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BEFORE THE PUBLIC UTILITY COMMISSION OF UTAH

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

REBUTTAL TESTIMONY

OF

BONNIE JOHNSON

ON BEHALF OF

ESCHELON TELECOM, INC.

July 27, 2007

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1 **I. INTRODUCTION AND EXHIBITS**

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

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

5 **Q. ARE YOU THE SAME BONNIE J. JOHNSON WHO FILED DIRECT**
6 **TESTIMONY IN THIS PROCEEDING ON JUNE 29, 2007?**

7 A. Yes.

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

9 A. As part of my testimony, I have included the following exhibit:

- 10 • Exhibit Eschelon 3R.1: CONTROLLED PRODUCTION: Qwest-prepared
11 April 6, 2007 notice (Effective immediately) regarding IMA XML Release
12 21.0.

13 **Q. DID YOU PREPARE THIS EXHIBIT OR HAVE IT PREPARED UNDER**
14 **YOUR DIRECTION?**

15 A. All of the documents in this exhibit were prepared by Qwest. I compiled the
16 exhibit, and they contain true and correct copies of Qwest's documents.

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

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

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

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

9 **II. SECTION 12 ISSUES: SUBJECT MATTERS 29, 31, 33, AND 43**

10 **A. SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**
11 **ACKNOWLEDGEMENT OF MISTAKES**

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

13 **Q. PLEASE RESPOND TO QWEST'S CLAIM THAT ESCHELON'S**
14 **PROPOSED LANGUAGE IS NOT APPROPRIATE OR NECESSARY FOR**
15 **INCLUSION IN AN INTERCONNECTION AGREEMENT ("ICA").¹**

16 A. Qwest's proposal in Utah to remain silent in the ICA on this issue is not
17 consistent with its actions in Minnesota, where Qwest agreed to include virtually
18 all of Eschelon's proposal for Section 12.1.4 and subparts within the ICA.
19 Eschelon's need to protect against harm to its business and its reputation is as

1 great in Utah as it is in Minnesota, as Mr. Starkey indicated in his direct
2 testimony.² Since Qwest attributes its conflicting positions to the fact that
3 Minnesota has issued an order regarding root cause analysis and
4 acknowledgement of mistakes and Utah has not,³ a Commission order requiring
5 inclusion of the language in the ICA is needed in Utah to obtain the same terms in
6 the ICA as in Minnesota.

7 Although Qwest points to language in its Product Catalog (“PCAT”) on this
8 point,⁴ the PCAT does not provide contractual certainty because Qwest may
9 easily change the PCAT over CLEC objection.⁵ Also, as I discuss below, Qwest
10 currently interprets its obligations more narrowly than they are described in
11 Qwest’s own posted documentation. This illustrates that Qwest’s obligations
12 should be set forth in the ICA so that they are less subject to Qwest’s discretion
13 and unilateral interpretation. Providing more certainty in the contract will help
14 avoid future disputes, as further described by Mr. Starkey in his direct testimony.⁶

¹ Albersheim Direct, p. 40 lines 7-8; *id.* Albersheim Direct, p. 41 lines 19-21.

² Starkey Direct, p. 69 lines 3-4.

³ Albersheim Direct, p. 41 lines 19-22.

⁴ Albersheim Direct, p. 40 lines 4-5.

⁵ Starkey Direct, pp. 39-40 & 52-63 (CRUNEC example); Denney Direct, pp. 163-166 (Expedites). I was involved in Eschelon’s escalation with Qwest in the CRUNEC situation, and I objected on Eschelon’s behalf in the Expedite situation.

⁶ Starkey Direct, pp. 10-11 & 20-107.

1 While Qwest's reference to its PCAT to support its position that contract language
2 is unnecessary⁷ suggests that the PCAT already addresses all of Eschelon's
3 business needs, Qwest specifically told Eschelon that Qwest's *policy* is that Qwest
4 will *not* provide a written acknowledgement to be provided to the customer, even
5 when the purpose of the acknowledgement is to correct Qwest mis-information
6 provided to an Eschelon customer.⁸ Although the Minnesota commission caused
7 Qwest to reverse that policy in Minnesota, Qwest chose not to make those
8 procedures available in any state where not specifically ordered to do so.⁹
9 Therefore, contract language is necessary and appropriate to effect a change in
10 this Qwest policy and properly require Qwest to provide an acknowledgement of
11 its mistake to correct Qwest mis-information provided to an Eschelon customer
12 while Qwest is performing services for Eschelon at Eschelon's expense.

