judges agree with the

Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996. ["Minnesota Qwest-Eschelon ICA Arbitration"], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) ["MN PUC Arbitration Order"].

²⁴¹ E.g., Direct Testimony of Renee Albersheim in Colorado Docket 06B-497T (Eschelon-Qwest Arbitration case), p. 7 (12/15/06).

²⁴² See, e.g., Albersheim Colorado Direct Testimony, Colorado Docket No. 06B-497T, p. 7, line 31.

²⁴³ See, e.g., Qwest Response, p. 9, line 17 and p. 40, lines 16-17.

1 Department's analysis that any negotiated issue that relates to a
2 term and condition of interconnection may properly be included in
3 an ICA, subject to a balancing of the parties' interests and a
4 determination of what is reasonable, non-discriminatory, and in the
5 public interest.²⁴⁴

6 Given that ICA and CMP terms can "coexist, conflict, or potentially overlap,"
7 there is no basis for Qwest's position that intervals should be excluded from the
8 ICA because they are also addressed in CMP. The same goes for the other issues
9 that Qwest recommends excluding from the ICA and relegating to CMP (*see, e.g.*,
10 Issues 12-67 and 12-71 – 12-73).

11 **Q. PLEASE SUMMARIZE THE INTERVAL CHANGE ISSUES (ISSUES 1-1**
12 **AND (A)-(E)).**

13 A. Provisioning intervals are critical to Eschelon's ability to provide timely service
14 to its End User Customers on the date they expect service. Eschelon's proposed
15 language calls for this key term to be included in ICA language for the relevant
16 products offered by Qwest. Eschelon does not ask for any change to Qwest's
17 current intervals, just the inclusion of the terms in the ICA to provide necessary
18 reliability for end users and Eschelon. Eschelon's proposal allows the
19 Commission appropriate regulatory oversight over these significant provisions,
20 but allows for an existing, streamlined process to execute any change. Eschelon's
21 language is consistent with the relationship between the ICA and CMP and in
22 harmony with FCC findings requiring more than ILEC "website posting" of terms

²⁴⁴ Exhibit Eschelon 2.24 (MN Arbitrators' Report, ¶ 21).

1 and conditions. The Commission should reject Qwest's language, which would
2 allow Qwest non-contractual control over provisioning intervals.

3 **IV. SUBJECT MATTER NO. 14: NONDISCRIMINATORY ACCESS TO**
4 **UNES**

5 *Issue No. 9-31: ICA Section 9.1.2*

6 **Q. WHAT IS ESHELON'S BUSINESS ISSUE RELATING TO**
7 **NONDISCRIMINATORY ACCESS TO UNES (ISSUE 9-31)?**

8 A. Nondiscriminatory access to UNEs and interconnection is the cornerstone of local
9 competition. The FCC has read this nondiscriminatory access requirement for
10 UNEs to apply broadly and has required that UNEs must be provisioned in a way
11 that would make them useful. This means Qwest is required to provide
12 nondiscriminatory access to the UNEs themselves as well as to the means of
13 obtaining the UNEs, repairing the UNEs, and modifying the UNEs. This is
14 critical for CLECs because these are all activities that Qwest performs for its own
15 retail customers, and if CLECs are unable to obtain these activities related to
16 UNEs on reasonable terms and conditions and at cost based rates, CLECs will be
17 competitively disadvantaged vis-à-vis Qwest. Qwest has proposed language that
18 would modify the nondiscriminatory access to UNEs provision of the ICA to
19 create a loophole that may allow Qwest to charge tariff rates for activities that
20 have historically been provided at TELRIC rates pursuant to Qwest's Section 251
21 obligations to provide access to UNEs without first obtaining Commission

1 approval. Eschelon opposes this language and asks the Commission to adopt its
2 language, which would ensure that TELRIC rates continue to apply to access to
3 UNEs unless Qwest obtains an order to the contrary.

4 Although Section 9.1.2 contains language regarding nondiscriminatory access to
5 UNEs, it became clear that -- notwithstanding Section 9.1.2 and all other
6 provisions of the ICA -- Qwest's position is that it may charge tariff rates for
7 activities that have historically been provided at TELRIC rates without first
8 obtaining Commission approval. Qwest did not raise this issue initially in a cost
9 case. Eschelon first learned of this Qwest position through revised Qwest rate
10 proposals, in which Qwest referred to the tariff instead of Commission approved
11 rates for certain elements, including miscellaneous charges of the type listed in
12 Eschelon's proposed language. Per Qwest, application of TELRIC rates is limited
13 to the enumerated list of UNEs;²⁴⁵ if not named on that list (*e.g.*, local loops),
14 according to Qwest, it is not an activity for which TELRIC pricing applies -- even
15 when these activities are performed on UNE orders.²⁴⁶ This reasoning would
16 vitiate the law on *access to* UNEs in lieu of a simplistic look at the enumerated

²⁴⁵ See §51.319; *see also* FCC First Report and Order ¶ 27 ["The minimum set of network elements the Commission identifies are: local loops, local and tandem switches (including all vertical switching features provided by such switches), interoffice transmission facilities, network interface devices, signalling and call-related database facilities, operations support systems functions, and operator and directory assistance facilities."]

²⁴⁶ *See, e.g.*, Colorado arbitration, Albersheim Direct, p. 52, line 17 ("expedites are not UNEs"); Colorado arbitration, Million Rebuttal, p. 31, line 3 ("FCC's list of Section 251 elements"). *See also* Qwest (Senior Attorney Harisha Bastiampillai) letter to Eschelon (copied to Mr. Denney and Ms. Johnson) (April 5, 2006), pp. 4-5 ("Qwest will not process expedites for Eschelon unbundled loop orders without a duly executed amendment. The amendment for expedites will reflect Qwest's **tariffed rate** for expedites (along with applicable installation charges)" (emphasis added). Mr. Denney discusses Expedited Orders in his testimony regarding Issue 12-67.

1 UNEs. Although Eschelon believes that such an approach is inconsistent with the
2 unmodified language of Section 9.1.2, Qwest’s position shows that more explicit
3 contract language is needed.

4 On August 31, 2006, Qwest confirmed this position by issuing a non-CMP
5 notification announcing that it intended to post a new “template” interconnection
6 agreement on its website on September 1, 2006 (on one day’s notice). *See*
7 Process Notification PROS.08.31.06.F.04159.Amendments.ComlAgree.SGAT.²⁴⁷

8 This new Qwest negotiations template added a tariff reference for the following
9 rate elements: Additional Dispatch, Trouble Isolation Charge, Design Charge,
10 Expedite Charge, Cancellation Charge, and Maintenance of Service Charge.
11 During negotiations on design changes (*see* Issue 4-5 discussed by Mr. Denney)
12 Qwest also submitted a proposal that would have applied tariff rates to certain
13 activities – much like its 8/31/06 non-CMP notice. Qwest later changed its
14 position in negotiations, but indicated that Qwest’s change in position for
15 negotiations should not be construed as Qwest giving up on its tariff rate proposal
16 for design changes, and that Qwest fully intended to pursue this proposal outside
17 of negotiations. By changing its position in negotiations with Eschelon while
18 maintaining its tariff position outside of arbitration, Qwest is attempting to leave
19 the door open for Qwest to ultimately impose its tariff proposal on Eschelon
20 (despite the considerable time and resources expended to arbitrate this issue).

²⁴⁷ Exhibit Eschelon 2.5 (Denney).

1 The activities that Qwest listed in its notice as activities for which tariff rates will
2 apply are the same activities in Eschelon's proposed language for Issue 9-31 (to
3 be included as necessary to access to UNEs). Eschelon's language for Issue 9-31
4 puts this issue squarely before the Commission, and a Commission ruling is
5 needed to ensure that CLECs receive the nondiscriminatory access to UNEs to
6 which they are entitled and avoid future disputes.

7 **Q. ARE YOU AWARE OF OTHER EXAMPLES DEMONSTRATING THE**
8 **NEED FOR ESCHELON'S LANGUAGE?**

9 A. Yes. One example is Qwest's 12/9/05 CMP notice, which introduced as a CMP
10 change²⁴⁸ adding language to the DS1 Loop product description that stated that,
11 "Unbundled Loops are not available for telecommunications services provided
12 directly to you or for your own administrative purposes *nor are they available to*
13 *serve another CLEC, IXC, or other Telecommunications Provider.*" (Emphasis
14 added.) Since Qwest introduced this change in CMP, it was not required to show
15 how its proposed changes that prohibit CLECs from using UNE loops to serve
16 another telecommunications carriers comport with 47 C.F.R §51.309, which
17 provides that subject to certain limited restrictions, the ILEC "shall not impose
18 limitations, restrictions, or requirements on requests for, or the use of, unbundled
19 network elements for the service a requesting telecommunications carrier seeks to

²⁴⁸ CMP Document No. PROD.12.09.05.F.03543.EEL_and_LMC_MTE.

1 offer.”²⁴⁹ None of the restrictions on the use of UNEs prohibits a CLEC from
2 using a UNE to provide service to another CLEC, IXC or Telecommunications
3 Provider.

4 Since the ICA does not include Qwest’s PCAT restriction and says, to the
5 contrary, that no other limitations on the use of UNEs shall be imposed,²⁵⁰
6 Eschelon believes that the ICA language controls and that this clause would not
7 apply to Eschelon. Qwest had every opportunity to propose this language during
8 this arbitration, but did not. All of this notwithstanding, based on the manner in
9 which Qwest has chosen issues that it has and has not addressed in CMP to its
10 advantage, Eschelon is concerned that it could get through this entire case without
11 this language found anywhere in the contract, yet Qwest would still apply the

²⁴⁹ 47 CFR § 51.309 provides:

- (a) Except as provided in §51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.
- (b) A requesting telecommunications carrier may not access an unbundled network element for the exclusive provision of mobile wireless services or interexchange services.
- (c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.
- (d) A requesting telecommunications carrier that accesses and uses an unbundled network element consistent with paragraph (b) of this section may provide any telecommunications services over the same unbundled network element.

²⁵⁰ “9.1.1.2.1: Except as provided in this Section 9.1.1.2.1 and in Section 9.23.4.1, Qwest shall not impose limitations, restrictions, or requirements on requests for, or the use of, Unbundled Network Elements for the service CLEC seeks to offer.”

1 restriction to Eschelon (perhaps by claiming that the contract is silent on the
2 matter, which it is not).²⁵¹

3 **Q. HAS QWEST ISSUED ADDITIONAL CMP NOTICES THAT FURTHER**
4 **RESTRICT ACCESS TO UNES SINCE THEN?**

5 A. Yes. On September 11, 2006, Qwest issued a Level 3 CMP notice²⁵² that revised
6 its Provisioning and Installation Overview and changed the verbal supplement for
7 CFA slot change on the due date. Qwest added the following language:

8 NOTE: For CFA or slot changes, it is the CLEC's responsibility to
9 provide Qwest with a new CFA that will work. Qwest will only
10 accept one verbal CFA change on the due date. If that CFA fails to
11 work, Qwest will place the order in jeopardy (customer jeopardy).
12 No further action will be taken on Qwest's part until Qwest
13 receives a valid supplemental request to change the due date and
14 the CFA (if applicable). Additional charges may apply.

15 This language restricts the availability of CFA changes,²⁵³ unnecessarily
16 complicates the provisioning process and leaves the door open for Qwest to assess
17 "additional charges" – which, coupled with Qwest's 8/31/06 notice, means that
18 Qwest will apply tariff charges. As indicated in Eschelon's proposed language
19 for Issue 9-31, design changes are activities that are necessary for
20 nondiscriminatory access to UNEs, and this type of arbitrary restriction on this

²⁵¹ The operative language makes clear that no other limitations on UNEs will be imposed (beyond those in the contract) and the restriction on using UNEs to serve other carriers is not in the ICA.

²⁵² PROS.09.11.06.F.04161.P_&_I_Overview_v91.

²⁵³ Design changes, and more specifically CFA changes, are addressed in Issue 4-5 (Design Changes) in the testimony of Mr. Denney.

1 access is concerning to Eschelon. While Qwest later retracted this CMP notice,²⁵⁴
2 on October 26, 2006, Qwest issued an internal notification (MCC) that it
3 distributed to CLECs which again limits CFA changes to one per circuit on the
4 day of the cut, but directs Qwest testers to “determine if it is reasonable to expect
5 the next CFA change to resolve the issue” and if Qwest’s tester decides that this
6 expectation is not reasonable, the “CFA change should be refused and the CLEC
7 should be pointed to the supplemental process.” Qwest’s 10/26/06 document also
8 states that “If Qwest receives frequent attempts from a CLEC to verbally request
9 numerous changes on DD before a good CFA is found, the Tester should post a
10 Customer Jeopardy to the order and contact the CLEC’s Service Manager to
11 inform them of the situation.” Qwest claims (incorrectly) that it has always been
12 Qwest’s intent to limit CFA changes to one per circuit on the day to the cut, and
13 that this MCC notice only reiterates the current practice. Eschelon asked Qwest
14 to retract this MCC notice, explaining that this is a change in process and should
15 be issued as a Level 4 CMP change request, and that limiting CFA changes on the
16 day of the cut to one per circuit was not Qwest’s intent and that Qwest has been
17 performing multiple CFA changes for four years.²⁵⁵ The intent to apply to
18 multiple CFA changes is evident on the face of the change request. It provides
19 examples to illustrate the request, and one of those examples includes multiple

²⁵⁴ Qwest filed a notice on 10/20/06 (PROS.10.20.06.F.04281.Retract_CFA_P&I_OvrwV91) to retract PROS.09.11.06.F.04161.P_&_I_Overview_v91.

²⁵⁵ Mr. Denney provides a CFA Change Chronology as Exhibit Eschelon 2.4. This exhibit includes Qwest’s CFA change notices and Eschelon’s request for Qwest to retract its 10/26/06 MCC notice.

1 changes to one CFA. Qwest then issues a Qwest-originated Change Request
2 limiting CFA changes on the day of the cut to one per circuit and implemented in
3 over Eschelon's objection.²⁵⁶ Qwest's actions with regard to its CFA change
4 notices is further proof that Qwest's promises regarding nondiscriminatory access
5 to UNEs and its actions are two different things and that the Commission should
6 remedy this situation by making Qwest's obligations clear in the contract under
7 Issue 9-31.

8 **Q. WHAT IS ESCHELON'S PROPOSAL ON ISSUE 9-31?**

9 A. Eschelon has two alternative proposals for Section 9.1.2:

10 **Proposal #1:**

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

16
17 **Proposal #2:**

18 9.1.2 ~~Access to Activities available for~~ Unbundled Network
19 Elements includes moving, adding to, repairing and changing the
20 UNE (through, *e.g.*, design changes, maintenance of service
21 including trouble isolation, additional dispatches, and cancellation
22 of orders) ~~at the applicable rates~~ and will be provided at TELRIC
23 rates....

24 Because Section 9.1.2 deals only with Section 251 access to unbundled network
25 elements,²⁵⁷ TELRIC rates apply. Therefore, if any reference to rates is made in
26 this section, it should specify TELRIC rates, as shown in Eschelon's proposal #2.

²⁵⁶ Exhibit Eschelon 3.85.

²⁵⁷ See definition of Unbundled Network Element in Section 4.0 of the proposed ICA.

1 If Qwest later challenges use of TELRIC rates and succeeds in obtaining a ruling
2 allowing it to charge tariff rates in one or more of these cases, the ICA has change
3 of law provisions for use in such situations.

4 **Q. WHAT IS QWEST'S PROPOSAL ON ISSUE 9-31?**

5 A. Qwest originally proposed to omit Eschelon's language and provided no
6 competing language. In support of this position, Qwest states that Eschelon's
7 language would require Qwest to provide a "superior network" and may be an
8 attempt by Eschelon to get modifications to UNEs without paying for them.²⁵⁸

9 Qwest has since modified its proposal as follows:

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

15 **Q. WHY HAS ESCHELON PROPOSED TO INCLUDE MOVES, ADDS,**
16 **REPAIRS AND CHANGES TO UNES IN THE DESCRIPTION OF**
17 **ACCESS TO UNES?**

18 A. It is crucial to include these items to ensure that CLECs get nondiscriminatory
19 access to UNEs, as Qwest's attack on TELRIC pricing for these activities clearly
20 demonstrates. The importance of making this clear in the ICA is evident in both
21 the existing ICA between Eschelon and Qwest as well as FCC rules and orders.

22 As both companies' proposals now include the phrase "Unbundled Access to

²⁵⁸ Qwest Response, p. 21, lines 7-8.

1 Unbundled Network Elements includes moving, adding to, repairing and
2 changing the UNE (through *e.g.*, design changes, maintenance of service
3 including trouble isolation, additional dispatches, and cancellation of orders),” the
4 remaining open issue is whether these activities – which under both companies’
5 proposals apply to “the UNE” – are provided at TELRIC rates (subject to the
6 change in law provisions of the ICA should a later decision change the status
7 quo). Eschelon’s position is that TELRIC rates apply not only to the enumerated
8 UNEs but also to “access to” those UNEs.

9 **Q. PLEASE ELABORATE ON HOW THE FCC ADDRESSED “ACCESS TO**
10 **UNES” IN ITS ORDERS.**

11 A. In its *First Report and Order* at ¶ 268, the FCC found that the requirement to
12 provide “access to UNEs” must be read broadly, concluding that the Act requires
13 that UNEs “be provisioned in a way that would make them useful” and “[t]he
14 ability of other carriers to obtain access to a network element for some period of
15 time does not relieve the incumbent LEC of the duty to maintain, repair, or
16 replace the unbundled network element.”