13 **Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON'S PROPOSED**
14 **LANGUAGE "GOES WELL BEYOND THE SCOPE OF THE**

⁷ Albersheim Direct, p. 40 lines 4-5.

⁸ Johnson Direct, p. 47 lines 3-6. Eschelon captured these Qwest statements in an April, 17, 2003 email to Qwest on which I was copied, which stated: "Additionally, this discussion started out with Qwest indicated (as it has in other instances) that its policy is that it does not provide written statements/retractions of the type requested by Eschelon. Eventually, Qwest did provide such information. Qwest needs a policy that recognizes this type of situation and provides a quick method for obtaining such retractions when Qwest misinformation to a customer needs to be corrected. OUTSTANDING." In Qwest's email response (April 17, 2003), Qwest (Mr. Jason Topp) attributed this position to "confidentiality concerns." Eschelon's ICA language, however, requires an acknowledgement of a Qwest mistake but no disclosure of confidential information in the letter. As the companies were not able to resolve the issue, the Minnesota commission decided the issue and ordered Qwest to implement procedures to acknowledge mistakes. *See* Exhibit Eschelon 1.4 (MN 616 Orders), p. 4. An order is likewise needed in Utah to obtain such procedures.

1 **MINNESOTA COMMISSION’S DECISION.”¹⁰ DID THE MINNESOTA**
2 **COMMISSION AGREE WITH HER?**

3 A. No. Ms. Albersheim made the identical claim in the Minnesota Qwest-Eschelon
4 ICA arbitration¹¹ regarding the Minnesota 616 Order.¹² In the arbitration, the
5 Minnesota commission clearly rejected Qwest’s argument, saying:

6 The Commission’s concern for the anticompetitive consequences
7 of service quality lapses has *never* been as narrow as Qwest’s
8 language would suggest. The Commission finds it reasonable for
9 Qwest to acknowledge mistakes at any point in processing
10 wholesale orders, including mistakes arising during pre-ordering,
11 ordering, provisioning, maintenance and repair, and billing. In the
12 interest of clarity, the Commission will adopt the arbitrator’s
13 language as modified by Eschelon.¹³

14 The Minnesota commission is in a better position than Qwest to determine the
15 scope of its own orders. The Commission should reject Qwest’s request¹⁴ to rule

⁹ Qwest did not even inform other CLECs of the availability of the procedures in Minnesota through CMP (even though state-specific changes are made in CMP), as further discussed by Mr. Starkey. Starkey Direct, pp. 72-73.

¹⁰ Albersheim Direct, p. 44 line 5.

¹¹ Minnesota arbitration, Albersheim MN Direct (Aug. 25, 2006), p. 46 lines 5-6 (“Eschelon’s language is unnecessary and goes well beyond the scope of the Commission’s decision.”). The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”); for Colorado, 06B-497T (“Colorado arbitration”); for Minnesota, P-5340, 421/IC-06-768 (“Minnesota arbitration”); for Oregon, ARB 775 (“Oregon arbitration”); for Utah, 07-2263-03; (“Utah arbitration”); and for Washington, UT-063061 (“Washington arbitration”). Transcript (“Tr.”) pages from the arbitration hearings in Minnesota are included as Exhibit Eschelon 1.5 and in Arizona as Exhibit Eschelon 1.6 to the testimony of Mr. Starkey. Copies of the rulings of the Administrative Law Judges (ALJs) and the commission in Minnesota are included as Exhibit Eschelon 2.24 and Exhibit Eschelon 2.25 to the testimony of Mr. Denney.

¹² See discussion of the “Minnesota 616 Order” in Mr. Starkey’s direct testimony. Starkey Direct, pp. 67-76.

¹³ Exhibit Eschelon 2.24, p. 15; *see also* Exhibit Eschelon 2.24, p. 23 [MN PUC Arbitration Order, p. 15 (emphasis added); *see also id.* p. 23, ¶4 (Topic 27)].

¹⁴ Albersheim Direct, p. 44 line 7.

1 that Eschelon’s proposed language goes beyond the scope of the Minnesota 616
2 order and adopt Eschelon’s language because of the protections it offers for
3 competition and Utah consumers. If Qwest can blame Eschelon for errors that
4 Qwest makes while working as Eschelon’s wholesale vendor, as Qwest did in the
5 Minnesota 616 case,¹⁵ Eschelon may wrongly lose customers to Qwest to its
6 disadvantage, as Eschelon did in that example.¹⁶

7 **Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON’S PROPOSAL**
8 **REFLECTS AN “OVERREACTION TO A SINGLE ISOLATED**
9 **INCIDENT”¹⁷ AND THAT ESCHELON HAS NOT REQUESTED**
10 **ADDITIONAL ACKNOWLEDGEMENT OF MISTAKE LETTERS.¹⁸**
11 **PLEASE RESPOND.**

12 A. Eschelon provided reasons why such Qwest conduct may occur but remain
13 unknown to Eschelon in Mr. Starkey’s discussion of the rarity of “smoking gun”
14 type of evidence.¹⁹ My experience is consistent with Mr. Starkey’s testimony
15 that, although I sometimes hear of such examples through sales, service delivery,
16 or customers, rarely are contacts between Qwest and Eschelon’s customer in

¹⁵ Exhibit Eschelon 1.4, p. 11. The Minnesota Commission specifically found that Qwest Retail’s email to Eschelon’s Customer “was misleading in at least two ways.” *See id.*

¹⁶ Exhibit Eschelon 1.4 (MN 616 Orders), p. 11 (“Qwest's retail service representative dealt with the customer, who decided in the course of those dealings to reverse its decision to transfer its service to Eschelon.”).

¹⁷ Albersheim Direct, p.40 lines 3-4.

¹⁸ Albersheim Direct, p. 42 lines 1-4.

¹⁹ Starkey Direct, pp. 69-72.

1 writing (as they were in the Minnesota 616 situation) or, if they are written and
2 provided to customers, the customers may not want to be caught in the middle by
3 providing to Eschelon copies of Qwest communications.²⁰

4 Given that Qwest perceives these as rare events, it cannot claim additional
5 burden.²¹ The fact that Eschelon *has the ability to* request formal
6 acknowledgment of mistakes may also serve as an additional incentive for Qwest
7 not to create situations in which formal acknowledgment would be requested.

8 **Q. MS. ALBERSHEIM TESTIFIES THAT “QWEST’S PCAT CLEARLY**
9 **ALLOWS CLECs TO OBTAIN ROOT CAUSE ANALYSIS OF UNUSUAL**
10 **QWEST ERRORS”²² BY REFERENCING THE ACCOUNT**
11 **MANAGEMNT PCAT.²³ DOES MS. ALBERSHEIM’S REFERENCE TO**
12 **THE ACCOUNT MANAGEMNT PCAT FULLY DESCRIBE QWEST’S**
13 **OBLIGATIONS REGARDING ROOT CAUSE ANALYSIS?**

14 A. No. Ms. Albersheim references the Qwest Account Manager PCAT, which
15 describes repair situations and unusual events. With my direct testimony, I
16 provided as Exhibit Eschelon 3.51 a copy of the posted “Qwest Service Center
17 and Manager Roles in Relation to CMP” that has been in place since June of

²⁰ Starkey Direct, pp. 69-70.

²¹ See Minnesota arbitration, Albersheim MN Direct (Aug. 25, 2006), p. 44 lines 7-9 (“Eschelon's changes . . . impose additional unnecessary burdens on Qwest.”).

²² Albersheim Direct, p. 40 lines 4-5.

²³ Albersheim Direct, p. 40 footnote 25.

1 2002. Attached to my testimony as Exhibit Eschelon 3.52 is Qwest-prepared
2 documentation from CMP Redesign meetings showing that Qwest developed and
3 documented these roles in CMP Redesign in response to CLEC concerns. Exhibit
4 Eschelon 3.51 and Exhibit Eschelon 3.52 show that Qwest committed that it
5 would be part of Qwest Service Manager’s Role to provide root cause analysis not
6 only for repair but also in many other areas, including “Requests for Information,”
7 “System Problems,” “Service Order Problems,” “Billing Problems,” “Compliance
8 Issues,” “Network Repair Problems,” “Product Information,” “Chronic
9 Performance Problems,” and “Isolated Personnel Performance Issues.” Qwest
10 states in Exhibit Eschelon 3.51 that, in “*all*” of these instances (*i.e.*, whether
11 unusual or not), “*Qwest will conduct a root cause analysis* of the examples of the
12 problem, and *provide its analysis* to the reporting CLEC in a *timely* manner.”²⁴