17 **Q. WHAT OTHER FCC ORDERS OR RULES GOVERNING NON-**
18 **DISCRIMINATION FOR UNES APPLY HERE?**

19 A. Section 251(c)(3) of the Telecommunications Act requires that Qwest provide
20 access to unbundled network elements, including unbundled local loops, on rates,
21 terms and conditions that are just, reasonable and non-discriminatory. The FCC

1 *First Report and Order*²⁵⁹ further defined the meaning of “just, reasonable and
2 non-discriminatory,” which was included in 47 CFR §51.313. Specifically, the
3 Order stated that at the minimum, the obligation of “just, reasonable and non-
4 discriminatory” includes two conditions: First, the ILECs should provide
5 unbundled network elements to requesting carriers under terms and conditions
6 that are equal to the terms and conditions under which the ILEC provides the
7 service to itself.²⁶⁰ Second, the ILECs should offer equal terms and conditions to
8 all carriers requesting unbundled network elements.²⁶¹ Further, the Order noted
9 that the obligation of “just, reasonable and non-discriminatory” terms and
10 conditions are conditions that provide the requesting carriers a meaningful
11 opportunity to compete:

12 The duty to provide unbundled network elements on "terms, and
13 conditions that are just, reasonable, and nondiscriminatory" means,
14 at a minimum, that whatever those terms and conditions are, they
15 must be offered equally to all requesting carriers, and where
16 applicable, they must be equal to the terms and conditions under
17 which the incumbent LEC provisions such elements to itself. We
18 also conclude that, because section 251(c)(3) includes the terms
19 "just" and "reasonable," this duty encompasses more than the
20 obligation to treat carriers equally. Interpreting these terms in light
21 of the 1996 Act's goal of promoting local exchange competition,
22 and the benefits inherent in such competition, we conclude that
23 these terms require incumbent LECs to provide unbundled
24 elements under terms and conditions that would provide an

²⁵⁹ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 (1996) FCC Dockets CC Nos. 96-98 and 95-185, (“*Local Competition Order*”) adopted on August 1, 1996.

²⁶⁰ 47 CFR §51.313(b).

²⁶¹ 47 CFR §51.313(a).

1 efficient competitor with a meaningful opportunity to compete.
2 Such terms and conditions should serve to promote fair and
3 efficient competition. This means, for example, that incumbent
4 ILECs may not provision unbundled elements that are inferior in
5 quality to what the incumbent provides itself because this would
6 likely deny an efficient competitor a meaningful opportunity to
7 compete.²⁶²

8 In addition, the Order stated that the provision of unbundled network elements
9 does not relieve the ILEC from the duty to maintain and repair the unbundled
10 network element:

11 We conclude that we should adopt our proposed interpretation that
12 the terms "access" to network elements "on an unbundled basis"
13 mean that incumbent ILECs must provide the facility or
14 functionality of a particular element to requesting carriers, separate
15 from the facility or functionality of other elements, for a separate
16 fee. We further conclude that a telecommunications carrier
17 purchasing access to an unbundled network facility is entitled to
18 exclusive use of that facility for a period of time, or when
19 purchasing access to a feature, function, or capability of a facility,
20 a telecommunications carrier is entitled to use of that feature,
21 function, or capability for a period of time. The specified period
22 may vary depending on the terms of the agreement between the
23 incumbent ILEC and the requesting carrier. The ability of other
24 carriers to obtain access to a network element for some period of
25 time does not relieve the incumbent ILEC of the duty to maintain,
26 repair, or replace the unbundled network element.²⁶³

27 The final rules defining the meaning of "just, reasonable and nondiscriminatory"
28 access to UNEs prescribed that an ILEC must provide a carrier purchasing UNEs

²⁶² *Local Competition Order* at ¶ 315 (emphasis added; footnotes omitted).

²⁶³ *Local Competition Order* at ¶ 268 (emphasis added; footnotes omitted).

1 with the pre-ordering, ordering, provisioning, maintenance and repair, and billing
2 functions of the incumbent LEC's operations support systems.²⁶⁴

3 **Q. HOW DOES THE EXISTING ESCHELON AND QWEST ICA ADDRESS**
4 **THIS ISSUE?**

5 A. Section 6.2.1 of Attachment 5 "Business Process Requirements" of the ICA
6 states:

7 6.2.1 U S WEST shall provide repair, maintenance, testing, and
8 surveillance for all Telecommunications Services and
9 unbundled Network Elements and Combinations in
10 accordance with the terms and conditions of this
11 Agreement.

12
13 6.2.1.1 U S WEST shall provide CO-PROVIDER with the same
14 level of maintenance support as U S WEST provides itself
15 in accordance with standards and performance
16 measurements that US WEST uses and/or which are
17 required by law, regulatory agency, or by U S WEST's own
18 internal procedures, whichever are the most rigorous.
19 These standards shall apply to the quality of the
20 technology, equipment, facilities, processes, and techniques
21 (including, but not limited to, such new architecture,
22 equipment, facilities, and interfaces as U S WEST may
23 deploy) that U S WEST provides to CO-PROVIDER under
24 this Agreement.

25
26 6.2.1.2 U S WEST shall provide a SPOC (Single Point of Contact)
27 for Residence, and a SPOC for Business for CO-
28 PROVIDER to report via a toll free telephone number
29 maintenance issues and trouble reports twenty four (24)
30 hours a day and seven (7) days a week. The SPOC
31 Residence toll free number, and SPOC Business toll free
32 number, will be the numbers for all of U S WEST's
33 fourteen (14) states.
34

²⁶⁴ 47 CFR §51.313(c).

1 6.2.1.3 U S WEST shall provide CO-PROVIDER maintenance
2 dispatch personnel on the same schedule that it provides for
3 its own Customers.

4 **Q. BASED ON THE EXISTING ICA AND APPLICABLE FCC RULES AND**
5 **ORDERS, WHY IS IT CRUCIAL FOR THE ITEMS IDENTIFIED IN**
6 **ESCHELON’S LANGUAGE TO BE SPECIFICALLY IDENTIFIED IN**
7 **THE ICA AS “ACCESS” TO UNES?**

8 A. Because without the nondiscriminatory access to UNES that would result from
9 Eschelon’s proposed language (and which would not be preserved under Qwest’s
10 proposal), Eschelon would not have a meaningful opportunity to compete.
11 Eschelon has an expectation, as supported by governing rules and orders, that it
12 will continue to have access to the same maintenance and repair procedures and
13 level of quality available to Qwest’s other customers – whether retail, resale or
14 QPP – under terms and conditions that are nondiscriminatory.

15 **Q. WHY IS THE MODIFIED LANGUAGE THAT QWEST RECENTLY**
16 **PROPOSED NOT SUFFICIENT TO CLOSE THIS ISSUE?**

17 A. Qwest opposes Eschelon’s language because, according to Qwest, it
18 impermissibly expands Qwest’s obligations and would prevent Qwest from
19 recovering its costs.²⁶⁵ Qwest originally recommended striking all of Eschelon’s
20 language, but has since modified its language proposal for Section 9.1.2, and
21 Qwest’s modified proposal misses the point. The Commission needs to decide

²⁶⁵ Qwest Response, p. 21.

1 that moving, adding to, and repairing the UNE are part of nondiscriminatory
2 access to UNEs. Qwest's language states that these activities are "available for"
3 UNEs, and strikes the key word "access." Qwest's choice of "available for"
4 suggests that the activities are not UNE activities but rather are non-UNE
5 activities that Qwest may make in some manner "available for" UNEs, a concept
6 with which, as noted, the FCC disagrees. Qwest's modified language does
7 nothing to address Eschelon's concern that the ICA clarify that these activities are
8 part of Qwest's obligation to provide nondiscriminatory access to UNEs at
9 TELRIC-based rates. Further, Qwest's language leaves the door open for Qwest
10 to charge expensive, non-cost based charges (potentially tariff rates) for these
11 activities that Qwest would argue are not under the Commission's purview. The
12 fact that Qwest had agreed to make these activities "available for" UNEs would
13 be of little comfort to Eschelon if the prices Qwest assesses for these activities are
14 set at expensive, non-cost based levels, providing Qwest a significant cost
15 advantage when serving its customers.

16 **Q. DID THE MINNESOTA COMMISSION AGREE WITH QWEST THAT**
17 **ESCHELON'S PROPOSAL FOR THIS ISSUE IMPERMISSABLY**
18 **EXPANDS QWEST'S OBLIGATIONS AND WOULD KEEP QWEST**
19 **FROM RECOVERING ITS COSTS FOR THESE ACTIVITIES?**

20 A. No, the Minnesota Commission disagreed with Qwest's arguments. The
21 Minnesota Arbitrators, as affirmed by the Minnesota Commission found:

1 It is difficult to understand Qwest's position that Eschelon's
2 language might require Qwest to provide access to an "as yet
3 unbuilt, superior network" or that it might mean Qwest would be
4 unable to charge at all for making such changes. It is a real stretch
5 to find this kind of ambiguity in Eschelon's language. Qwest has
6 pointed to nothing in the language that would require it to perform
7 an activity that is obviously outside of its existing § 251
8 obligations.²⁶⁶

9 The Minnesota Commission also recognized the problem with Qwest's proposed
10 "applicable rate" language as follows:

11 Qwest's proposed language is in fact more ambiguous than
12 Eschelon's, because it would leave unanswered the question
13 whether routine changes in the provision of a UNE would be
14 priced at TELRIC or at some other "applicable rate."

15 Federal law requires that when a CLEC leases a UNE, the ILEC
16 remains obligated to maintain, repair, or replace it. Unless and
17 until the Commission or other authority determines to the contrary,
18 these types of routine changes to UNEs should be provided at
19 TELRIC rates. Eschelon's language should be adopted for this
20 section.²⁶⁷

21 The Minnesota Commission adopted Eschelon's proposed language for Issue 9-
22 31.²⁶⁸

23 **Q. PLEASE SUMMARIZE ISSUE 9-31**

24 A It is critical that the ICA language make clear that Qwest must continue to provide
25 nondiscriminatory access to UNEs, including activities performed to make the
26 UNE useful and allow Eschelon a meaningful opportunity to compete. This is

²⁶⁶ Exhibit Eschelon 2.24, MN Arbitrators' Report, ¶130, affirmed in relevant part in the MN PUC Arbitration Order.

²⁶⁷ Exhibit Eschelon 2.24, MN Arbitrators' Report, ¶¶131-132, affirmed in relevant part in the MN PUC Arbitration Order.

²⁶⁸ Exhibit Eschelon 2.24, MN Arbitrators' Report, ¶132, affirmed in relevant part in the MN PUC Arbitration Order.

1 supported by FCC rules and orders as well as the current Eschelon/Qwest ICA.
2 For all of the reasons described in Eschelon's business need and in these
3 responses, the Commission should adopt Eschelon's language for Issue 9-31.

4 **V. SUBJECT MATTER NO. 16. NETWORK MAINTENANCE AND**
5 **MODERNIZATION**

6 *Issue Nos. 9-33 and 9-34: ICA Section 9.1.9*

7 **Q. PLEASE DESCRIBE THE NETWORK MAINTENANCE AND**
8 **MODERNIZATION ISSUES (9-33 AND 9-34)²⁶⁹ AND EXPLAIN THE**
9 **BUSINESS NEEDS BEHIND ESCHELON'S LANGUAGE PROPOSALS.**

10 A. The two network maintenance and modernization issues are (1) whether minor
11 changes in transmission parameters include changes that adversely affect the End
12 User Customer's service on more than a temporary or emergency basis [Issue 9-
13 33]; and (2) whether, in situations when Qwest makes changes that are specific to
14 an End User Customer, Qwest should include the circuit identification and End
15 User Customer address information in the notice [Issue 9-34].

16 First, regarding Issue 9-33, Qwest has refused to provide any commitment in the
17 ICA that network maintenance and modernization activities that the companies
18 have agreed will involve only "minor changes to transmission parameters" will
19 not adversely affect service to Eschelon's End User Customers on more than a

²⁶⁹ As shown in the Issues by Subject Matter List (Attachment 2 to Eschelon's Petition for Arbitration), Issues 9-33(a), 9-35 and 9-36 are closed.

1 temporary or emergency basis. Adversely affect is a known term in the industry,
2 as it has been used by the FCC in its rules. This issue concerns Eschelon
3 customers who have a working circuit and are up and running without any service
4 problems. Qwest then makes changes to the UNEs in its network that were not
5 requested by Eschelon or Eschelon's Customer. Resulting customer disruption
6 would be unexpected from the End User Customer's perspective because the
7 problem was caused by a Qwest-initiated maintenance or modernization activity –
8 not an Eschelon-initiated or customer-initiated request. Sometimes, however,
9 temporary customer disruption is unavoidable, and Eschelon is not attempting to
10 hold Qwest to a zero outage standard for maintenance and modernization
11 activities. Eschelon's proposed language clearly anticipates and addresses
12 reasonably anticipated temporary service interruptions and emergencies.²⁷⁰ The
13 expectation in Section 9.1.9 should be that once any anticipated, temporary
14 disruption (such as a brief outage during non-working hours needed to perform
15 the work) or any emergency (such as when a brief anticipated outage develops
16 into an unanticipated extended outage) *has ended*, the End User Customer's
17 service will work without any adverse affect to that service. This is different, for
18 example, from situations in which copper is retired and replaced with fiber
19 pursuant to Section 9.2.1.2.3. In those copper retirement situations, the

²⁷⁰ Former Issues 9-35 and 9-36 are closed. Therefore, the terms relating to emergencies in Section 9.1.9.1 are agreed upon and closed. Although the language of Section 9.1.9.1 is now closed, Qwest has not agreed to Eschelon's proposal to include a cross reference in Section 9.1.9 to Section 9.1.9.1, even though a primary purpose of the cross reference is to assure Qwest that the "adversely affect" language is not a zero outage standard, as Eschelon's proposed language clearly recognizes that emergencies will occur.

1 expectation is that the End User Customers' service *will* be adversely affected (so
2 Qwest must provide 91 Days notice, CLECs are allowed to object, *etc.*).²⁷¹ In
3 contrast, for Section 9.1.9 activities, Eschelon's proposed language appropriately
4 provides that, after those modifications and changes to the UNEs in Qwest's
5 network that result in minor changes to transmission parameters, the End User
6 Customer's service will be restored (if a temporary interruption or emergency
7 occurs) and will continue to work within the transmission limits of the UNE
8 ordered by Eschelon.²⁷² Eschelon needs this commitment in the ICA to ensure
9 that it may continue to provide working service, using the UNEs for which it has
10 compensated Qwest, to its Customers.

11 Regarding Issue 9-34, Eschelon's proposed language provides that, in the limited
12 scenario when changes are specific to an End User Customer, the notice of the
13 change will contain the circuit identification and End User Customer address
14 information. Qwest's technicians will need this information in order to perform
15 changes that are specific to an End User Customer and Qwest should also provide
16 this information to Eschelon. Eschelon needs this information to be prepared to
17 address any temporary service interruptions and to communicate with its
18 Customer.

²⁷¹ See Section 9.2.1.2.3 of the proposed ICA (closed language).

²⁷² Closed language in Section 9.1.9 provides: "Network maintenance and modernization activities will result in UNE transmission parameters that are within transmission limits of the UNE ordered by CLEC."

1 Q. WHAT IS ESCHELON'S PROPOSAL TO ADDRESS ISSUES 9-33 AND 9-
2 34?

3 A. Eschelon proposes the following language:

4 **Issue 9-33 (Option #1)**

5 9.1.9Such changes may result in minor changes to
6 transmission parameters but the changes to transmission
7 parameters will not adversely affect service to any CLEC End User
8 Customers (other than a reasonably anticipated temporary service
9 interruption, if any, needed to perform the work). (In addition, in
10 the event of emergency, see Section 9.1.9.1).²⁷³

11

12 **Issue 9-33 (Option #2)**

13 . . . If such changes result in the CLEC's End User Customer
14 experiencing unacceptable changes in the transmission of voice or
15 data, Qwest will assist the CLEC in determining the source and
16 will take the necessary corrective action to restore the transmission
17 quality to an acceptable level if it was caused by the network
18 changes....

19 **Issue 9-34 (Option #1)**

20 9.1.9.....Such notices will contain the location(s) at which the
21 changes will occur including, if the changes are specific to an End
22 User Customer, the circuit identification and End User Customer
23 address information, and any other information required by
24 applicable FCC rules. . . .

25 **Issue 9-34 (Option #2)**

26Such notices will contain the location(s) at which the changes
27 will occur including, if the changes are specific to an End User
28 Customer,²⁷⁴ circuit identification, if readily available, and any
29 other information required by applicable FCC rules.

²⁷³ Eschelon also continues to offer in the alternative: "but will not adversely affect service to any End User Customers. (In the event of emergency, however, see Section 9.1.9.1)."

²⁷⁴ Note: Eschelon will accept "End User Customer" or "CLEC End User Customer" here.

1 **Issue 9-33(a) is now closed with the following language:**

2 This Section 9.1.9 does not address retirement of copper Loops or
3 Subloops, which are addressed in Sections 9.2.1.2.2 (and subparts),
4 9.2.1.2.2.3, 9.2.1.2.3 (and subparts), and 9.2.2.3.3.

5 **Issues 9-35 and 9-36 are now closed with the following language:**

6 9.1.9.1 In the event that Qwest intends to dispatch personnel to the
7 Premises of a CLEC End User Customer, for the purpose of
8 maintaining or modernizing the Qwest network, Qwest shall
9 provide CLEC with email notification no less than three (3)
10 business days in advance of the Qwest dispatch and within three
11 (3) business days after completing the maintenance or
12 modernization activity. In the event of an emergency (e.g., no dial
13 tone), Qwest need not provide CLEC with advance email
14 notification but shall notify CLEC by email within three (3)
15 business days after completing the emergency maintenance or
16 modernizing activity. In such emergencies, once Qwest personnel
17 involved in the maintenance or modernization activities are aware
18 of an emergency affecting multiple End User Customers, Qwest
19 shall ensure its repair center personnel are informed of the network
20 maintenance and modernization activities issue and their status so
21 that CLEC may obtain information from Qwest so that CLEC may,
22 for example, communicate with its End User Customer(s). CLEC
23 may also contact its Service Manager to request additional
24 information so that CLEC may, for example, communicate with its
25 End User Customer(s). In no event, however, shall Qwest be
26 required to provide status on emergency maintenance or
27 modernization activity greater than that provided to itself, its End
28 User Customers, its Affiliates or any other party. To the extent
29 that the activities described in Sections 9.1.9 and 9.1.9.1 include
30 dispatches, no charges apply.