13 Despite this documented process requiring Qwest to conduct root cause analysis
14 of CLEC examples, Qwest currently refuses to provide root cause analysis of
15 Eschelon’s examples of jeopardies problems (Issue 12-72), which Eschelon
16 continues to send to Qwest regularly.²⁵ Although Qwest has attempted to justify
17 its conduct by claiming that the examples relate to a disputed issue²⁶ so it is

²⁴ Exhibit Eschelon 3.51, p. 2 (last paragraph). This is Qwest documentation posted on its website which, as discussed previously, Qwest may change unilaterally and, as discussed below (with respect to Qwest’s refusal to provide root cause for jeopardy examples) Qwest is disregarding currently. These facts show that the commitment to perform root cause analysis needs to be in the interconnection agreement.

²⁵ See Exhibit Eschelon 3.78.

²⁶ Qwest now disputes that the phrase “the day before” is part of its jeopardies process. I discuss Qwest’s position on this issue below. *See also* Johnson Direct, pp. 75-76. After Qwest started to

1 allegedly “pointless” to analyze the examples,²⁷ Eschelon provides examples
2 relating to undisputed issues,²⁸ and Qwest refuses to root cause the undisputed
3 examples. Qwest’s service manager has previously recognized that, while
4 Eschelon continued to provide “misses on FOC 24-hours before due date” in the
5 data, Eschelon also provides other jeopardies examples, which Qwest reviewed.²⁹
6 In addition, before Qwest refused to root cause any of these types of examples,
7 Qwest’s service manager told Eschelon that Qwest reviews “all of the data”
8 (which included misses on FOC 24-hours before due date).³⁰ In the same
9 conversation, I asked if Eschelon should continue to provide this data, and

dispute this phrase, Eschelon (while reserving its rights) accommodated Qwest by no longer using these examples as examples of non-compliance to Qwest’s process (while continuing to provide the ones involving no FOC as non-compliance examples).

²⁷ Colorado arbitration, Albersheim Surrebuttal (April 10, 2007), p. 32 lines 10-20. *Id.*, p. 32 lines 13-15 (“Eschelon’s service management team at Qwest found it fruitless to continue to respond to Eschelon’s data *because Eschelon presents the data on the premise that FOCs must be sent at least a day before the new due date.*”) (emphasis added). Qwest added that Eschelon’s data “has *always* been presented based on an incorrect premise.” *Id.*, p. 32 lines 17-18 (emphasis added). First, that is not the case, because Eschelon’s examples have always also included undisputed examples of non-compliance (involving no FOC) (such as those included in Exhibit Eschelon 3.76). Second, if that were the case, then Qwest would have always refused to root cause the examples, instead of changing its conduct after the arbitrations commenced.

²⁸ Johnson Direct, p. 71 footnote 85. Eschelon continues to provide examples involving no FOC at all after the Qwest facility jeopardy clears, and Qwest refuses to root cause them, even though it has admitted its process it to provide an FOC. *See* Exhibit Eschelon 1.5, p. 6, Minnesota Tr., Vol. I, p. 37 lines 20-23 (Ms. Albersheim) (“Q So you agree with me that Qwest’s current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes.”).

²⁹ Qwest (Jean Novak) Oct. 3, 2005 email to Eschelon (Bonnie Johnson). (This email is captured in the issues log provided regularly to Qwest.) Qwest’s service manager said in this email that, after Qwest eliminated the “missed on FOC 24-hours before due date,” the “difference is 19.84% increase to Eschelon’s calculation of 65.44% met,” leaving Qwest with 14.72% non-compliance.

³⁰ Qwest-Eschelon Oct. 5, 2005 call. (Notes from this call are captured in the issues log provided regularly to Qwest.)

1 Qwest's service manager said yes.³¹ I believed then, as I do now, that this
2 indicated that Qwest also found the data useful in resolving issues and attempting
3 to avoid future mistakes. Qwest's refusal after arbitrations commenced to root
4 cause such examples illustrates that Qwest's own documentation (even when
5 provided through CMP Redesign) is insufficient, and ICA language is needed.
6 Ms. Albersheim testifies that "Qwest's service managers are willing to work with
7 CLECs where customers have been impacted."³² Customers are impacted in the
8 jeopardies examples, however, when their due date is missed. Yet, Qwest is now
9 unwilling to root cause these examples.

10 Although the "Qwest Service Center and Manager Roles in Relation to CMP"
11 document is a Qwest document and I have attached it to my testimony in other
12 Qwest arbitration cases,³³ in many previous rounds of testimony in the Qwest-
13 Eschelon arbitration proceedings Ms. Albersheim has never even acknowledged
14 its existence or recognized the work in CMP Redesign to document these
15 responsibilities to ensure that Qwest service managers would continue to perform
16 these responsibilities for CLECs. To the contrary, before Eschelon pointed out
17 these facts, Ms. Albersheim has attempted to portray Qwest's obligation as
18 limited to repair, as she does in her testimony here. Previously, she also tried to

³¹ Qwest-Eschelon Oct. 5, 2005 call. (Notes from this call are captured in the issues log provided regularly to Qwest.)

³² Albersheim Direct, p 40 lines 6-7.

³³ See, e.g., BJJ-34, Arizona Rebuttal (Feb. 9, 2007), BJJ-43, Washington Surrebuttal (April 3, 2007), Eschelon/92, Oregon Direct (May11, 2007).

1 down play the obligation to root cause examples in other ways, such as this
2 testimony: “Anecdotal evidence from Qwest's account managers indicates that the
3 *only CLEC* that has expressed a desire for root cause analysis is Eschelon.”³⁴
4 Later, after Eschelon quoted the Qwest PCAT regarding repair,³⁵ Ms. Albersheim
5 testified that Qwest “already provides root cause analysis *to all CLECs* for repair
6 issues.”³⁶ Silence in the contract on this issue may lead to similarly conflicting
7 results. In my direct testimony, I address Eschelon’s concerns regarding Qwest’s
8 ability to make unilateral changes to its Service Management Roles and
9 Responsibilities it posts on its web site³⁷ and how by proposing to exclude the
10 term from the contract, Qwest is attempting to reserve the right to stop providing
11 root cause analysis during the contract term without amending the agreement.³⁸
12 Eschelon needs more certainty that root cause analysis will be performed to help

³⁴ Minnesota arbitration, Albersheim MN Direct (Aug. 25, 2006), p. 40 lines 21-22 (emphasis added). Despite Qwest’s previous testimony that no other CLEC has expressed a desire for root cause analysis, a simple search of Qwest’s web site for “root case” produced this statement by AT&T: “While the collaborative work from the Documentation Forum has accomplished areas of improvement relative to the content of the event notification, AT&T believes that Qwest does not fulfill the requirement to provide to CLECs detailed root cause analysis of unplanned degradations/outages nor detailed final corrective actions taken as part of the root cause analysis.” http://www.qwest.com/wholesale/downloads/2004/040323/SCR111203-01-E22_EscalationResponse-Final.doc. In addition, in the Arizona 271 case Qwest indicated that, even before requested by Eschelon, it provided a mechanism for CLECs to obtain “root cause analysis without a confidentiality footer” to “address CLECs’ need for information about an outage.” *AZ 271 Staff Report*, ¶ 219. Albersheim did not explain why this need of CLECs (plural) is not an expression of a desire by CLECs for root cause analysis.

³⁵ Minnesota arbitration, Eschelon (Webber) Direct (Aug. 25, 2006), p. 58 lines 6-22 (quoting the same language from the Qwest PCAT as quoted by Ms. Albersheim in footnote 34 of her direct testimony in this matter).

³⁶ Minnesota arbitration, Albersheim MN Reply (Sept. 22, 2006), p. 42 lines 10-15 (emphasis added)

³⁷ Johnson Direct, p. 54 footnote 56.

³⁸ Johnson Direct, p. 54 line 19 - 55 line 2.