31 **Q. WHAT IS QWEST'S PROPOSAL TO ADDRESS THESE ISSUES?**

32 A. Qwest proposes the following language:

33 **Issue 9-33**

34 9.1.9Such changes may result in minor changes to
35 transmission parameters ~~but will not adversely affect service to any~~
36 ~~End User Customers (other than a reasonably anticipated~~
37 ~~temporary service interruption, if any, needed to perform the~~

1 work). ~~(In addition, in the event of emergency, see Section~~
2 ~~9.1.9.1).~~

3 **Issue 9-34**

4 9.1.9.....Such notices will contain the location(s) at which the
5 changes will occur ~~including, if the changes are specific to an End~~
6 ~~User Customer, the circuit identification and End User Customer~~
7 ~~address information,~~ and any other information required by
8 applicable FCC rules. . . .

9 Qwest’s proposal for Issue 9-33 omits the “adversely affect” and “unacceptable
10 changes” language in Eschelon’s Proposals #1 and #2, suggesting that under
11 Qwest’s proposal, “minor” changes can have an adverse effect on Customers’
12 service and result in unacceptable changes to the transmission of voice and data
13 and Qwest need not take corrective action to fix the problem. Qwest argues that
14 Eschelon’s language is vague, not tied to industry standards, inappropriately
15 focuses on service provided to Eschelon’s end users, and would lead to future
16 disagreements.²⁷⁵ It bears noting that the Minnesota Commission adopted
17 Eschelon’s Proposal #2, which is based on the proposal of the Minnesota
18 Department of Commerce, to resolve Issue 9-33 and rejected the same concerns
19 Qwest raises here. The Arbitrators found (at paragraph 142), as affirmed by the
20 Minnesota Commission, that “The Department’s recommended language should
21 be adopted. It appears to balance the reasonable needs of both parties in an even-
22 handed manner...The reference to correcting transmission quality to ‘an
23 acceptable level’ does not, as Qwest argues, make this language unacceptably
24 vague. The language merely commits Qwest to taking action to restore

²⁷⁵ Qwest Response, p. 22. See also, Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon’s Petition for Arbitration in the Eschelon-Qwest Oregon arbitration, Qwest’s Position Statement, pp. 90-91.

1 transmission quality to that which existed before the network change.”²⁷⁶

2 For Issue 9-34, Qwest omits the language that would require inclusion of circuit
3 ID and customer address information in network change notices for changes that
4 are specific to End User Customers in Eschelon’s Proposal #1. Qwest also
5 recommends omitting Eschelon’s language for Proposal #2 which simply requires
6 Qwest to provide the circuit i.d. information “if readily available” for changes that
7 are specific to an End User Customer (or “CLEC End User Customer”). Qwest
8 contends that the information that it currently provides CLECs through its
9 network change notifications is compliant with FCC rules and provides Eschelon
10 with sufficient information to determine if the change will affect its End User
11 Customers.²⁷⁷ When examining this same issue in Minnesota, the Minnesota
12 Commission adopted Eschelon’s proposal #2 for Issue 9-34, finding that “if this
13 information is readily available, Qwest should provide it.”²⁷⁸ In response to
14 Qwest’s stated concern that the term “End User Customer” was an attempt by
15 Eschelon to extend the requirement beyond its own customers to customers of
16 other carriers, Eschelon offered to accept “CLEC End User Customer” instead of
17 “End User Customer.”

²⁷⁶ MN Arbitrators’ Report, ¶ 142, affirmed in relevant part by the MN PUC Arbitration Order.

²⁷⁷ Qwest Response, pp. 22-23. See also, Oregon Disputed Issues Matrix, Exhibit 3 to Eschelon’s Petition for Arbitration in the Oregon Eschelon-Qwest arbitration, Qwest’s Position Statement, p. 94.

²⁷⁸ MN Arbitrators’ Report, ¶153, as affirmed by the MN PUC Arbitration Order.

1 **Issue 9-33: Affect on End User Customers - Section 9.1.9**

2 **Q. IS ESCHELON’S LANGUAGE FOR ISSUE 9-33, WHICH STATES THAT**
3 **“MINOR” CHANGES IN TRANSMISSION PARAMETERS WILL NOT**
4 **ADVERSELY AFFECT ESCHELON END USER CUSTOMERS,**
5 **GROUNDING IN FCC RULES AND ORDERS?**

6 A. Yes. 47 CFR § 51.319(a)(8) states:

7 (8) *Engineering policies, practices, and procedures.* An incumbent
8 LEC shall not engineer the transmission capabilities of its network
9 in a manner, or engage in any policy, practice, or procedure, that
10 *disrupts or degrades* access to a local loop...

11 The FCC’s rule prohibits Qwest from making changes to transmission parameters
12 that “disrupts” or “degrades” access to the loop over which a CLEC provides
13 service to its End User Customer. Though Qwest complains that Eschelon’s
14 “adversely affect” language is not tied to industry standards and is vague,²⁷⁹ the
15 FCC rule is not tied to an industry standard and does not delineate the degree of
16 degradation that would be prohibited – it just prohibits degradation and
17 disruption. Eschelon’s proposal for Issue 9-33 requires the same standard.

18 **Q. ARE THERE OTHER FCC RULES THAT SUPPORT ESCHELON’S**
19 **LANGUAGE FOR ISSUE 9-33?**

20 A. Yes. 47 CFR § 51.316(b), entitled “conversion of unbundled network elements
21 and services,” states:

²⁷⁹ Qwest Response, p. 22.

1 (b) An incumbent LEC shall perform any conversion from a
2 wholesale service or group of wholesale services to an unbundled
3 network element or combination of unbundled network elements
4 without *adversely affecting* the service quality perceived by the
5 requesting telecommunications carrier's end-user customer.
6 (emphasis added)

7 The FCC uses the term “adversely affecting” in FCC Rule 51.316(b) to describe
8 the ILECs’ obligations regarding performing conversions the same way
9 Eschelon’s proposal uses the term to describe Qwest’s obligation regarding
10 network maintenance and modernization activities. Again, the FCC’s rule does
11 not define an industry standard, nor does it define a specific level of degradation
12 that would be allowed. The FCC has used the same term (*i.e.*, “adversely affect”) as
13 Eschelon’s proposal and for the same purpose (*i.e.*, requiring the activities to be
14 performed by the ILEC in a manner that is seamless from the perspective of the
15 End User Customer). The above FCC rules show that any criticism by Qwest that
16 Eschelon’s “adversely affect” language is vague, ambiguous or not tied to
17 industry standards²⁸⁰ is misplaced and is really a collateral attack on the FCC’s
18 rules and orders.

19 In addition, it is entirely proper for Eschelon’s language to focus on the service
20 quality perceived by Eschelon’s End User Customer, just as FCC Rule 51.316(b)

²⁸⁰ See, e.g., Qwest Response, p. 22, lines 6 – 10 (“Eschelon’s proposed requirement...is flawed because it is not tied to industry standards and is too vague...”; “Eschelon’s failure to tie the phrase ‘adversely affect service’ to any measurable standard creates considerable ambiguity...”)

1 does.²⁸¹ Eschelon's Customers rely on Eschelon's service for their service
2 including dial tone and 911 service, and Eschelon, in turn, relies on the service
3 Qwest provides to Eschelon to serve its Customers. Therefore, it is impossible to
4 separate Eschelon's service needs from the service needs of Eschelon's End User
5 Customers in terms of service quality.

6 **Q. REGARDING THE EFFECT OF QWEST'S NETWORK MAINTENANCE**
7 **OR MODERNIZATION ACTIVITIES ON END USER CUSTOMERS,**
8 **PLEASE EXPLAIN WHY THE COMMISSION SHOULD ADOPT**
9 **ESCHELON'S PROPOSAL.**

10 A. The Commission should either adopt Eschelon's Option #1 or Option #2 for Issue
11 9-33 primarily because "minor changes to transmission facilities" should not
12 adversely affect the service of End User Customers (aside from temporary
13 interruptions needed to perform the work and emergencies, both of which will be
14 remedied). In other words, if the Customer's service worked before Qwest makes
15 changes to the UNEs in its network, the service should work afterward. Eschelon
16 has also offered Proposal #2 which states that if these changes do result in the
17 CLEC End User Customer experiencing unacceptable changes in the transmission
18 of voice or data, Qwest will assist the CLEC in identifying the source of the
19 problem and fixing it. As shown by Eschelon's Proposal #1 and Proposal #2, the

²⁸¹ Qwest ignores the FCC's focus on the service quality perceived by the End User Customer when it criticizes Eschelon's proposal for Issue 9-33 for focusing on the End User Customer. Qwest Response, p. 22, lines 3 – 5 ("Eschelon's proposed standard improperly focuses on the service Eschelon provides to its customers, not on the service Qwest provides to Eschelon.").

1 overarching purpose of Eschelon’s language is to ensure that maintenance or
2 modernization activities do not disable Eschelon’s reliable, working circuit and to
3 protect its End User Customers from such service-affecting problems, while at the
4 same time allowing Qwest to perform “necessary”²⁸² maintenance and
5 modernization activities as needed.

6 Eschelon’s language does not hold Qwest to a strict or extreme standard under
7 which service will never be adversely affected. In fact, Eschelon’s language
8 specifically carves out reasonably anticipated temporary service interruptions
9 necessary to perform the work, emergencies, and copper loop retirement as
10 described in Section 9.2.1.2.3 as three instances in which adverse effects on
11 customer service may result. In the two situations governed by Section 9.1.9
12 under Eschelon’s proposal (temporary service interruptions and emergency
13 situations), the End User Customer’s service should be restored. In the third
14 (cooper loop retirement), Section 9.2.1.2.3 governs. Eschelon’s proposal
15 documents the expectation that service which worked before Qwest performed a
16 change not requested by Eschelon or its Customer will also work after Qwest
17 completes that change.

18 In contrast, Qwest is taking the position that a network modification, and resulting
19 change in transmission parameters of a UNE, may be considered “minor” even if

²⁸² As shown above in Eschelon’s proposed language for Issue 9-33, a sentence preceding the disputed language states, in closed language, “Qwest may make *necessary* modifications and changes to the UNEs in its network on an as needed basis.” (emphasis added)

1 the change results in a loss of service to End User Customers. As improbable as
2 that sounds, Eschelon added the “adversely affect” language to its proposal for
3 Section 9.1.9 after Qwest actually took this position while discussing a customer-
4 affecting situation involving dB levels, which I discuss further in response to the
5 next question. A service outage is not “minor,” especially from the perspective of
6 the Customer whose working service was unexpectedly disabled when it is due,
7 not to a request by Eschelon or the Customer, but to Qwest’s network changes.

8 **Q. IN ADDITION TO PROVIDING THAT CHANGES TO TRANSMISSION**
9 **PARAMETERS WILL BE “MINOR,” CLOSED LANGUAGE IN**
10 **SECTION 9.1.9 PROVIDES THAT QWEST’S ACTIVITIES WILL**
11 **RESULT IN UNE TRANSMISSION PARAMETERS THAT ARE WITHIN**
12 **THE TRANSMISSION LIMITS OF THE UNE ORDERED BY**
13 **ESCHELON. WHY DOESN’T THIS CLOSED LANGUAGE**
14 **ADEQUATELY ADDRESS ESCHELON’S CONCERNS?**

15 A. Qwest has previously taken the position that it meets its obligations under this
16 language if it provides a UNE within transmission parameters, even though the
17 circuit is *not operational* and there is a way to provision an operational circuit
18 that is within transmission parameters. Eschelon, in the past, had a situation in
19 which Qwest was claiming that it met the industry standards regarding decibel

1 (dB)²⁸³ loss for DS1s, but Qwest did not provide an operational circuit to
2 Eschelon. I will refer to this as the dB loss example. An email exchange and
3 supporting documentation on this example is provided by Ms. Johnson as Exhibit
4 Eschelon 3.43. When Eschelon provided the facts of this example in ICA
5 negotiations, Qwest confirmed that it interpreted the language of Section 9.1.9 as
6 proposed by Qwest to allow Qwest to render an End User Customer's circuit non-
7 operational if such a situation arose under the ICA as a result of Qwest network
8 maintenance and modernization activities. Eschelon's proposed language for
9 Issue 9-33 is needed, therefore, to avoid that result.

10 **Q. PLEASE ELABORATE ON THE DB LOSS EXAMPLE.**

11 A. In the 2004 timeframe, Qwest provisioned certain DS1 circuits to Eschelon that
12 did not work. These DS1 circuits required a repair immediately after Qwest
13 provisioned them because the dB settings were set at levels that did not work for
14 the service requested. The standard for dB loss is a range between 0 and -16.5
15 dBs.²⁸⁴ When Qwest sets the dB level within this range (including at a level of -
16 7.5 dBs), often the service works. In some cases, however, Eschelon encounters
17 situations in which Qwest has set the dBs at a level that, although it is within this
18 range, the circuit is not operational. In such situations, Eschelon asks Qwest to

²⁸³ A decibel is a unit of measure of signal strength, usually the relationship between a transmitted signal and a standard signal source, known as a reference. Newton's Telecom Dictionary, 20th edition at 233.

²⁸⁴ It is undisputed that the relevant industry standard in this example provides a *range* from 0 to -16.5 for dB loss. See, Exhibit Eschelon 3.43, p. 1 (Qwest said: "As you know the ANSI range is -16.5 as the lowest setting and "0" as the highest setting for dB levels.")

1 adjust the dB level to another point *within the standard range* to make the circuit
2 operational (such as an adjustment from -7.5 dBs to -1.0 dBs). For example, if
3 the circuit does not work at the Network Interface Unit (“NIU”) (this means that
4 the trouble is not in Eschelon’s equipment, which may not even be connected
5 yet), an adjustment in the dB level may be needed to obtain an operational circuit.
6 A simple adjustment at either the Qwest central office card or the NIU or both
7 often will correct the problem.

8 For a period of time, Qwest began to deny requests for an adjustment in the dB
9 level even though, with the adjustment, the level would still be within the
10 standard range of 0 and -16.5 dBs. Eschelon escalated this issue and spent quite a
11 bit of time attempting to resolve this issue with Qwest. When examples of Qwest
12 denials continued to occur despite Eschelon’s efforts, Eschelon even requested
13 and received the participation of staff from the Minnesota Department of
14 Commerce in its attempts to resolve the issue. During Eschelon’s efforts to
15 resolve this problem, Eschelon learned that Qwest had unilaterally implemented a
16 network maintenance plan to set the dB levels at a specific level (-7.5) as a
17 default, even though the industry standard was not -7.5, but rather a dB range of
18 between 0 and -16.5. Qwest claimed that it was appropriately delivering the
19 circuit within the industry standard, even though the circuit was not
20 operational.²⁸⁵ Eschelon received no notice of Qwest’s maintenance and

²⁸⁵ See Exhibit Eschelon 3.43, pp. 1 & 9.

1 modernization plan. Instead, it was revealed in an email from Qwest to Eschelon
2 dated 10/12/04²⁸⁶ as follows (see, Exhibit Eschelon 3.43, p. 1):

3 ...techs were instructed to reset the db at -7.5 whenever they did a
4 repair. This was first given as an instruction four years ago and
5 has been repeated over time. Thus, in order to allow for proper
6 performance of end-user equipment, Qwest has been moving the
7 network over time to a default setting of -7.5.

8 Qwest's admission in this email shows that Qwest instructed its technicians that,
9 whenever performing work needed for repairs, to also reset the dB level at -7.5
10 (not as part of the repair but rather as part of its move to a different default
11 setting). It stands to reason, however, that if Eschelon had to obtain an
12 adjustment in the dB level during installation to obtain an operational circuit, that
13 a later action to return the dB setting back to the former level would likely once
14 again cause the circuit to become non-operational. Because Qwest provided no
15 advance notice to Eschelon of the instruction that Qwest provided to its
16 technicians in this regard, however, Eschelon would not have known when
17 troubles or repeat troubles occurred that changes made per this instruction had
18 been the cause.

19 Qwest said that it was making this change for the purposes of "moving the
20 network over time to a default setting of -7.5." This Qwest statement is indicative
21 of a network maintenance or modernization policy that Qwest established to, over
22 time, move its network to a new default dB setting – a setting that results in DS1s

²⁸⁶ Email from Qwest – Senior Attorney (Joan Peterson) to Eschelon (including Ms. Johnson) dated 10/12/04. Exhibit Eschelon 3.43, p. 1.

1 that do not work in some instances (*i.e.*, causes a previously working circuit to not
2 work for the customer). Though the particular problems Eschelon brought to
3 Qwest’s attention at that time arose during installation,²⁸⁷ in the course of
4 investigating the cause of this problem, Qwest revealed its *maintenance and*
5 *modernization policy* to proactively reset dB settings at a default of -7.5 during
6 repairs. This maintenance and modernization policy could cause some customers
7 to lose service – service that had been up and working fine.

8 When Eschelon provided the facts of this example in ICA negotiations as a basis
9 for its proposed language for Section 9.1.9, Qwest confirmed that its position is
10 that Qwest may appropriately deliver a circuit anywhere within the industry
11 standard, even if the circuit is not operational and a different setting also within
12 the ANSI standard range would make the circuit operational. This example
13 demonstrates that Qwest will defend a non-working circuit (that previously
14 worked just fine for the Customer) as being acceptable, within transmission
15 limits, and meeting the ICA if it can conceivably be described as within those
16 limits, even though it *does not work*, when another setting – also within
17 transmission limits – would both meet the standard and *work*. Therefore, while it
18 may have seemed obvious (given use of the word “minor” in the ICA) before this
19 example arose that the service should work as it did before Qwest performed its

²⁸⁷ Qwest delivered DS1s of such poor quality that they needed an immediate repair.

1 network maintenance and modernization activities, it is now clear that the ICA
2 needs to expressly address this point.

3 **Q. IS ESCHELON ASKING QWEST TO PROVIDE SERVICE OUTSIDE OF**
4 **INDUSTRY STANDARDS?**

5 A. No. If a setting of -7.5 always resulted in working service, the industry standard
6 would logically be -7.5. Instead, the industry standard is a range (-16.5 to 0)
7 because, logically, the service may or may not work at all the settings in the range
8 but should work somewhere within that range depending on other factors (such as
9 Qwest cards in the central office or at the NIU – which the standard allows for).
10 In the dB loss example, Eschelon’s request was simply for Qwest to provide
11 working service *within this range* (i.e., within industry standard transmission
12 limits), including near the top of the range if necessary to make the service work
13 (or work *again* in the case of network maintenance and modernization). Eschelon
14 is not asking Qwest to set the dB levels outside the range. Eschelon is not even
15 asking Qwest to re-set the default level, so long as Qwest adjusts the level within
16 the range when needed. Eschelon is paying Qwest for these circuits and, when
17 working service is obtainable somewhere within the applicable standard, Eschelon
18 should be able to expect that these circuits for which Qwest is being compensated
19 will be operational. With its proposed language, Eschelon is asking the
20 Commission to recognize a key purpose of industry standards – to ensure working
21 service for End User Customers.