1 avoid customer impacting, Qwest-caused mistakes in the future. Qwest has
2 admitted that root cause analysis may help “prevent a reoccurrence of the
3 event.”³⁹

4 **Q. MS. ALBERSHEIM CLAIMS THAT ANY LANGUAGE REGARDING**
5 **THE ACKNOWLEDGMENT OF MISTAKES IS UNNECESSARY**
6 **BECAUSE NO OTHER CLECS HAVE EXPRESSED A SIMILAR NEED**
7 **FOR SUCH CONTRACT LANGUAGE, AND THAT QWEST HAS**
8 **RECEIVED NO INDICATION THAT MISTAKES ARE A SIGNIFICANT**
9 **OR ONGOING PROBLEM.⁴⁰ PLEASE RESPOND.**

10 A. First, unlike “other” CLECs, Eschelon has expended the resources to bring this
11 issue to the Commission, and therefore Eschelon’s individual business need is
12 before this Commission in this arbitration. Qwest’s witness testified that
13 individual carrier’s needs are appropriately addressed in ICAs.⁴¹ Second, if
14 Qwest refuses to root cause examples provided by CLECs, as it has done with
15 Eschelon’s jeopardies examples,⁴² Qwest may claim that there is no ongoing

³⁹ Colorado arbitration, Hearing Exhibit 4 (Albersheim Reb.) at RA-23, p. 3 (sixth bullet point); *See, e.g.*, Exhibit Eschelon 3.44, pp. 7-8 (Example 3) & 30-36 (Example 8) (both examples of root cause analyses that resulted in additional training for the Qwest personnel to prevent a reoccurrence of the event).

⁴⁰ Albersheim Direct, p.41 lines 23-25.

⁴¹ Stewart Direct, p. 43 lines 4-9 (“The individual ICA negotiation process was clearly contemplated by the Telecommunications Act. Specifically, the Act requires that ILECs negotiate individually with CLECs and reach agreements that are tailored to each carrier’s needs. While this approach, mandated by the Act results in terms and conditions that may be different from one CLEC to another, those differences are not an illegal or prohibited form of discrimination.”).

⁴² *See, e.g.*, Exhibit Eschelon 3.78.

1 problem when the problem exists but Qwest will not recognize it. Third, Ms.
2 Albersheim's statements are not supported by any evidence, whereas Qwest's
3 own documentation (quoted above) on its web site is contrary to her assertions.
4 The fact that Qwest's own documentation includes a description of procedures by
5 which CLECs can request root cause analyses of examples⁴³ indicates that
6 mistakes may be an ongoing problem, and Qwest is fully aware that CLECs may
7 have a business need for requesting such analyses. Finally, to the extent other
8 CLECs have not requested acknowledgments of mistakes (as opposed to root
9 cause analyses) perhaps this is because, as discussed by Mr. Starkey,⁴⁴ Qwest
10 chose not to implement the Minnesota Commission-ordered procedures through
11 CMP (for Minnesota⁴⁵ or any state) to inform other CLECs of the availability of
12 such acknowledgments and how and when to obtain them. Qwest should not be
13 allowed to defeat Eschelon's proposal on the grounds that other CLECs have
14 allegedly expressed no interest in receiving acknowledgment of mistakes, when
15 Qwest chose not to inform CLECs through CMP of the availability of such
16 acknowledgments.

17 **Q. IS MS. ALBERSHEIM CORRECT WHEN SHE ARGUES THAT**
18 **ESCHELON'S PROPOSAL TO REQUIRE ROOT CAUSE ANALYSIS IS**

⁴³ Qwest Exhibit 1.2; Exhibit Eschelon 3.51.

⁴⁴ Starkey Direct, pp. 72-73.

⁴⁵ Terms may be implemented in CMP on a state-specific basis. Expedites, for which Qwest offers unique terms in Washington but not its other 13 states (see Eschelon's discussion of Issue 12-67) is an example.

1 **UNNECESSARY BECAUSE OF THE EXISTENCE OF PERFORMANCE**
2 **INDICATORS (“PIDS”)?⁴⁶**

3 A. No. As Mr. Starkey discusses in his direct testimony,⁴⁷ PIDs do not capture all
4 types of Qwest’s inadequate service. For example, a real life incident described
5 in Exhibit Eschelon 3.44 to my direct testimony, in which Qwest’s technician
6 insulted Eschelon’s End User Customer with profanity, would not be captured in
7 PIDs. Similarly, PIDs do not measure the harm to Eschelon’s reputation done by
8 Qwest’s mistakes in situations in which the End User is erroneously led by Qwest
9 to believe that Eschelon was at fault.

10 Even if Qwest must pay under the PAP for a specific instance of inadequate
11 service via PIDs, Qwest may still have incentives to commit a mistake because
12 gains from winning back a large End User Customer may exceed PID penalties.
13 In the Minnesota 616 case, for example, Qwest gained a more than \$460,000 per
14 year customer as a result of a Qwest error that Qwest’s representatives, when
15 dealing with Eschelon’s customer, blamed on Eschelon.⁴⁸ That figure is multiples
16 greater than the annual amount Qwest pays Eschelon in PAP payments in Utah
17 for all performance issues that occur throughout the year.

18

⁴⁶ Albersheim Direct, p. 42 lines 11-13.

⁴⁷ Starkey Direct, pp. 74-75.

⁴⁸ Exhibit Eschelon 1.4, p. 7. See Starkey Direct, pp. 67-76 (discussing the Minnesota 616 case).

1 **Q. MS. ALBERSHEIM SUGGESTS THAT, IF THE COMMISSION ADOPTS**
2 **ESCHELON'S PROPOSED LANGUAGE REGARDING**
3 **ACKNOWLEDGMENT OF MISTAKES, THIS LANGUAGE SHOULD BE**
4 **RECIPROCAL.⁴⁹ PLEASE RESPOND.**

5 A. Qwest did not request reciprocal language in negotiations for Utah or any other
6 state. The main problem with Ms. Albersheim's suggestion is that the nature of
7 the relationship is not reciprocal. There is no comparable situation in which
8 Eschelon would make a mistake while acting on Qwest's behalf and at its expense
9 so that an impression is created that Qwest is at fault if a mistake is made. As I
10 explained in direct testimony,⁵⁰ Eschelon pays Qwest to perform activities on
11 Eschelon's behalf, such as installation or repair of loops, but Eschelon does not
12 perform installation and repair activities on behalf of Qwest. The specific
13 language of Eschelon's proposal is drafted to reflect Qwest's unique position and
14 procedures in the wholesale market; many of its specific provisions and
15 terminology would not apply reciprocally. Qwest addresses reciprocity in its
16 direct testimony, which does not include discussion of each provision of the
17 proposed language,⁵¹ so it is unclear to which portions of the language Qwest is
18 referring and how Qwest would modify the language. As of today, after several
19 years of negotiations and many rounds of testimony in several states, Qwest has

⁴⁹ Albersheim Direct, p. 44 lines 13-14.

⁵⁰ Johnson Direct, p. 43 lines 9-10.

⁵¹ Albersheim Direct, p.44 lines 15-18.

1 not provided a language proposal that captures Ms. Albersheim's suggestion. If
2 Qwest provides proposed language to Eschelon, Eschelon will consider the
3 proposal. Eschelon made this same offer in its rebuttal testimony in Washington
4 on December 4, 2006, and in direct testimony in Oregon on May 11, 2007 but
5 Qwest has not provided any proposal to Eschelon for its consideration.

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

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

8 **Q. WHERE IS SUBJECT MATTER 31 DISCUSSED IN ESCHELON'S**
9 **REBUTTAL TESTIMONY?**

10 A. Mr. Denney addresses Issue 12-67 and subparts in his testimony. (Expedited
11 orders are also addressed in Exhibit Eschelon 3.53 – Exhibit Eschelon 3.70 to my
12 direct testimony.)

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

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

15 **Q. PLEASE COMMENT ON MS. ALBERSHEIM'S CLAIMS THAT**
16 **ESCHELON'S PROPOSAL DOES NOT REFLECT QWEST'S CURRENT**
17 **PRACTICE.⁵²**

⁵² Albersheim Direct, p. 56 lines 34-37.

1 A. When asked if Eschelon’s proposed language reflects Qwest’s current practice,
2 Ms. Albersheim responds “No.”⁵³ In the next two sentences, however, she adds
3 that *one aspect* of Eschelon’s proposal is not Qwest’s current practice: providing
4 the jeopardy notice “at least a day before.”⁵⁴ Only with the latter clarification is
5 Ms. Albersheim’s testimony consistent with her previous testimony that, except
6 for that phrase, Eschelon’s proposed jeopardies language *is* consistent with
7 Qwest’s current practice.⁵⁵

8 Ms. Albersheim argues in favor of a “compelling need” standard for changes to
9 process.⁵⁶ Mr. Starkey discusses the reasons why Eschelon is opposed to Qwest’s
10 attempt to shift the burden to Eschelon and apply this new standard in his rebuttal
11 testimony. Ms. Albersheim states that Eschelon’s ICA language proposal is
12 “incorporating the current PCAT process for Jeopardy Notices into its contract.”⁵⁷
13 Because Ms. Albersheim has admitted that the bulk of Eschelon’s jeopardies
14 language is Qwest’s current process, her own proposed standard, if applied, would
15 require Qwest to establish a compelling need to change Eschelon’s language.