1 **Issue 9-34: Notices - Location at Which Changes Occur - Sections 9.1.9**

2 **Q. DO THE FCC RULES ADDRESS THE INFORMATION ILECS MUST**
3 **PROVIDE ON THEIR NETWORK CHANGE NOTICES?**

4 A. Yes. In 47 CFR § 51.327, the FCC provides a list of items that a public notice of
5 network changes must include, one of which is the location at which the changes
6 will occur. The FCC described this list as “minimum” requirements. Therefore,
7 the FCC anticipated the potential for this list being supplemented – just as
8 Eschelon’s proposal for Issue 9-34 does.

9 **Q. ARE THERE OTHER FCC RULES THAT SUPPORT ESCHELON’S**
10 **PROPOSAL?**

11 A. Yes. The term “location” in the rule must be considered in the context of 47 CFR
12 § 51.325(a), which states that the public notice must include notice regarding any
13 network change that “will affect a competing service provider’s performance or
14 ability to provide service.” Unlike Qwest’s proposal, Eschelon’s proposal is
15 consistent with 47 CFR §51.327 *and* 47 CFR §51.325 taken together, in that it
16 provides that Qwest’s customer-specific network notices will provide the location
17 of the customer for whom the CLEC’s performance will be affected. Eschelon’s
18 language (Proposal #1) calls for the circuit ID and customer address information,
19 which are necessary in this regard.²⁸⁸ Eschelon’s Proposal #2, which is based on
20 a proposal made by the Minnesota Department of Commerce in the Minnesota

²⁸⁸ Circuit ID is the generally accepted locator within the network and the customer address is the locator within the CLEC’s list of customers.

1 arbitration and adopted by the Minnesota Commission, states that Qwest will
2 provide the circuit i.d. information to Eschelon for changes that are specific to an
3 End User Customer (or “CLEC End User Customer”) “if readily available.”
4 Without this information, the notice provided by Qwest would not achieve the
5 intent of the FCC’s notice rules.

6 **Q. ESCHELON’S PROPOSAL FOR ISSUE 9-34 INCLUDES CIRCUIT ID**
7 **AND CUSTOMER ADDRESS INFORMATION IN THE QWEST**
8 **NETWORK CHANGE NOTICE FOR CHANGES THAT ARE SPECIFIC**
9 **TO AN END USER CUSTOMER. WHY IS THIS INFORMATION**
10 **NEEDED?**

11 A. Eschelon’s proposal is designed to make Qwest’s notices of network changes that
12 are specific to an End User Customer meaningful. Circuit ID and customer
13 address information is needed for network changes that are customer specific so
14 that Eschelon can determine if a network change will affect Eschelon’s End User
15 Customers. Circuit ID is the generally accepted locator within the network and
16 the customer address is the locator within the CLEC’s list of customers. This
17 information identifies particular customers in the network, and with this
18 information, Eschelon can cross reference its records to determine which
19 customers Qwest’s network change will affect. Eschelon can then inform and
20 assist these customers, as necessary. Furthermore, Eschelon is less likely to
21 contact Qwest’s repair department if Qwest’s notices provide adequate

1 information to determine whether Eschelon's customers will be affected by a
2 change, which would reduce the amount of work for both Qwest and Eschelon.

3 **Q. DOES EVIDENCE EXIST DEMONSTRATING THAT QWEST CAN**
4 **IDENTIFY CHANGES THAT ARE SPECIFIC TO AN END USER**
5 **CUSTOMER AND PROVIDE CIRCUIT ID AND CUSTOMER ADDRESS**
6 **INFORMATION TO ESCHELON?**

7 A. Yes. Agreed upon language in Section 9.2.1.2.3 provides that, although notices of
8 copper retirement will generally be posted on its website, Qwest will provide
9 direct notice to Eschelon of any planned replacement of copper with fiber "when
10 CLEC or its End User Customers will be affected." This shows that, when
11 making a change, Qwest can distinguish between changes that will affect
12 Eschelon's End User Customers and those that will not. Qwest has not provided
13 any reason why this would not also be true for network maintenance and
14 modernization activities. Also, to perform changes that are specific to an End
15 User Customer, the Qwest technician logically needs this type of customer
16 identifying information to perform the work. Qwest should share this information
17 with Eschelon.

18 Furthermore, I have attached, as Exhibit Eschelon 1.3, a document that Qwest's
19 new service manager recently provided to Eschelon about a network change – a
20 change resulting in a different dB level (the very type of change used as an
21 illustration in negotiations when describing the facts of the dB loss example). The

1 document is a Qwest form (with a date of October 27, 2005 for the form itself) for
2 copper retirements and Impacted CLEC circuits. The form provides for one of
3 two “Foreseeable Impacts to the CLEC Community”: (1) “Copper to Fiber
4 (Hybrid)”; or (2) “Negative impact on Loop Make-up (Length or Gauge
5 Change).” By its terms, the first impact is when the copper is moved to fiber
6 (hybrid) and the second is when the copper is replaced with copper but the length
7 or gauge changes. In the particular example shown in Exhibit Eschelon 1.3,
8 which is dated October 17, 2006, Qwest checked the second box (for replacement
9 of copper with copper). When Eschelon inquired about the anticipated impact of
10 this change, Qwest indicated that the change may result in a greater dB loss but,
11 with the length or gauge change, service should continue to work just fine.

12 Significantly, on Exhibit Eschelon 1.3, p. 1, Qwest provides the “circuit ID” and
13 “Impacted Address” (as well as other information) for the Eschelon circuits that
14 will be impacted by the change. This is clear evidence that Qwest already
15 possesses and processes this information on impacted circuits for network
16 changes and, therefore, adopting Eschelon’s language for Issue 9-34 would not
17 result in a unique process for Eschelon or costly modifications to Qwest’s systems
18 or processes. Qwest’s own form shows that this falls within the “Impacted CLEC
19 Circuits” portion of the form and is not a copper retirement job involving
20 replacement with Fiber to the Home (“FTTH”) or Fiber to the Curb (“FTTC”)
21 Loops because it contains an effective date only 10 days after the announcement

1 date,²⁸⁹ when such copper retirement notices must be issued at least 90 days in
2 advance of the retirement.²⁹⁰ Therefore, what Exhibit Eschelon 1.3 shows is that
3 Qwest can already provide the precise information that Eschelon is requesting
4 under Issue 9-34 for End User Customer specific changes.

5 When Eschelon inquired further about this notice, Qwest told Eschelon that it sent
6 the notice to Eschelon “in error” and that it “should not have been sent to
7 Eschelon.”²⁹¹ Qwest referred Eschelon instead to the “generic network disclosure
8 concerning the copper retirement posted to the Qwest website.”²⁹² Eschelon has
9 not been able to discern which generic notice that would be. As Qwest obviously
10 has this more specific information, including circuit identification and End User
11 Customer address, it should be required to provide this information to Eschelon as
12 well.

13 **Q. IS QWEST OBLIGATED TO PROVIDE THIS INFORMATION TO**
14 **ESCHELON?**

15 A. Yes. To comply with the nondiscrimination requirements of Section 251 of the
16 Act, Qwest must provide CLECs service that is “at least equal in quality to that
17 provided by the local exchange carrier to *itself* or to any subsidiary, affiliate, or

²⁸⁹ The form is dated 10/17/06 with an effective date of 10/27/06.

²⁹⁰ 47 CFR § 51.333(b)(2).

²⁹¹ Exhibit Eschelon 1.3, p. 3.

²⁹² Exhibit Eschelon 1.3, p. 3.

1 any other party to which the carrier provides interconnection.”²⁹³ See also 47
2 CFR § 51.313(b).²⁹⁴ Exhibit Eschelon 1.3 shows that Qwest generates and
3 provides circuit ID and customer address information to itself for changes made to
4 circuits, and therefore, Qwest must provide it to Eschelon.

5 **Q. ESCHELON’S LANGUAGE FOR ISSUE 9-34 ADDRESSES SITUATIONS**
6 **THAT ARE SPECIFIC TO AN END USER CUSTOMER, OR IN THE**
7 **ALTERNATIVE “CLEC END USER CUSTOMER.” PLEASE**
8 **ELABORATE ON WHAT AN “END USER CUSTOMER SPECIFIC”**
9 **CHANGE IS, AND THE TYPES OF CHANGES THAT WOULD BE END**
10 **USER CUSTOMER SPECIFIC.**

11 A. A change that is specific to an end user customer is a change that is made to the
12 service of a customer at an address and not a change made that affects a
13 geographic area (or many customers). The dB loss example discussed above and
14 referenced in Exhibit Eschelon 3.43 is an example of a change specific to an end
15 user customer at a particular address. Qwest has attempted to confuse this issue
16 by claiming that Eschelon’s language is vague and not practical. In support of
17 these criticisms, Qwest claims that it would be required to provide circuit ID and
18 customer address information in the case of a change to local dialing from 7 to 10

²⁹³ Section 251(c)(2)(C) emphasis added.

²⁹⁴ Rule 51.313(b): “Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.”

1 digits or a switch upgrade. However, these changes are made for all customers in
2 a geographic area, and are therefore not specific to End User Customers and
3 would not be addressed under Eschelon's proposal for Issue 9-34.

4 **Q. PLEASE SUMMARIZE THE NETWORK MAINTENANCE AND**
5 **MODERNIZATION ISSUES (ISSUES 9-33 AND 9-34).**

6 A. First, minor changes to transmission parameters should not disrupt service for End
7 User Customers. Eschelon's Customers' service should not be adversely affected
8 by Qwest's maintenance and modernization activities, especially when there are
9 special exceptions when service may be disrupted, with disruptions that may not
10 be temporary being addressed separately in Section 9.2.1.2.3 relating to copper
11 retirement. If these changes do result in unacceptable changes to the transmission
12 of voice or data service, however, Qwest should work with the CLEC to identify
13 and fix the problem, as Eschelon's Proposal #2 reasonably requires. Second,
14 when Qwest makes changes that are specific to an End User Customer or a CLEC
15 End User Customer, Qwest should be required to provide information sufficient to
16 allow Eschelon to identify and provide quality service to the affected
17 Customer(s). Qwest provides this information to itself and should provide this
18 information to Eschelon. For all of the reasons discussed with respect to
19 Eschelon's business need and in these responses, the Commission should adopt
20 Eschelon's language for Issues 9-33 and 9-34.

1 **VI. SUBJECT MATTER NO. 18: CONVERSIONS**

2 Issue Nos. 9-43 and 9-44 and subparts: ICA Sections 9.1.15.2.3; 9.1.15.3 and
3 subparts; 9.1.15.3.1; 9.1.15.3.1.1; 9.1.15.3.1.2

4 **Q. WHAT IS ESCHELON'S BUSINESS ISSUE REGARDING**
5 **CONVERSIONS (ISSUES 9-43 AND 9-44 AND (A)-(C))?**

6 A. A conversion happens when a circuit that was formerly available as a UNE must
7 be converted to a non-UNE alternative arrangement, as the result of a finding of
8 "non-impairment." By definition, conversions will take place on live circuits that
9 are up and running and currently supporting service to End User Customers.
10 Therefore, a seamless and error free conversion is crucial because if problems
11 arise during the conversion, the likelihood that an Eschelon customer will be
12 placed "out of service" is high.

13 Further, it is important to note the "conversions" discussed in this testimony
14 involve only changing the rate charged for the facility and, in the vast majority of
15 circumstances, the CLEC and its End User Customer should be using the same
16 facility that was used prior to the conversion. These conversions are required
17 solely for purposes of implementing a regulatory construct and have nothing to do
18 with improving or otherwise managing the customer's service – in essence, the
19 conversion is intended to re-label as something different what was before a UNE.
20 These facts reinforce the need for conversions to be transparent to Eschelon's End
21 User Customers, as any disruption in service would be completely unexpected and
22 difficult to explain. In other words, even though these conversions are being

1 undertaken to effectuate Qwest’s reduced legal obligations relative to UNEs, it is
2 Eschelon who bears all the risk of failure. Eschelon, therefore, is highly
3 motivated to ensure that conversions can be accomplished seamlessly, reliably,
4 efficiently and cost-effectively, and Eschelon is concerned that Qwest will not
5 abide by its obligation in this regard.

6 **Q. IS THERE GOOD REASON FOR ESCHELON’S CONCERN THAT**
7 **QWEST WILL MAKE THE CONVERSION PROCESS**
8 **UNNECESSARILY CUMBERSOME AND POTENTIALLY DISRUPT**
9 **SERVICE TO ESCHELON’S END USER CUSTOMERS?**

10 A. Yes. In my discussion of the ICA and need for contractual certainty above, I
11 explained that Qwest has issued several non-CMP “secret PCATs” used to advise
12 CLECs of Qwest’s view of how its obligations regarding UNEs has changed due
13 to the *TRO/TRRO*. These notices are password protected, and since they do not
14 go through CMP, there is no opportunity for CLEC comment about the changes.
15 Qwest issued one of these password-protected, non-CMP secret PCAT notices on
16 7/21/06²⁹⁵ entitled “TRRO – Reclassification of Terminations for Unbundled
17 Network Element (UNE) Conversions – V1.0,” with an effective date of
18 7/28/2006 – just one week from the 7/21/06 date of announcement. This notice
19 announced a “procedure that is needed when you [CLECs] are converting UNE
20 Services to Finished Services in Non-Impaired Central Offices as required by the

²⁹⁵ Document No. PROS.07.21.06.F.04074.TRRO_Reclass_Termin_V1 (Qwest Wholesale Notification – not CMP notice). See, Exhibit Eschelon 3.21.

1 TRRO.” Or, in other words, Qwest announced in a non-CMP PCAT that CLECs
2 would need to go through a “procedure” to effectuate the same type of
3 conversions that are the subject of Issues 9-43 and 9-44.

4 This procedure, as explained in Qwest’s notice, requires the CLEC to submit a
5 collocation application for each central office to “reclassify UNE terminations,”
6 which is explained as having “Qwest reclassify your UNE Collocation
7 terminations to a Finished Service Interconnection Tie Pair (ITP) with the
8 DEMARC outside the collocation as required by the TRRO.” Qwest went on to
9 explain that DS1s would be reclassified in blocks of 28 DS1s as part of
10 reclassification and must reside in the same cable sheath,²⁹⁶ with DS3
11 terminations being reclassified on an ICB basis. According to Qwest’s notice,
12 when Qwest completes all of this work, it will send the CLEC a revised
13 Alternative Point of Termination (“APOT”), and the CLEC will then have the
14 responsibility to update its databases to reflect the new cabling arrangement.

15 In sum, Qwest’s notice indicates that Qwest intends to require a significant
16 amount of work to convert a UNE to an alternative service – work that could
17 potentially put Eschelon’s customers out of service. Qwest’s procedure is also

²⁹⁶ In a document Qwest provided to Eschelon on August 11, 2006, in response to the question, “Under Qwest’s “TRRO PCAT,” can the UNE EELs and the non-UNE converted alternative arrangements reside on the same block of 28?,” Qwest said: “Yes, when the same cable is being redesigned In this example, Qwest will allow UNE EELs and non-UNE converted alternative arrangements to reside on the same cable being reclassified” (emphasis added). In other words, collocation and UNEs are both addressed by this Secret TRRO PCAT. The entire block (including UNEs) will be frozen.

1 very time consuming – 45 day and ICB intervals, depending on whether the
2 circuit is a DS1 or DS3 – and Qwest indicates that unless CLECs “reclassify” or
3 “convert” their UNE circuits that are no longer impaired pursuant to Qwest’s new
4 procedure, it will stop accepting the CLEC’s connect, change and disconnect
5 orders. Worse yet, Qwest’s procedure requires the CLEC to either complete or
6 cancel all work in progress related to the cables being reclassified, which would
7 put a “freeze” on these cables and customers for a minimum of 15 calendar
8 days.²⁹⁷ This “freeze” is certainly not indicative of the seamless conversions
9 required by the FCC.

10 This conversion procedure announced in Qwest’s non-CMP PCAT flies in the
11 face of the FCC’s determinations on conversions and Qwest never once raised this
12 issue in CMP or in the Eschelon arbitration cases – despite Issues 9-43 and 9-44
13 (conversions) being negotiated for quite some time.²⁹⁸ Since Qwest’s notice was
14 slim on details, Eschelon issued questions to Qwest on 8/3/06 inquiring about
15 several aspects of Qwest’s notice – primarily, why the extensive work described
16 in the non-CMP secret TRRO PCAT is necessary to simply convert a facility
17 from UNE pricing to non-UNE pricing. In Qwest’s responses to Eschelon’s

²⁹⁷ Qwest’s PCAT states: “To eliminate CFA mismatches on orders, it is recommended that all work in progress related to the cable being reclassified either be completed or cancelled by the CLEC prior to quote acceptance. Submission of new connect, change, and disconnect orders on the cable being reclassified will be restricted 15 calendar days prior to the Ready for Service (RFS) date of the reclassification order. The restriction of orders is necessary to enable Qwest to change the designated name of the cable and provide that revised APOT information to the CLEC prior to issuance of orders against that cable.”

²⁹⁸ Qwest also never raised the APOT issue in any of the wire center proceedings, which discussed conversions.

1 questions, Qwest indicated that “[t]his is a records change, no CLEC or Qwest
2 physical modifications can be made to the facility as a part of the reclassification”
3 – though this record change, according to Qwest’s PCAT, would take 45 days to
4 execute for the first five applications per week per state, and an ICB interval
5 would apply to any applications exceeding this amount.²⁹⁹ Eschelon should be
6 clear that it does not believe that this non-CMP notice applies to Eschelon
7 because this language is not in Eschelon’s ICA with Qwest and Qwest has not
8 proposed this language for negotiation/arbitration. However, Eschelon is
9 concerned, based on Qwest’s past conduct and Qwest’s testimony in other
10 arbitration proceedings, that if there are not clear terms and conditions in the
11 companies’ ICA that track the FCC’s requirements on conversions, Eschelon will
12 get through this arbitration and Qwest will attempt to apply the terms of this
13 notice to Eschelon. Eschelon’s proposals on Issues 9-43 and 9-44 will provide
14 these clear terms and conditions and avoid future disputes.

15 **Q. HAS QWEST REFUSED TO NEGOTIATE THIS APOT ISSUE?**

16 A. Yes. On September 6, 2006, Qwest responded to Eschelon’s questions about this
17 notice indicating that Qwest is refusing to negotiate the APOT issue because
18 according to Qwest, “the level of process Eschelon is seeking is best managed

²⁹⁹ <http://www.qwest.com/wholesale/pcat/trroreclassuneterm.html> “Qwest will complete the reclassification request within 45 days of receipt of a valid application. The 45-day interval for Reclassification applies to the first five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation Applications are submitted by CLEC in a one (1) week period in the state, intervals for the Collocation Applications in excess of the first five (5) shall be individually negotiated.”

1 through CMP.”³⁰⁰ This response is ironic and highly objectionable given that the
2 APOT notice was a *non*-CMP notice - meaning that Qwest itself refuses to use
3 CMP for this issue.³⁰¹ Again, this is a prime example of Qwest using the CMP
4 process as a sword or shield depending on what benefits Qwest. Qwest refuses to
5 negotiate the APOT issue in state commission arbitrations, and also refuses to
6 address this issue in CMP (though Qwest admits that it is “best served by CMP”).
7 Eschelon is gravely concerned that the ultimate outcome of Qwest’s strategy is to
8 attempt to omit language addressing conversions in Eschelon’s ICA, implement
9 its troublesome, potentially customer-affecting conversion procedure outside of
10 CMP (avoiding the participation afforded CLECs in CMP), and then ultimately
11 impose this procedure on Eschelon (arguing that the ICA does not address
12 conversions). Qwest has already referred to Qwest’s APOT procedure as the
13 “existing product”³⁰² for conversions. Qwest is arguing that any proposed
14 changes to this “existing product” – a process that Qwest established unilaterally
15 outside of ICA negotiations/arbitrations and outside CMP and which does not
16 comply with the FCC’s requirements – should be rejected because changes would
17 impose costs on Qwest that would go unrecovered.³⁰³ This underscores the

³⁰⁰ Email from Kathleen Salverda (Qwest), dated 9/6/06. Exhibit Eschelon 3.21. *See also*, Qwest Response, p. 24, lines 16-18 (“Eschelon’s demand involves processes that affect all CLECs, not just Eschelon, and it therefore should be addressed through the CMP, not through an arbitration involving a single CLEC.”)

³⁰¹ Qwest issued a follow-up non-CMP notice on August 31, 2006, effective September 7, 2006 entitled “TRRO Reclassification of Terminations V2.0”

³⁰² Oregon arbitration, Rebuttal Testimony of Teresa Million (Qwest/39, Million/10, line 16).

³⁰³ *See*, Oregon arbitration, Rebuttal Testimony of Teresa Million (Qwest/39, Million/10, lines 13-16).

1 importance of the Commission rendering a decision on conversions in this
2 arbitration and maintaining consistency with the FCC's findings regarding
3 seamless conversions.

4 **Q. WHAT ARE ESCHELON'S PROPOSALS FOR CONVERSIONS (ISSUES**
5 **9-43 AND 9-44 AND (A)-(C))?**

6 A. Eschelon proposes the following language:

7 **Issue 9-43**

8 9.1.15.2.3 The circuit identification ("circuit ID") will not change.
9 After the conversion, the Qwest alternative service
10 arrangement will have the same circuit ID as formerly
11 assigned to the high capacity UNE.

12 **Issue 9-44**

13 9.1.15.3 If Qwest converts a facility to an analogous or alternative
14 service arrangement pursuant to Section 9.1.15, the
15 conversion will be in the manner of a price change on the
16 existing records and not a physical conversion. Qwest
17 will re-price the facility by application of a new rate.

18 **Issue 9-44(a)**

19 9.1.15.3.1 Qwest may perform the re-pricing through use of an
20 "adder" or "surcharge" used for Billing the difference
21 between the previous UNE rate and the new rate for the
22 analogous or alternative service arrangement, much as
23 Qwest currently does to take advantage of the annual
24 price increases in its commercial Qwest Platform Plus
25 product.

26 **Issue 9-44(b)**

27 9.1.15.3.1.1 Qwest may add a new Universal Service Ordering
28 Code ("USOC") for this purpose and assign the
29 "adder" or "surcharge" rate to that USOC.

30 **Issue 9-44(c)**

1 9.1.15.3.1.2 For any facility converted to an analogous or
2 alternative service arrangement pursuant to Section
3 9.1.15.3, Qwest will either use the same USOC or the
4 USOC will be deemed to be the same as the USOC
5 for the analogous or alternative service arrangement
6 for pricing purposes, such as for the purpose of
7 calculating volumes and discounts for a regional
8 commitment plan.

9 Taken together, Eschelon’s proposals for Issues 9-43 and 9-44 explain how the
10 conversions from UNEs to alternative service arrangements will be conducted.
11 For Issue 9-43, Eschelon proposes language that states that the circuit ID for the
12 facility that is being converted will not change during the conversion. For Issue
13 9-44, Eschelon proposes language that reflects the FCC’s language regarding the
14 billing changes involved in conversions, and Eschelon’s language for Issues 9-
15 44(a) and 9-44(b) sets out an efficient option for implementing the re-pricing of
16 converted facilities – an adder or surcharge to the original rate – that Qwest
17 already uses for re-pricing services. Eschelon’s language for Issue 9-44(c) states
18 that the USOC associated with the converted circuit will remain the same for
19 calculating volume discounts.

20 **Q. WHAT IS QWEST’S PROPOSAL FOR CONVERSIONS?**

21 A. Qwest proposes to omit all of the Eschelon language shown above, and provides
22 no competing language. As it has with respect to a number of other issues, Qwest
23 claims that Eschelon’s proposals for Issues 9-43 and 9-44 would circumvent the

1 CMP and require costly, unique processes that affect all CLECs.³⁰⁴ This is
2 despite Qwest's refusal to address this issue in CMP.

3 **Q. WHAT TYPE OF CONVERSIONS ARE ADDRESSED IN ISSUES 9-43**
4 **AND 9-44?**

5 A. These issues apply to conversions from a UNE facility to an analogous or
6 alternative service arrangement (*see*, Section 9.1.15 of the ICA). These
7 conversions would occur when there is agreement, or it is determined in dispute
8 resolution, that the UNE is impacted by a finding of non-impairment. Analogous
9 or alternative service arrangements include access products purchased from
10 Qwest's access tariff. For instance, a UNE DS1 loop could be converted to a DS1
11 special access circuit if it is determined that the applicable non-impairment
12 thresholds are met for a particular wire center (*see* 47 CFR § 51.319(a)(4)).

13 **Q. IS THIS TRANSITION AWAY FROM UNES WITHIN THE SCOPE OF**
14 **SECTIONS 251 AND 252 OF THE ACT?**

15 A. Yes. The FCC found that "as contemplated in the Act, individual carriers will
16 have the opportunity to negotiate specific terms and conditions necessary to
17 translate our rules into the commercial environment, and to resolve disputes over
18 any new contract language arising from differing interpretations of our rules."³⁰⁵

³⁰⁴ Qwest Response, p. 24.

³⁰⁵ TRO, ¶ 7.

1 Similarly, the Washington Utilities and Transportation Commission found that
2 this transition away from UNEs is within the scope of 251/252 of the Act.³⁰⁶

3 **Q. SHOULD ANY CHANGES BE MADE BY QWEST DURING A**
4 **CONVERSION THAT COULD RESULT IN SERVICE DISRUPTION FOR**
5 **ESCHELON'S END USERS?**

6 A. No. When it has been determined that a UNE facility needs to be converted to an
7 analogous or alternative service arrangement, Eschelon and its End User
8 Customer should continue to use the same physical facility. Therefore, the
9 change required to effectuate the FCC's regulatory requirements can be
10 accomplished with a record-only change (*i.e.*, changing the price of the UNE
11 facility being converted to a non-UNE).

12 **Q. PLEASE ELABORATE ON WHY CONVERSIONS SHOULD NOT**
13 **ENTAIL WORK THAT WOULD PUT ESCHELON'S CUSTOMERS OUT**
14 **OF SERVICE?**

15 A. The conversions at issue are conversions from UNE to non-Section 251
16 alternative/analogous service (*e.g.*, access product). The "conversion" in this
17 instance is really a conversion from cost-based UNE prices (*i.e.*, TELRIC based
18 prices) to special access prices (*e.g.*, conversion from UNE rates for DS1 loop to
19 access rates for DS1 special access circuit). However, since the physical facility
20 otherwise remains unchanged – indeed, the end user should not even know that it

³⁰⁶ Washington ALJ Report (Order No. 17 in Verizon/CLEC arbitration), ¶ 150.

1 has been “converted” – no other changes should be required for conversion.
2 Given that this re-pricing should not affect the operation of the facility itself,
3 Qwest should not be allowed to change the facility currently being provided.

4 **Q. DOES THE FCC AGREE THAT CONVERSIONS SHOULD INVOLVE**
5 **RECORD CHANGES AND AVOID NETWORK-RELATED CHANGES**
6 **THAT COULD PUT ESCHELON’S END USER CUSTOMERS OUT OF**
7 **SERVICE?**

8 A. Yes. The FCC addressed the issue of conversions in the *TRO*³⁰⁷ and found that
9 conversions should be seamless from the end user’s perspective, and should
10 involve only billing changes from Qwest’s perspective. At paragraph 586 of the
11 *TRO*, the FCC discussed the seamlessness of conversions:

12 Converting between wholesale services and UNEs or UNE
13 combinations should be a seamless process that does not affect the
14 customer’s perception of service quality.

15 The FCC codified the requirement that conversions should be seamless from the
16 perspective of the CLEC’s end user in 47 CFR §51.316(a) as follows:

17 (b) An incumbent LEC shall perform any conversion from a
18 wholesale service or group of wholesale services to an unbundled
19 network element or combination of unbundled network elements
20 without adversely affecting the service quality perceived by the
21 requesting telecommunications carrier's end-user customer.

22 And at paragraph 588 of the *TRO*, the FCC addressed the notion that conversions
23 are billing changes:

³⁰⁷ The *TRO* addressed conversions from UNEs to wholesale services *and* from wholesale services to UNEs.

1 588. We conclude that conversions should be performed in an
2 expeditious manner **in order to minimize the risk of incorrect**
3 **payments**. We expect carriers to establish any necessary
4 timeframes to perform conversions in their interconnection
5 agreements or other contracts. We decline to adopt ALTS's
6 suggestion to require the completion of all necessary billing
7 changes within ten days of a request to perform a conversion
8 because such time frames are better established through
9 negotiations between incumbent LECs and requesting carriers. **We**
10 **recognize, however, that converting between wholesale services**
11 **and UNEs (or UNE combinations) is largely a billing function.**
12 **We therefore expect carriers to establish appropriate**
13 **mechanisms to remit the correct payment after the conversion**
14 **request**, such as providing that any pricing changes start the next
15 billing cycle following the conversion request.

16 It is clear from the language above that the FCC's concern was directed at
17 ensuring proper payment for the facility, depending on whether it is a Section 251
18 UNE or a wholesale service (*e.g.*, access product), and did not envision work or
19 physical changes on the ILEC's part leading to the potential for customer
20 disruption.³⁰⁸

21 *Issue No. 9-43: Conversions – Circuit ID, Section 9.1.15.2.3*

22 **Q. WHAT IS A CIRCUIT ID AND WHAT IS ITS PURPOSE?**

23 A. The term is somewhat self-explanatory. A circuit ID is just that, a number or
24 code that identifies a specific circuit, generally by defining its two end points –

³⁰⁸ The FCC did mention in paragraph 586 of the *TRO* that there may be an increase in the risk of customer disruption caused by CLECs grooming inter-exchange traffic in order to comply with the eligibility criteria. However, this potential for disruption stems from decisions made by the CLECs, not Qwest. The fact that the FCC mentioned the potential for End User Customer disruption caused by CLEC grooming, yet did not mention the possibility for disruption caused by Qwest (and indeed requires conversions to be seamless), indicates that the FCC never envisioned the potential for Qwest-caused customer disruption because from Qwest's perspective, the conversion involves simply changing the rate that applies to the facility.

1 referred to as the “A” and “Z” location. Both CLEC and Qwest use this circuit ID
2 throughout their operational support systems to identify that circuit for numerous
3 activities including billing and repair matters.

4 **Q. SHOULD A CIRCUIT ID CHANGE DURING A CONVERSION?**

5 A. No. As described above, in the vast majority of circumstances in which Eschelon
6 will be required to convert an existing circuit from a UNE to an alternative service
7 arrangement, the physical facility need not (and should not) change. As such, the
8 circuit ID need not (and should not) change either. This is important from
9 Eschelon’s perspective because Eschelon specifically tracks that particular facility
10 and the customer it serves via the circuit ID. Numerous Eschelon systems rely on
11 that circuit ID in providing ongoing billing and customer service to the customer.
12 To the extent Qwest is allowed to (a) unnecessarily change the underlying facility
13 simply to effectuate what should be accomplished by a billing change and then (b)
14 assign a new circuit ID to the same arrangement, Eschelon’s systems will be
15 substantially, adversely, and unnecessarily affected. This will be accompanied by
16 notable cost and inconvenience. Likewise, unnecessarily re-arranging facilities
17 puts the customer at risk of losing service – a customer who never asked to be
18 converted and should not even realize that it happened.

19 **Q. PLEASE EXPLAIN HOW CHANGING CIRCUIT IDS DURING**
20 **CONVERSIONS COULD AFFECT ESCHELON’S END USER**
21 **CUSTOMERS.**

1 A. Changing the circuit ID for a circuit that is already in place and working well for a
2 customer in connection with “converting” the circuit from a UNE to an alternative
3 arrangement, significantly increases the risk of customer disruption. For instance,
4 Qwest processes circuit ID changes using “disconnect” and “new” service orders.
5 A simple typing error in an order could send the order to Qwest facilities
6 assignment with a “disconnect” on the order, and the customer will be
7 erroneously disconnected and put out of service. In addition, if records are not
8 correctly and timely updated to show new circuit IDs in either Qwest or Eschelon
9 systems, problems are likely to arise in the areas of maintenance and repair. For
10 example, if six months after the conversion, the end user notifies Eschelon that its
11 circuit is in need of repair, but the circuit ID is incorrectly stored in either the
12 Eschelon or Qwest systems as a result of an unnecessary physical conversion, it is
13 likely that Eschelon and Qwest will be unable to effectively open a trouble-ticket.
14 As a result, the repair function will be delayed and is likely to require substantial
15 additional resources to resolve, as compared to a normal repair ticket. All of this
16 can be avoided by adopting Eschelon’s proposal and making sure that Qwest does
17 not change circuit IDs for conversions.

18 **Q. HAS QWEST ALREADY PROCESSED CONVERSIONS WITHOUT**
19 **CHANGING CIRCUIT IDS?**

20 A. Yes. When Qwest first converted special access circuits to UNEs, the original
21 circuit IDs did not change. Issue 9-43 deals with the reverse situation – *i.e.*,
22 conversion of UNEs to special access. To date Qwest has been unable to explain

1 why the circuit ID must be changed in the current situation when no such change
2 was required in previous conversions.

3 **Q. WILL CHANGING CIRCUIT IDS FOR CONVERSIONS IMPOSE COSTS**
4 **ON ESCHELON?**

5 A. Yes. If Qwest changes circuit IDs for conversions, Eschelon will be forced to
6 modify its systems and its records to account for the new circuit ID. Qwest
7 complains about purported costs that it would incur to leave the circuit ID
8 unchanged, but ignores the costs imposed on Eschelon by changing the circuit ID
9 for the same facility.

10 **Q. SHOULD ESCHELON BEAR THE COSTS ASSOCIATED WITH**
11 **CIRCUIT ID CHANGES?**

12 A. No. The physical circuit already exists and Eschelon paid substantial non-
13 recurring charges to establish that circuit. There is no technical need to change
14 that circuit just to convert it from one service-type (UNE) to another (special
15 access). It is Qwest's decision to make a physical change (or change
16 unnecessarily the ID for that circuit), and it is Qwest who should bear the costs.
17 Otherwise, there will be no economic discipline associated with Qwest's decision.
18 In a circumstance in which Qwest can foist additional costs on its competitors like
19 Eschelon, while at the same time endangering the service provided by its
20 competitors by requiring a physical conversion, all the while garnering additional
21 fees for unnecessary non-recurring charges, why wouldn't Qwest require an

1 unnecessary physical change in every circumstance? Unfortunately, all of these
2 additional fees and expenses will have to ultimately be paid by Qwest's
3 competitors and/or their End User Customers and, therefore, the Commission
4 should adopt the process which is most efficient and least likely to disrupt
5 customer services. That approach is the one advocated by Eschelon.

6 **Q. YOU DESCRIBED THE RISK OF DISRUPTION FACING ESHELON'S**
7 **CUSTOMERS IF QWEST CHANGES THE CIRCUIT IDS FOR**
8 **CONVERSIONS. WOULD QWEST'S RETAIL CUSTOMERS FACE**
9 **THIS SAME RISK?**

10 A. No, and this is a very important point. Conversions only apply to the facilities
11 used by CLECs, and not facilities used by Qwest, and therefore, Qwest's retail
12 customers would face none of the risks that are inherent in Qwest's proposal to
13 change circuit IDs during conversions. The FCC recognized this very point when
14 addressing conversion charges in paragraph 587 of the TRO:

15 Because incumbent LECs are never required to perform a
16 conversion in order to continue serving their own customers, we
17 conclude that such charges are inconsistent with an incumbent
18 LEC's duty to provide nondiscriminatory access to UNEs and
19 UNE combinations on just, reasonable, and nondiscriminatory
20 rates, terms, and conditions.

21 The FCC was speaking to conversion charges that ILECs may attempt to assess,
22 but the same reasoning holds true with respect to circuit ID changes. Qwest is
23 never required to perform a conversion in order to continue serving its own
24 customers, and therefore, Qwest's proposal to change circuit IDs for conversions

1 to CLEC circuits: increases the risk for CLEC customer (not Qwest customer)
2 disruption; undermines the FCC's requirements for seamless conversions; and
3 fails to comply with Qwest's obligation to provide access to UNEs on just,
4 reasonable, and nondiscriminatory rates, terms and conditions.

5 Issue No. 9-44 – Manner of Conversion – Section 9.1.15.3

6 **Q. IS ESCHELON'S PROPOSAL FOR ISSUE 9-44, WHICH RECOGNIZES**
7 **THAT CONVERSIONS CAN BE ACCOMPLISHED THROUGH A**
8 **BILLING CHANGE, SUPPORTED BY THE FCC'S FINDINGS ON**
9 **CONVERSIONS?**

10 A. Yes. As explained above, the FCC has found in paragraph 588 of the *TRO* that
11 conversions affect the billing of rates – not physical changes in the facilities.
12 Eschelon's proposed Section 9.1.15.3 simply memorializes the FCC's findings.

13 **Q. WHY IS IT CRITICAL TO ENSURE SEAMLESS CONVERSIONS?**

14 A. For starters, seamless conversions are required by the FCC (see, *TRO*, ¶ 586). In
15 addition, a conversion is a regulatory construct and not a change requested by
16 Eschelon or its customer, and because only the price of a facility is changing,
17 service to end users should not be put at risk. Eschelon's proposed Section
18 9.1.15.3 prohibits Qwest from putting Eschelon's customers at risk by performing
19 unnecessary physical rearrangements. Furthermore, since Qwest's customers will
20 not face any of the same risks (because ILECs do not need to perform conversions
21 to continue to serve their customers), Eschelon's End User Customers will face a

1 higher likelihood of service outage problems than will Qwest's customers. These
2 problems will be directly attributable to Qwest's insistence on making physical
3 facility changes when the FCC has already found that record-only changes are
4 required.

5 **Q. ARE THERE OTHER REASONS WHY ESCHELON'S LANGUAGE IS**
6 **NECESSARY?**

7 A. Yes. Agreed upon language in Section 9.1.15 states that, if a CLEC has not
8 converted a UNE at the end of a transition period, Qwest "will convert" it to
9 month-to-month service arrangements under its tariff. Without Eschelon's
10 language in Section 9.1.15.3, the ICA does not describe what "convert" means or
11 the terms and conditions under which this conversion will take place. As a result,
12 absent Eschelon's proposed Section 9.1.15.3, Qwest could interpret the contract to
13 be open-ended with respect to the changes Qwest can make during conversions
14 that could harm Eschelon's customers' service quality.

15 Issue No. 9-44(a): Manner of Conversion – Use of adder or surcharge – Section
16 9.1.15.3.1

17 **Q. YOU HAVE EXPLAINED ABOVE THAT CONVERSIONS INVOLVE A**
18 **BILLING CHANGE AND NOT A CHANGE IN PHYSICAL FACILITY. IS**
19 **THERE A SIMPLE, TECHNICALLY FEASIBLE WAY IN WHICH**
20 **QWEST COULD EFFECTUATE THIS BILLING CHANGE AND**
21 **IMPLEMENT THE CONVERSION?**

1 A. Yes. Providing such an option to Qwest is the purpose of Eschelon's proposed
2 language under Issue 9-44(a). Eschelon's proposal would allow Qwest to
3 accomplish this conversion (or re-pricing) through the application of an adder or
4 surcharge to bill the difference between the old rate and new rate (*i.e.*, pre and
5 post conversion rates). For instance, if a DS1 UNE loop was converted to a DS1
6 special access circuit, the adder or surcharge would reflect the difference between
7 the UNE rate and the special access rate.

8 **Q. DOES QWEST ALREADY USE SUCH AN ADDER/SURCHARGE**
9 **APPROACH TO REFLECT PRICE CHANGES?**

10 A. Yes. Qwest has already demonstrated this with its implementation of the Qwest
11 Platform Plus ("QPP") agreements. Under those agreements, QPP circuits are
12 subject to annual rate increases. Qwest does not physically convert the circuits to
13 convert to the new rates. Instead, Qwest re-prices the circuits by using an "adder"
14 or "surcharge" for billing the difference between the previous rate and the new
15 rate. Eschelon's proposed language in Section 9.1.15.3.1 merely makes clear that
16 Qwest may use this same approach for the conversions described in Section
17 9.1.15.

18 **Q. IS THE USE OF ADDERS UNDER THE QPP AGREEMENTS STRONG**
19 **EVIDENCE THAT SUCH A RE-PRICING METHODOLOGY COULD BE**
20 **USED TO IMPLEMENT CONVERSIONS?**

1 A. Yes. The rate changes involved with QPP are significantly more complex than
2 rate changes involved in converting UNE rates to analogous/alternative service
3 rates. That is, QPP rates differ depending on whether the End User Customer is a
4 residential or a business customer, and depend upon whether the CLEC has met
5 certain volume quotas. Implementing such a re-pricing methodology should be
6 easier to implement for conversion adders, which would not vary based on these
7 factors.

8 Issue No. 9-44(b): Manner of Conversion – Use of USOC – Section 9.1.15.3.1.1

9 **Q. IS THE DISAGREEMENT UNDER ISSUE 9-44(B) AN EXTENSION OF**
10 **ISSUE 9-44(A) ABOVE?**

11 A. Yes. As explained above, Eschelon’s proposal under Issue 9-44(a) would permit
12 Qwest to implement the re-pricing involved in a conversion through the use of an
13 “adder” or “surcharge” reflecting the difference between the old and new rate, just
14 as Qwest does when re-pricing under the QPP agreements. It is possible that
15 Qwest may need to add new USOC codes to identify the conversion adders.
16 Eschelon’s language for Section 9.1.15.3.1.1 is designed to allow Qwest to
17 introduce new USOC(s) if needed to implement the same re-pricing methodology
18 for conversions as Qwest uses for QPP.

1 Issue No. 9-44(c): Manner of Conversion – Same USOC – Section 9.1.15.3.1.1

2 **Q. WHAT CONCERN IS ESCHELON ATTEMPTING TO ADDRESS**
3 **THROUGH ITS PROPOSED LANGUAGE FOR ISSUE 9-44(C)?**

4 A. Eschelon's proposals under Issues 9-44(a) and 9-44(b) would permit Qwest to
5 perform the re-pricing involved in a conversion by way of an adder, similar to the
6 way in which Qwest re-prices under its QPP Agreements. The USOCs that are
7 used to represent rate elements are used for other pricing purposes, such as
8 calculating volumes and discounts for a regional commitment plant. For example,
9 a CLEC may have a volume commitment with Qwest to purchase a certain dollar
10 value worth of services over a particular state or region in order to receive a
11 percentage discount on the services it purchases from Qwest. The services that
12 contribute to that volume commitment, and in turn, the associated discount may
13 be identified by USOC. Eschelon is concerned that Qwest may change or add
14 USOCs to accomplish a conversion and then remove the revenue associated with
15 the facility from the calculated volume commitments, making it more difficult for
16 Eschelon to meet its volume commitments and obtain a discount, which would in
17 turn lead to more wholesale revenues for Qwest. Eschelon's language for this
18 issue was designed to ensure that any USOC changes involved in a conversion do
19 not change the way in which the USOCs are used for pricing purposes (e.g.,
20 calculating volume commitments and discounts).

1 **Q. PLEASE ELABORATE ON WHY A USOC CHANGE USED TO**
2 **ACCOMPLISH A CONVERSION SHOULD NOT AFFECT THE WAY IN**
3 **WHICH THE USOC IS USED FOR PRICING PURPOSES.**

4 A. The facility is the exact same facility after the conversion as it was before the
5 conversion, and this would hold true even if Qwest assigned a new USOC to the
6 circuit to reflect the post-conversion pricing. Qwest should not be allowed to
7 manipulate its USOCs in such a way as to allow Qwest to recover higher charges
8 from CLECs. This would be particularly unfair since the USOC methodology of
9 implementing conversions makes the conversions efficient for Qwest, and in light
10 of the FCC's strong emphasis on nondiscriminatory, just and reasonable treatment
11 by Qwest for conversions (given that conversions apply only to CLECs and not
12 Qwest).

13 **Q. PLEASE SUMMARIZE ISSUES 9-43 AND 9-44.**

14 A. Conversions should be seamless to the CLEC End User Customer. A conversion
15 involves re-pricing a facility – a facility that is operational and serving an End
16 User Customer – from UNE prices to the price of the alternative/analogous
17 service, and it should not involve any work that would result in service disruption
18 for the End User Customer. Qwest and its customers do not bear any risk of
19 disruption or costs from conversions because Qwest does not convert its circuits.
20 Eschelon's proposed language would ensure that conversions are implemented
21 just as the FCC required them to be – seamlessly. Eschelon's proposal of
22 implementing conversions through a billing change is specifically discussed by

1 the FCC and the billing change option included in Eschelon’s ICA language is
2 already used by Qwest to re-price services. Qwest, on the other hand, attempts to
3 remain silent on conversions in the ICA so that it can, after the conclusion of this
4 arbitration, impose the potentially disruptive and costly conversion “procedure”
5 that it unilaterally develops. Qwest’s position and proposed “procedure” flies in
6 the face of the FCC’s rules and orders. For all of the reasons described in
7 Eschelon’s business need and in these responses, the Commission should adopt
8 Eschelon’s language for Issues 9-43 and 9-44.

9 **VII. SUBJECT MATTER NO. 24: LOOP-TRANSPORT COMBINATIONS**

10 Issue No. 9-55: ICA Sections 9.23.4; 9.23.4.4; 9.23.4.4.1; 9.23.4.5; 9.23.4.6;
11 9.23.4.5.4

12 **Q. WHAT IS ESCHELON’S BUSINESS ISSUE REGARDING LOOP-**
13 **TRANSPORT COMBINATIONS?**

14 A. Eschelon is entitled to receive from Qwest UNEs that are combined, or
15 “commingled,” with non-UNEs. Commingling does not mean that the UNE
16 component is no longer a UNE and Qwest remains responsible for providing the
17 UNE in a commingled arrangement, subject to the same requirements that apply
18 to non-commingled UNEs.

19 When Qwest’s proposals are closely scrutinized, it becomes clear that Qwest is
20 attempting to position one type of loop transport combination – a commingled
21 EEL – so that the terms governing the non-UNE (or the “facilities or services that

1 a requesting telecommunications carrier has obtained at wholesale from an
2 incumbent LEC”) will dictate how the UNE portion of the combination is
3 ordered, provisioned, and repaired. Qwest’s proposal is a thinly-veiled attempt to
4 remove the terms regarding these UNEs from Commission purview by dictating
5 the terms and conditions over the entire offering through its tariffs. At least one
6 component of these offerings is a Section 251 UNE, and the Commission should,
7 at a minimum, retain its jurisdiction over the UNE component of Loop-Transport
8 Combinations, including the UNE in a Commingled EEL, and ensure that terms
9 that affect the UNE are included in the filed and approved ICA. The
10 nondiscrimination requirements of Section 251 of the Act are not contained in
11 Qwest’s tariffs and, therefore, tariffs should not be used to govern UNEs.

12 **Q. WHAT IS ESCHELON’S PROPOSAL ON ISSUE 9-55?**

13 A. Eschelon proposes the following language for Section 9.23.4.³⁰⁹

14 **9.23.4 Loop-Transport Combinations: Enhanced Extended Links**
15 **(EELs), Commingled EELs, and High Capacity EELs**

16
17 Loop-Transport Combination –For purposes of this Agreement,
18 “Loop-Transport Combination” is a Loop in combination, or
19 Commingled, with a Dedicated Transport facility or service (with
20 or without multiplexing capabilities), together with any facilities,
21 equipment, or functions necessary to combine those facilities. At
22 least as of the Effective Date of this Agreement “Loop-Transport
23 Combination” is not the name of a particular Qwest product.
24 “Loop-Transport Combination” includes Enhanced Extended
25 Links (“EELs”), Commingled EELs, and High Capacity EELs. If
26 no component of the Loop-transport Combination is a UNE,

³⁰⁹ Eschelon also capitalizes the term “Loop-Transport” in its language to indicate that it is a defined term in the ICA.

1 however, the Loop-Transport Combination is not addressed in this
2 Agreement. The UNE components of any Loop-Transport
3 Combinations are governed by this Agreement and the other
4 component(s) of any Loop-Transport Combinations are governed
5 by the terms of an alternative service arrangement, as further
6 described in Section 24.1.2.1.³¹⁰

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

10
11 High Capacity EEL – “High Capacity EEL” is a Loop-Transport
12 Combination (either EEL or Commingled EEL) when the Loop or
13 transport is of DS1 or DS3 capacity. High Capacity EELs may
14 also be referred to as “DS1 EEL” or “DS3 EEL,” depending on
15 capacity level.
16

17 **9.23.4.4 Additional Terms for UNE Components of Loop Transport**
18 **Combinations~~EELs~~**

19 ...
20 9.23.4.4.1 EELs and Commingled EELs may consist of loops and
21 interoffice transport of the same bandwidth (Point-to-Point).
22 When multiplexing is requested, EELs and Commingled EELs
23 may consist of loops and interoffice transport of different
24 bandwidths (Multiplexed). CLEC may also order combinations of
25 interoffice transport, concentration capability and DS0 loops.
26

27 **9.23.4.5 Ordering Process for UNE Components of Loop Transport**
28 **Combinations~~EELs~~**

³¹⁰ A sentence clearly explaining that a non-UNE is governed by the an alternative service arrangement – not the ICA. (“and the other component(s) of any Loop-Transport Combinations are governed by the terms of an alternative service arrangement, as further described in Section 24.1.2.1. This additional language including a reference to Section 24.1.2.1 was added to dispel Qwest’s notion that Eschelon’s language was attempting to govern non-UNEs by the ICA (though Eschelon believes that its original language – as filed with the Petition – is perfectly clear on this point). Section 24.1.2.1 provides (in closed language): “The UNE component(s) of any Commingled arrangement is governed by the applicable terms of this Agreement. The other component(s) of any Commingled arrangement is governed by the terms of the alternative service arrangement pursuant to which that component is offered (e.g., Qwest’s applicable Tariffs, price lists, catalogs, or commercial agreements). Performance measurements and/or remedies under this Agreement apply only to the UNE component(s) of any Commingled arrangement. Qwest is not relieved from those measurements and remedies by virtue of the fact that the UNE is part of a Commingled arrangement.”

1
2 9.23.4.5.4 . . .Qwest may require two (2) service requests when
3 CLEC orders Multiplexed Loop Transport Combinations (which
4 are not Point-to-Point) and EEL loops (as part of a multiplexed
5 EEL). Regarding Commingling see Section 24.
6

7 **9.23.4.6 Rate Elements for UNE Components of Loop Transport**
8 **Combinations EELs**
9

10 Eschelon’s proposed language defines the term Loop-Transport Combination and
11 includes language in the contract to make clear that the UNE component of a
12 Loop-Transport combination is governed by the ICA. Eschelon’s language,
13 however, does not attempt to dictate the terms of the non-UNE piece of a Loop-
14 Transport combination and expressly states that non-UNE components are
15 addressed by the alternative service arrangement.

16 **Q. WHAT IS QWEST’S PROPOSAL ON ISSUE 9-55?**

17 A. Qwest proposes the following language (with Qwest language underlined and
18 Eschelon language in strikeout):

19 **9.23.4 ~~Loop-Transport Combinations:~~ Enhanced Extended**
20 **Links (EELs), Commingled EELs, and High Capacity**
21 **EELs**
22 ~~Loop-Transport Combination~~ For purposes of this
23 Agreement, ~~“Loop-Transport Combination” is a Loop in~~
24 ~~combination, or Commingled, with a Dedicated Transport~~
25 ~~facility or service (with or without multiplexing~~
26 ~~capabilities), together with any facilities, equipment, or~~
27 ~~functions necessary to combine those facilities. At least as~~
28 ~~of the Effective Date of this Agreement “Loop-Transport~~
29 ~~Combination” is not the name of a particular Qwest~~
30 ~~product. “Loop-Transport Combination” includes~~
31 ~~Enhanced Extended Links (“EELs”), Commingled EELs,~~
32 ~~and High Capacity EELs. If no component of the Loop-~~

1 ~~transport Combination is a UNE, however, the Loop-~~
2 ~~Transport Combination is not addressed in this Agreement.~~
3 ~~The UNE components of any Loop Transport~~
4 ~~Combinations are governed by this Agreement, as further~~
5 ~~described in Section 24.1.2.1.~~
6

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

10
11 High Capacity EEL – “High Capacity EEL” is a ~~Loop-Transport~~
12 ~~Combination~~ (either EEL or Commingled EEL) when the Loop or
13 transport is of DS1 or DS3 capacity. High Capacity EELs may
14 also be referred to as “DS1 EEL” or “DS3 EEL,” depending on
15 capacity level.
16

17 **9.23.4.4 Additional Terms for EELs~~UNE Components of Loop~~**
18 **~~Transport Combinations~~**
19

20 9.23.4.4.1 ~~EELs and Commingled EELs~~ may consist of loops and
21 interoffice transport of the same bandwidth (Point-to-Point).
22 When multiplexing is requested, ~~EELs and Commingled EELs~~
23 may consist of loops and interoffice transport of different
24 bandwidths (Multiplexed). CLEC may also order combinations of
25 interoffice transport, concentration capability and DS0 loops.
26

27 **9.23.4.5 Ordering Process for EELs~~UNE Components of Loop-~~**
28 **~~Transport Combinations~~**
29

30 9.23.4.5.4 Qwest may require two (2) service requests when
31 CLEC orders Multiplexed ~~EELs Loop-Transport Combinations~~
32 (which are not Point-to-Point) and EEL loops (as part of a
33 multiplexed EEL). Regarding Commingling see Section 24.
34

35 **9.23.4.6 Rate Elements for EELs~~UNE Components of Loop-~~**
36 **~~Transport Combinations~~**

37 Qwest disagrees that the term Loop-Transport should be defined in the ICA, and
38 uses the term “EEL” instead. Qwest also proposes to omit the term “commingled
39 EEL” from these sections of the ICA. Qwest, in support of its proposal, states

1 that Loop Transport is not a separate Qwest product and complains that
2 Eschelon's use of the term Loop Transport is different than the way in which the
3 FCC uses the term.³¹¹

4 **Q. WHAT IS THE PRIMARY DISAGREEMENT BETWEEN ESCHELON**
5 **AND QWEST ON ISSUE 9-55?**

6 A. The crux of the issue is how Loop-Transport Combinations will be treated under
7 the ICA, particularly if they involve commingling. The FCC defines
8 Commingling in 47 CFR §51.5 as follows:

9 Commingling. Commingling means the connecting, attaching, or
10 otherwise linking of an unbundled network element, or a
11 combination of unbundled network elements, to one or more
12 facilities or services that a requesting telecommunications carrier
13 has obtained at wholesale from an incumbent LEC, or the
14 combining of an unbundled network element, or a combination of
15 unbundled network elements, with one or more such facilities or
16 services. Commingle means the act of commingling.

17 **Q. DOES ESCHELON'S LANGUAGE USE THE TERM "LOOP**
18 **TRANSPORT COMBINATION" IN THE SAME WAY AS THE FCC HAS**
19 **USED THE TERM IN ITS ORDERS?**

20 A. Yes. Eschelon's proposed definition of "Loop-Transport Combination" mirrors
21 the way the FCC has used that term to define any combination of loop and
22 transport. For example, when discussing EELs in paragraph 575 of the *TRO*, the
23 FCC states as follows:

³¹¹ Qwest Response, p. 27.

1 575. As noted above, our rules currently require incumbent LECs
2 to make UNE combinations, including *loop-transport*
3 *combinations*, available in all areas where the underlying UNEs
4 are available and in all instances where the requesting carrier meets
5 the eligibility requirements... (emphasis added)

6 Again, at paragraph 576 of the *TRO*, the FCC states: “We further agree that the
7 availability of EELs and other UNE combinations promotes innovation because
8 competitive LECs can provide advanced switching capabilities in conjunction
9 with *loop-transport combinations*.” (emphasis added)

10 The FCC goes on in paragraph 584 of the *TRO* to state that “as we explain in
11 detail below, we obviate the risk identified by the court by applying service
12 eligibility criteria to *commingled loop-transport combinations*.” Indeed,
13 paragraph 593 of the *TRO* specifically refers to a high capacity loop transport
14 combinations as a commingled EEL [“...to obtain at UNE pricing part of a high-
15 capacity loop-transport combination (commingled EEL)”] and paragraph 594 of
16 the *TRO* again refers to “commingled loop-transport combinations.”

17 **Q. HOW ARE THESE EXCERPTS FROM THE FCC’S ORDER**
18 **CONSISTENT WITH ESCHELON’S DEFINITION OF LOOP**
19 **TRANSPORT COMBINATION?**

20 A. Eschelon’s language defines the Loop-Transport combination to include: (1)
21 Enhanced Extended Links (“EELs”), (2) Commingled EELs, and (3) High
22 Capacity EELs. The excerpts from the FCC’s *TRO* above show that the FCC has
23 referred to loop transport combinations as (1) EELs (*e.g.*, *TRO*, ¶¶ 575 and 576),

1 (2) commingled EELs (*e.g.*, *TRO*, ¶¶ 584, 593 and 594), and (3) high capacity
2 EELs (*e.g.*, *TRO*, ¶ 593) – just as Eschelon’s proposed section 9.23.4 does.

3 **Q. WHAT ARE THE ADVANTAGES OF DEFINING THE TERM LOOP-**
4 **TRANSPORT COMBINATION IN THE ICA?**

5 A. The use of this defined term is efficient because it provides an umbrella that
6 includes all three types of Loop-Transport Combinations that currently exists –
7 EELs, Commingled EELs, and High Capacity EELs – thus avoiding having to
8 repeat all three terms throughout the document.

9 In addition, Eschelon’s language ties the various sections of the ICA together
10 better than Qwest’s language. Because at least one component of the loop
11 transport combination is a UNE, the terms and conditions belong in Section 9,
12 which is entitled “Unbundled Network Elements.” Although there is also a
13 section on Commingling (Section 24), that section contains general terms and not
14 the type of terms and conditions that Eschelon and Qwest otherwise agree belong
15 in Section 9.23, such as Service Eligibility Criteria for High Capacity EELs.
16 Qwest’s proposal to place only these terms (Service Eligibility Criteria) of
17 Commingled EELs in Section 9 while placing others in Section 24 does not make
18 sense from an organizational or ease-of-use perspective. Commingled EELs have
19 a UNE component and that UNE component should be addressed in Section 9,
20 and at the same time, Eschelon’s proposed language in Section 9 expressly
21 references and restates the terms of Section 24 on Commingling so that the user of

1 the ICA will know even without having to reference Section 24 the Commingling
2 terms and how non-UNEs will be treated under the ICA.

3 **Q. DOES ESCHELON'S LANGUAGE COVER NON-UNES NOT**
4 **GOVERNED BY SECTION 251 OF THE ACT?**

5 A. No. Eschelon's proposed definition makes clear that only the UNE components
6 of a Loop-Transport Combination are subject to the ICA, and that, if no
7 component is a UNE, the combination is not governed by the ICA. Eschelon
8 specifically added to its proposal (*see*, Section 9.23.4) a reference to Section
9 24.1.2.1 which explains how non-UNE portions of a commingled arrangement are
10 treated. This language should eliminate any suggestion on Qwest's part that the
11 terminology is some kind of attempt to govern non-UNEs in the ICA. Eschelon
12 further clarifies this point by capitalizing the term in the headings (*see*, Sections
13 9.23.4; 9.23.4.4; 9.23.4.5; 9.23.4.6) to indicate it is a defined term and referring to
14 the UNE components of Loop-Transport Combinations.

15 **Q. PLEASE SUMMARIZE ISSUE 9-55.**

16 A. Eschelon is entitled to commingle UNEs with non-UNEs. The UNEs in these
17 commingled arrangements are still UNEs and must be provided in a non-
18 discriminatory manner pursuant to Section 251 of the Act and should be governed
19 by Section 9 (UNEs) of the ICA. Eschelon's language makes these requirements
20 clear and defines and uses the term "Loop-Transport Combinations" precisely as
21 the FCC has used it. For all of the reasons described in Eschelon's business need

1 and in these responses, the Commission should adopt Eschelon's language for
2 Issue 9-55.

3 **VIII. SUBJECT MATTER NO. 27: MULTIPLEXING (LOOP-MUX**
4 **COMBINATIONS)**

5 *Issue No. 9-61 and subparts: ICA Sections 9.23.9 and subparts; 24.4 and*
6 *subparts; 9.23.2; 9.23.4.4.3; 9.23.6.2; 9.23.9.4.3; 9.23.4.4.3; 9.23.6.2; Exhibit C;*
7 *24.4.4.3; Exhibit A; Sections 9.23.6.1 and subparts and 9.23.6.1 and subparts*

8 **Q. WHAT IS ESCHELON'S BUSINESS CONCERN REGARDING**
9 **MULTIPLEXING (LOOP MUX COMBINATIONS) (ISSUES 9-61 AND**
10 **SUBPARTS (A)-(C))?**

11 A. This issue concerns Eschelon's continued access to multiplexing when
12 multiplexing is combined with an unbundled loop. Qwest currently provides
13 unbundled access to multiplexing at TELRIC rates and has for some time. Qwest
14 has provided multiplexing in various forms, including as part of a UNE
15 combination as well as on a stand alone basis, and the Commission has approved
16 TELRIC rates for the LMC product. The FCC has made it very clear that
17 multiplexing must be provided in conjunction with UNEs and UNE combinations.
18 Despite all of this, Qwest has decided that it will stop providing multiplexing at
19 TELRIC rates and relegate the terms, conditions and rates for multiplexing to its
20 access tariff.

21 Eschelon is not asking for stand-alone multiplexing or unlimited access to
22 multiplexing at TELRIC rates. Rather Eschelon's proposal is narrowly-tailored to

1 treat multiplexing the same way that a reasonable reading of the FCC's order
2 treats multiplexing – *i.e.*, that unbundled access to multiplexers must be provided
3 when combined with UNEs. In these instances, multiplexing should be governed
4 by the ICA and priced at TELRIC.³¹²

5 **Q. WHAT IS ESCHELON'S PROPOSAL FOR ISSUES 9-61 AND SUBPARTS**
6 **(A)-(C)?**

7 A. Eschelon proposes the following language in Section 9:
8

9 **ISSUE 9-61**

10 **9.23.2 UNE Combinations Description and General Terms**

11
12 UNE Combinations are available in, but not limited to, the
13 following products: EELs (subject to the limitations set
14 forth below) and Loop Mux Combinations. If CLEC
15 desires access to a different UNE Combination, CLEC may
16 request access through the Special Request Process set
17 forth in this Agreement. . . .

18 **ISSUE 9-61(a)**

19 9.23.9.1.1 Loop-Mux combination (LMC) is an unbundled Loop as
20 defined in Section 9.2 of this Agreement (referred to in
21 this Section as an LMC Loop) combined ~~commingled~~
22 ~~with a private line (PLT), or with a special access (SA),~~
23 ~~Tariffed~~–DS1 or DS3 multiplexed facility with no
24 interoffice transport. The ~~PLT/SA~~–multiplexed facility
25 is provided as ~~either~~–an Interconnection Tie Pair (ITP)
26 ~~or Expanded Interconnection Termination (EICT)~~–from
27 the high side of the multiplexer to CLEC's Collocation.
28 The multiplexer and the Collocation must be located in
29 the same Qwest Wire Center.
30

³¹² Regardless of the status of multiplexing, the UNE loop is a component of a Loop Mux Combination and, therefore, LMC should be in Section 9 (UNEs) of the ICA.

- 1 9.23.9.1.2 LMC provides CLEC with the ability to access End
2 User Customers and aggregate DS1 or DS0 unbundled
3 Loops to a higher bandwidth via a ~~PLT/SA~~ DS1 or DS3
4 multiplexer. There is no interoffice transport between
5 the multiplexer and CLEC's Collocation.
6
- 7 9.23.9.1.3 Qwest offers the LMC ~~Loop~~ as a Billing conversion or
8 as new Provisioning.
9
- 10 9.23.9.2.1 A ~~UNE~~ Extended Enhanced Loop (EEL) may be
11 combined ~~commingled~~ with the ~~PLT/SA~~ multiplexed
12 facility.
13
- 14 9.23.9.2.2 LMC ~~Loops~~ will be provisioned where existing facilities
15 are available or pursuant to the provisions of Section
16 9.1.2.1 of the Agreement.
17
- 18 9.23.9.2.3 The ~~PLT/SA~~ DS1 or DS3 multiplexed facility must
19 terminate in a Collocation.
20
- 21 9.23.9.2.4 Intentionally Left Blank. ~~The multiplexed facility is~~
22 ~~subject to all terms and conditions (ordering, provisioning, and~~
23 ~~billing) of the appropriate tariff.~~
24
- 25 9.23.9.2.6 Rearrangements may be requested for work to be
26 performed by Qwest on an existing LMC ~~Loop~~, or on
27 some private line/special access circuits, when coupled
28 with a conversion-as-specified request to convert to
29 LMC ~~Loop~~.
30
- 31 9.23.9.3.2 LMC multiplexing is offered in DS3 to DS1 and DS1 to
32 DS0 configurations. LMC multiplexing is ordered
33 with LMC Loops. The recurring and nonrecurring rates
34 in Exhibit A apply.
35
- 36 9.23.9.3.2.1 3/1 multiplexing rates are contained in Exhibit A of
37 this Agreement, and include the following:
38 a) Recurring Multiplexing Charge. The DS3 Central Office

1 Multiplexer provides de-multiplexing of one DS3 44.736
2 Mbps to 28 1.544 Mbps channels.

3 b) Non-recurring Multiplexing Charge. One-time charges
4 apply for a specific work activity associated with
5 installation of the multiplexing service.

6
7 9.23.9.3.2.2 1/0 multiplexing rates are contained in Exhibit A of
8 this Agreement, and include the following charges:

9 a) Recurring Multiplexing Charge. The DS0 Central Office
10 multiplexer provides de-multiplexing of one DS1 1.544
11 Mbps to 24 64 Kbps channels.

12 b) Non-recurring Multiplexing Charge. One-time charges
13 apply for a specific work activity associated with
14 installation of the multiplexing service, including low side
15 channelization of all 24 channels.

16
17 9.23.9.3.4 Nonrecurring charges for Billing conversions to LMC
18 ~~Loop~~ are set forth in Exhibit A.

19
20 9.23.9.3.5 A rearrangement nonrecurring charge as described in
21 Exhibit A may be assessed on some requests for work to be
22 performed by Qwest on an existing LMC ~~Loop~~, or on some
23 private line/special access circuits, when coupled with a
24 conversion-as-specified request to convert to LMC ~~Loop~~.

25
26 9.23.9.4.1 Ordering processes for LMC ~~Loop~~-(s) are contained
27 below and in Section 12 of this Agreement. Qwest will
28 document its ordering processes in Qwest's Product
29 Catalog (PCAT). The following is a high-level description
30 of the ordering process:

31
32 9.23.9.4.1.1 Step 1: Complete product questionnaire for LMC
33 ~~Loop~~(s) with account team representative.

34
35 9.23.9.4.1.4 Step 4: After account team notification, place LMC
36 ~~Loop~~-orders via an LSR.

37
38 9.23.9.4.3 For UNE Combinations with appropriate retail

1 analogues, the Provisioning interval will be no longer than
2 the interval for the equivalent retail service. CLEC and
3 Qwest can separately agree to Due Dates other than the
4 interval.
5

6 9.23.9.4.4 Due date intervals are established when Qwest receives
7 a complete and accurate LSR made through the IMA, EDI
8 or Exact interfaces or through facsimile. For LMC ~~Loops~~,
9 the date the LSR is received is considered the start of the
10 service interval if the order is received on a business Day
11 prior to 3:00 p.m. For LMC ~~Loops~~, the service interval will
12 begin on the next business Day for service requests
13 received on a non-business day or after 3:00 p.m. on a
14 business day. Business Days exclude Saturdays, Sundays,
15 New Year's Day, Memorial Day, Independence Day (4th of
16 July), Labor Day, Thanksgiving Day and Christmas Day.
17

18 9.23.9.4.5 Out of Hours Project Coordinated Installations: CLEC
19 may request an out of hours Project Coordinated
20 Installation. This permits CLEC to obtain a coordinated
21 installation for LMC ~~Loops~~—with installation work
22 performed by Qwest outside of Qwest's standard
23 installation hours. For purposes of this Section, Qwest's
24 standard installation hours are 8:00 a.m. to 5:00 p.m.
25 (local time), Monday through Friday, except holidays.
26 Installations commencing outside of these hours are
27 considered to be out of hours Project Coordinated
28 Installations.
29

30 9.23.9.6.1 Qwest will maintain facilities and equipment for LMC
31 ~~Loops~~—provided under this Agreement. ~~Qwest will~~
32 ~~maintain the multiplexed facility pursuant to the Tariff.~~
33 CLEC or its End User Customers may not rearrange, move,
34 disconnect or attempt to repair Qwest facilities or
35 equipment, other than by connection or disconnection to
36 any interface between Qwest and the End User Customer,
37 without the prior written consent of Qwest.
38

39 **ISSUE 9-61(b)**

1 9.23.9.4.3 ~~Standard~~ Service intervals for LMC(s) ~~Loops~~ are set
 2 forth in Exhibit C in the ~~Service Interval Guide (SIG)~~
 3 available at www.qwest.com/wholesale. For UNE
 4 Combinations with appropriate retail analogues, the
 5 Provisioning interval will be no longer than the interval
 6 for the equivalent retail service. CLEC and Qwest can
 7 separately agree to Due Dates other than the interval.
 8

9 9.23.4.4.3 Installation intervals for UNE Combinations are set
 10 forth in Exhibit C but will be no longer than the
 11 respective Private Line Transport Service that Qwest
 12 will maintain on the following web-site address:
 13 <http://www.qwest.com/carrier/guides/sig/index.html>
 14

15 9.23.6.2 Service intervals for each UNE Combination ~~EEL~~ are set
 16 forth in Exhibit C. For UNE Combinations with
 17 appropriate retail analogues, the Provisioning interval
 18 will be no longer than the interval for the equivalent retail
 19 service. CLEC and Qwest can separately agree to Due
 20 Dates other than the interval.
 21

22 Exhibit C:
 23 Loop Mux Combo (LMC)
 24

25 **ISSUE 9-61(c)**

| | | | | |
|----|---|--------------|----------|--------------|
| 26 | <u>9.23.6.1 Interconnection Tie Pair (ITP), per Termination</u> | | \$0.36 | D |
| 27 | 9.23.6.1.1 | DS1 | \$1.46 | D |
| 28 | 9.23.6.1.2 | DS3 | \$14.69 | D |
| 29 | | | | |
| 30 | <u>9.23.6.6 LMC Multiplexing</u> | | | |
| 31 | 9.23.6.6.1 | DS1 to DS0 | \$151.43 | \$105.99 C,1 |
| 32 | 9.23.6.6.2 | DS3 to DS1 | \$192.25 | C |
| 33 | 9.23.6.6.2.1 | Installation | \$76.72 | 1 |
| 34 | 9.23.6.6.2.2 | Disconnect | \$29.27 | 1 |
| 35 | | | | |

36 Eschelon's proposal would put terms, conditions and rates for Loop Mux
 37 Combinations in Section 9 (UNEs) of the ICA. Eschelon's language for Issue 9-

1 61 includes the Loop Mux Combination in the description of UNE combinations
2 (along with EELs); its language for Issue 9-61(a) defines the Loop Mux
3 Combination; its language for Issue 9-61(b) ensures that service intervals for
4 UNE combinations, including Loop Mux Combinations, are included in Exhibit C
5 to the ICA; and its language for Issue 9-61(c) includes Commission-approved
6 rates for the LMC product.

7 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUES 9-61 AND (A)-(C)?**

8 A. Qwest's proposals on these issues are as follows:
9

10 **ISSUE 9-61**

11 **9.23.2 UNE Combinations Description and General Terms**

12
13 UNE Combinations are available in, but not limited to, the
14 following products: EELs (subject to the limitations set
15 forth below) ~~and Loop Mux Combinations.~~ If CLEC
16 desires access to a different UNE Combination, CLEC may
17 request access through the Special Request Process set
18 forth in this Agreement. . . .
19

20 **ISSUE 9-61(a)**: Section 24.4.1 contains Qwest's corresponding language:

21
22 **[24.4.1.1]** Loop-Mux combination (LMC) is an unbundled Loop as
23 defined in Section 9.2 of this Agreement (referred to in
24 this Section as an LMC Loop) Commingled combined
25 with a private line (PLT), or with a special access (SA),
26 Tariffed DS1 or DS3 multiplexed facility with no
27 interoffice transport. The PLT/SA multiplexed facility is
28 provided as either an Interconnection Tie Pair (ITP) or
29 Expanded Interconnection Termination (EICT) from the
30 high side of the multiplexer to CLEC's Collocation. The
31 multiplexer and the Collocation must be located in the
32 same Qwest Wire Center.

1

2 [24.4.1.2] LMC provides CLEC with the ability to access End User
3 Customers and aggregate DS1 or DS0 unbundled Loops
4 to a higher bandwidth via a PLT/SA DS1 or DS3
5 multiplexer. There is no interoffice transport between the
6 multiplexer and CLEC's Collocation.

7
8 [24.4.1.3] Qwest offers the LMC Loop as a Billing conversion or
9 as new Provisioning.

10
11 [24.4.2.1] An ~~UNE~~-Extended Enhanced Loop (EEL) may be
12 ~~combined~~-commingled with the PLT/SA multiplexed
13 facility.

14
15 [24.4.2.2] LMC Loops will be provisioned where existing facilities
16 are available or pursuant to the provisions of Section
17 9.1.2.1 of the Agreement.

18
19 [24.4.2.3] The PLT/SA DS1 or DS3 multiplexed facility must
20 terminate in a Collocation.

21
22 [24.4.2.4] The multiplexed facility is subject to all terms and
23 conditions (ordering, provisioning, and billing) of the
24 appropriate Tariff.

25
26 [24.4.2.6] Rearrangements may be requested for work to be
27 performed by Qwest on an existing LMC Loop, or on
28 some private line/special access circuits, when coupled
29 with a conversion-as-specified request to convert to LMC
30 Loop.

31
32 [24.4.3.4] Nonrecurring charges for Billing conversions to LMC
33 Loop are set forth in Exhibit A.

34
35 [24.4.3.5] A rearrangement nonrecurring charge as described in
36 Exhibit A may be assessed on some requests for work to
37 be performed by Qwest on an existing LMC Loop, or on
38 some private line/special access circuits, when coupled
39 with a conversion-as-specified request to convert to LMC
40 Loop.

41
42 [24.4.4.1] Ordering processes for LMC Loop (s) are contained

1 below and in Section 12 of this Agreement. Qwest will
2 document its ordering processes in Qwest's Product
3 Catalog (PCAT). The following is a high-level
4 description of the ordering process:
5

6 [24.4.4.1] Step 1: Complete product questionnaire for LMC
7 Loop(s) with account team representative.
8

9 [24.4.4.1] Step 4: After account team notification, place LMC
10 Loop orders via an LSR.
11

12 [24.4.4.4] Due date intervals are established when Qwest receives
13 a complete and accurate LSR made through the IMA,
14 EDI or Exact interfaces or through facsimile. For LMC
15 Loops, the date the LSR is received is considered the start
16 of the service interval if the order is received on a
17 business Day prior to 3:00 p.m. For LMC Loops, the
18 service interval will begin on the next business Day for
19 service requests received on a non-business day or after
20 3:00 p.m. on a business day. Business Days exclude
21 Saturdays, Sundays, New Year's Day, Memorial Day,
22 Independence Day (4th of July), Labor Day, Thanksgiving
23 Day and Christmas Day.
24

25 [24.4.4.5] Out of Hours Project Coordinated Installations: CLEC
26 may request an out of hours Project Coordinated
27 Installation. This permits CLEC to obtain a coordinated
28 installation for LMC Loops with installation work
29 performed by Qwest outside of Qwest's standard
30 installation hours. For purposes of this Section, Qwest's
31 standard installation hours are 8:00 a.m. to 5:00 p.m.
32 (local time), Monday through Friday, except holidays.
33 Installations commencing outside of these hours are
34 considered to be out of hours Project Coordinated
35 Installations.
36

37 [24.4.6.1] Qwest will maintain facilities and equipment for LMC
38 Loops provided under this Agreement. Qwest will
39 maintain the multiplexed facility pursuant to the Tariff.
40 CLEC or its End User Customers may not rearrange,
41 move, disconnect or attempt to repair Qwest facilities
42 or equipment, other than by connection or

1 disconnection to any interface between Qwest and the
2 End User Customer, without the prior written consent
3 of Qwest.
4

5 **ISSUE 9-61(b)**

6 24.4.4.3 Standard service intervals for LMC(s) Loops are set forth
7 ~~in Exhibit C~~ in the Service Interval Guide (SIG)
8 available at www.qwest.com/wholesale. ~~For UNE~~
9 ~~Combinations with appropriate retail analogues, the~~
10 ~~Provisioning interval will be no longer than the interval~~
11 ~~for the equivalent retail service. CLEC and Qwest can~~
12 ~~separately agree to Due Dates other than the interval.~~
13

14 9.23.4.4.3 Installation intervals for EELs ~~UNE Combinations~~ are
15 set forth in Exhibit C but will be no longer than the
16 respective Private Line Transport Service that Qwest
17 will maintain on the following web-site address:
18 <http://www.qwest.com/carrier/guides/sig/index.html>
19

20 9.23.6.2 Service intervals for each ~~UNE Combination~~ EEL are set
21 forth in Exhibit C. For UNE Combinations with
22 appropriate retail analogues, the Provisioning interval
23 will be no longer than the interval for the equivalent retail
24 service. CLEC and Qwest can separately agree to Due
25 Dates other than the interval.
26

27 Exhibit C:
28 ~~Loop Mux Combo (LMC)~~
29

30 **ISSUE 9-61(c)**

31 9.23.6.1 Intentionally Left Blank.

32 9.23.6.6 Intentionally Left Blank.
33

34 Qwest proposes to locate language on Loop Mux Combinations in Section 24
35 (Commingling) instead of Section 9 (UNEs). Qwest's language for Issue 9-61

1 excludes the Loop Mux Combination from UNE combinations; Qwest’s language
2 for Issue 9-61(a) states that multiplexing will be provided pursuant to special
3 access as opposed to TELRIC rates, and utilizes the term “LMC Loop” instead of
4 Loop Mux Combinations; Qwest’s language for Issue 9-61(b) states that intervals
5 for LMC Loops (or Loop Mux Combinations, as Eschelon calls them) will be
6 determined in the non-contractual SIG instead of the ICA, and uses the term EELs
7 instead of UNE combinations;³¹³ and Qwest’s proposal for Issue 9-61(c) is that
8 tariff rates should apply to multiplexing. In support of its position, Qwest states
9 that it is under no obligation to provide stand-alone multiplexing and that
10 multiplexing is not a feature or functionality of a loop.³¹⁴

11 Issue No. 9-61: Loop-Mux Combination (“LMC”) – Placement – Section 9 and
12 Section 24

13 **Q. PLEASE DESCRIBE THE DISAGREEMENT UNDER ISSUE 9-61.**

14 A. There are actually two disagreements under Issue 9-61: (1) whether Loop-Mux
15 Combinations language belongs in Section 9 (UNEs), as Eschelon proposes, or
16 solely in Section 24 (Commingling) as Qwest proposes; and (2) whether Section
17 9.23 should be limited only to discussing one UNE combination – the EEL – as

³¹³ Qwest uses EELs instead of UNE combinations because it does not acknowledge a Loop Mux Combination as a UNE combination.

³¹⁴ Qwest Response, p. 34.

1 Qwest proposes, or whether Section 9.32 should also discuss other UNE
2 combinations, as Eschelon proposes.³¹⁵

3 **Q. PLEASE EXPLAIN THE FIRST DISAGREEMENT – PLACEMENT.**

4 A. It is unquestionable that the UNE loop is a component of the Loop-Mux
5 Combination, and therefore, Eschelon’s language belongs in Section 9 (UNEs).
6 As explained above in Issue 9-55, Eschelon’s proposed contract language makes
7 clear that Eschelon is not attempting to broaden Section 9 to cover non-UNEs.

8 **Q. AND THE SECOND DISAGREEMENT?**

9 A. Qwest’s proposed language would result in Section 9.23 discussing only one UNE
10 combination – the EEL. However, a Loop-Mux Combination is also a UNE
11 Combination and should therefore be identified in Section 9.23.2 along with
12 EELs. The issue of whether a Loop-Mux Combination is a UNE Combination is
13 addressed under Issue 9-61(a).

14 Issue No. 9-61(a): Loop-Mux Combination (LMC) – LMC Loop versus LMC,
15 Sections 9.23.9 and subparts, 24.4 and subparts, and 9.23.2

16 **Q. IN YOUR IMMEDIATELY PRECEDING DISCUSSION, YOU**
17 **MENTIONED THAT ESCHELON AND QWEST DISAGREE ON**

³¹⁵ Eschelon’s proposed language for Section 9.23.2 is as follows: “9.23.2 UNE Combinations Description and General Terms UNE Combinations are available in, but not limited to, the following products: EELs (subject to the limitations set forth below) and Loop Mux Combinations. If CLEC desires access to a different UNE Combination, CLEC may request access through the Special Request Process set forth in this Agreement. . . .”

1 **WHETHER A LOOP MUX COMBINATION IS A UNE COMBINATION.**
2 **IS THAT DISAGREEMENT ADDRESSED UNDER ISSUE 9-61(A)?**

3 A. Yes. Eschelon contends that there are numerous indications that Qwest must
4 provide access to multiplexing at TELRIC rates as a feature, function or
5 capability of the UNE, while Qwest argues that there is no legal requirement for
6 Qwest to provide access to multiplexing.

7 **Q. PLEASE ELABORATE ON THE FACTORS THAT SUPPORT**
8 **ESCHELON'S POSITION REGARDING MULTIPLEXING.**

9 A. First, multiplexing is a “feature, function, or capability” associated with both
10 unbundled loops and transport and, pursuant to the FCC’s unbundling rules,
11 Eschelon is entitled to use that feature, function, or capability. 47 CFR §51.307
12 states as follows (emphasis added):

13 (a) An incumbent LEC shall provide, to a requesting
14 telecommunications carrier for the provision of a
15 telecommunications service, *nondiscriminatory access to network*
16 *elements on an unbundled basis* at any technically feasible point
17 on terms and conditions that are just, reasonable, and
18 nondiscriminatory in accordance with the terms and conditions of
19 any agreement, the requirements of sections 251 and 252 of the
20 Act, and the Commission's rules.

21 ***

22 (c) An incumbent LEC shall provide a requesting
23 telecommunications carrier access to an unbundled network
24 element, *along with all of the unbundled network element's*
25 *features, functions, and capabilities*, in a manner that allows the
26 requesting telecommunications carrier to provide any

1 telecommunications service that can be offered by means of that
2 network element.

3 Eschelon's language would call for multiplexing to be provided at UNE rates
4 when it is provided in connection with multiplexed EELs – a combination of loop
5 and transport in which the loop and transport components have different
6 bandwidths and multiplexing is necessary to connect the facilities – and as part of
7 a Loop-Mux Combination – when unbundled loops are connected to the
8 multiplexer and the multiplexer is connected to Eschelon's collocation, with no
9 transport provided. In each of these instances, nondiscriminatory access to
10 unbundled network elements requires access to multiplexing, and that
11 multiplexing is a feature, function and capability of the UNE loop and/or UNE
12 transport to which the UNE is connected.

13 **Q. HAS QWEST AGREED TO LANGUAGE IN ANY OTHER SECTIONS OF**
14 **THE ICA THAT SUPPORTS ESCHELON'S POINT ON**
15 **MULTIPLEXERS?**

16 A. Yes. Eschelon and Qwest have agreed to the definition of "routine network
17 modifications" as "those activities of the type that Qwest regularly undertakes for
18 its own End User Customers." This definition also lists activities that are
19 considered routine network modifications – or activities that Qwest routinely
20 provides for its own retail customers – and those activities include "deploying a
21 new multiplexer" and "reconfiguring an existing multiplexer." If Qwest regularly
22 deploys new multiplexers and reconfigures existing multiplexers for its own retail

1 customers, it should not be allowed to argue here that it need not provide access to
2 multiplexers to CLECs.

3 **Q. ARE THERE OTHER INDICATIONS FROM THE FCC THAT ACCESS**
4 **TO MULTIPLEXERS SHOULD BE PROVIDED AT TELRIC RATES?**

5 A. Yes. When discussing UNE loops at paragraph 214 of the *TRO*, the FCC states:

6 214. At its most basic level, a local loop that serves the mass
7 market consists of a transmission medium, which almost always
8 includes copper wires of various gauges. *The loop may include*
9 *additional components* (e.g., load coils, bridge taps, repeaters,
10 *multiplexing equipment*) that are usually intended to facilitate the
11 provision of narrowband voice service. (emphasis added)

12 The FCC further clarified this point at footnote 1921 of the *TRO*, in which it
13 states: “Verizon cannot refuse to provision a particular loop by claiming that
14 multiplexing equipment is absent from the facility. In that case, Verizon must
15 provide the multiplexing equipment, because the requesting carrier is entitled to a
16 fully functioning loop.” And at paragraph 571 of the *TRO*, the FCC makes clear
17 that multiplexing is a component of a UNE combination (see also, paragraph
18 575):

19 571. In the *Notice*, the Commission sought comment on issues
20 related to the EEL, which is a UNE combination consisting of an
21 unbundled loop and dedicated transport and may sometimes
22 include additional electronics (e.g., multiplexing equipment).

23 **Q. IS THERE MORE SUPPORT FOR ESCHELON’S POSITION?**

24 A. Yes. Qwest has offered unbundled multiplexing in three ways: (1) as part of a
25 multiplexed EEL, (2) as part of a Loop-Mux Combination, and (3) as a stand

1 alone UNE. Furthermore, the Commission has set TELRIC rates the LMC
2 product, and the UNE rates established for loops and transport include the cost of
3 multiplexing where appropriate.

4 **Q. IS ESCHELON REQUESTING THAT QWEST PROVIDE UNLIMITED**
5 **ACCESS TO UNBUNDLED MULTIPLEXING OR MULTIPLEXING AS A**
6 **STAND ALONE UNE?**

7 A. No, and I believe this point deserves special emphasis. Eschelon's position in this
8 arbitration only requires Qwest to provide multiplexing at UNE rates when the
9 loops and/or transport to which the multiplexer is connected are UNEs. This
10 would include providing multiplexing at UNE rates in connection with
11 multiplexed EELs and as part of a Loop-Mux Combination.

12 Issue No. 9-61(b): LMC Multiplexing – Intervals - Sections 9.23.9.4.3, 9.23.4.4.3,
13 9.23.6.2, Exhibit C, and 24.4.4.3

14 **Q. DOES ISSUE 9-61(B) CONSIST OF TWO DISAGREEMENTS THAT ARE**
15 **LARGELY EXTENSIONS OF THE DISAGREEMENTS DESCRIBED**
16 **ABOVE?**

17 A. Yes. As I explained under Issue 1-1, it is critical for the ICA to contain applicable
18 intervals and require ICA amendment and Commission approval when intervals
19 are modified. That is precisely what Eschelon's language for Section 9.23.9.4.3 is
20 designed to achieve:

21 9.23.9.4.3 Service intervals for LMC(s) are set forth in Exhibit
22 C. For UNE Combinations with appropriate retail

1 analogues, the Provisioning interval will be no
2 longer than the interval for the equivalent retail
3 service. CLEC and Qwest can separately agree to
4 Due Dates other than the interval.

5 Remaining true to its position under Issue 1-1, Qwest proposes language in
6 Section 24.4.4.3 that would allow Qwest to have unilateral control over changes
7 to intervals [“Standard service intervals for LMC Loops in the Service Interval
8 Guide (SIG) available at www.qwest.com/wholesale”] For the reasons explained
9 under Issue 1-1, intervals should be contained in the agreement and should be
10 modified by Commission-approved ICA amendment.

11 **Q. WHAT IS THE SECOND DISAGREEMENT UNDER ISSUE 9-61(B)?**

12 A. As described under Issue 9-61(a), Eschelon and Qwest disagree on whether Loop-
13 Mux should be identified as a UNE combination along with an EEL. For the
14 reasons explained above, it is Eschelon’s position that it should be. This
15 disagreement serves as the difference between Eschelon’s Sections 9.23.4.4.3 and
16 9.23.6, in which Eschelon proposes to use the term “UNE Combinations” and
17 Qwest proposes to use the term “EEL.” Eschelon’s proposal for Sections
18 9.23.4.4.3 and 9.23.6.2 address UNE combinations the same way the
19 Commission-approved AT&T ICA addresses UNE combinations, and Qwest
20 wants to limit that term to EELs for Eschelon.

1 Issue No. 9-61(c): LMC Multiplexing - Exhibit A Section 9.23.6.6 and subparts

2 **Q. ISSUE 9-61(C) ADDRESSES LMC MULTIPLEXING RATES. IS**
3 **RESOLUTION OF THIS ISSUE RELATED TO THE ISSUES ABOVE?**

4 A. Yes. As explained above (primarily under Issue 9-61(a)), a primary disagreement
5 between Eschelon and Qwest in Section 9.23.9 is whether the contract should
6 reference UNE combinations – both EELs and Loop-Mux Combinations – or
7 whether it should exclude Loop-Mux Combinations and reference only EELs. If
8 Eschelon prevails on this issue, then multiplexing rates should be contained in the
9 agreement in Exhibit A Section 9.23.6.6 – just as they are today. Eschelon
10 proposes charges for LMC multiplexing from Qwest’s SGAT.

11 **Q. PLEASE SUMMARIZE ISSUES 9-61 AND (A)-(C).**

12 A. Access to multiplexing should be provided at TELRIC rates when combined with
13 a UNE loop. Qwest has provided access to multiplexing in this manner in the past
14 and currently has Commission-approved TELRIC rates for multiplexing.
15 Accordingly, terms, conditions and rates for Loop Mux Combinations should be
16 included in the ICA. For all of the reasons described in Eschelon’s business need
17 and in these responses, the Commission should adopt Eschelon’s language for
18 Issues 9-61 and (a) – (c).

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

20 A. Yes.