⁵³ Albersheim Direct, p. 56 lines 34-37.

⁵⁴ Albersheim Direct, p. 56 line 36 - p. 57 line 2.

⁵⁵ Exhibit Eschelon 1.5, p. 6, Minnesota Tr., Vol. I, p. 37, lines 16-23 (Ms. Albersheim) (“Q Other than that phrase, at least a day before, is Eschelon's proposal consistent with Qwest's practice? A Current practice, yes, except for that sentence. Q So you agree with me that Qwest's current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes.”). *See also* Albersheim Direct, p. 57, lines 11-12 (referring to Eschelon’s ICA proposal as “incorporating the current PCAT process for Jeopardy Notices into its contract”).

⁵⁶ Albersheim Direct, p. 57 lines 30-4.

⁵⁷ Albersheim Direct, p. 57 lines 11-12.

1 Eschelon is the company, however, that has established a business need for its
2 jeopardies proposal.

3 With respect to the single phrase Qwest now disputes (“at least the day before”), I
4 quoted in my direct testimony the Qwest-prepared CMP documents that supports
5 this phrase and shows it is part of Qwest’s process,⁵⁸ despite Qwest’s denials in
6 these arbitrations. That documentation provides:

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

13 Response #1 ***This example is non-compliance to a documented***
14 ***process. Yes an FOC should have been sent prior to the Due***
15 ***Date.***⁵⁹

16 “Bonnie confirmed that the ***CLEC should always receive the FOC***
17 ***before the due date. Phyllis agreed,*** and confirmed that Qwest
18 cannot expect the CLEC to be ready for the service if we haven’t
19 notified you.”⁶⁰

20 I participated in the CMP communications that Qwest documented in those
21 materials. When Qwest’s CMP representative committed that in these situations
22 the CLEC should “***always*** receive the FOC before the due date,”⁶¹ she made that

⁵⁸ Johnson Direct, p. 75 lines 15-18, quoting from Exhibit Eschelon 3.74, p. 3 & Exhibit Eschelon 3.72, p.5.

⁵⁹ Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added).

⁶⁰ Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest (emphasis added).

⁶¹ Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP discussions.

1 commitment to me, as well as the other CLECs on the call, in response to
2 questions I asked to confirm the very process described in Eschelon's proposed
3 language for Issue 12-72, which I helped to develop based on this experience.

4 **Q. IN YOUR PREVIOUS ANSWER, YOU REFER TO QWEST-PREPARED**
5 **DOCUMENTS SHOWING THAT QWEST'S PROCESS INCLUDES**
6 **PROVIDING THE FOC THE DAY BEFORE THE NEW DUE DATE. HAS**
7 **QWEST ATTEMPTED TO RE-DEFINE THOSE CMP STATEMENTS IN**
8 **ARBITRATION?**

9 A. Yes, although only very recently,⁶² and only with respect to the example (i.e., the
10 first of the above two quotations). Qwest's discussion in the March CMP meeting
11 (i.e., the second of the above two quotations) was not limited to that example. In
12 the March CMP meeting, Qwest and CLECs (including myself) addressed the
13 scenario later described in Eschelon's proposed language, and Qwest's CMP
14 representative committed that in these situations the CLEC should "*always*
15 receive the FOC before the due date."⁶³ Although Ms. Albersheim (who was not
16 present) has testified "Qwest never made such a commitment,"⁶⁴ she has not

⁶² Eschelon has consistently relied upon the same Qwest statements in its arbitration testimony, starting with its direct testimony in Minnesota on August 25, 2006. *See* Minnesota arbitration, Exhibit BJJ-5, p. 4 (containing the example from the Feb. 26, 2004 meeting materials and the March 4, 2004 CMP minutes, stating "the CLEC should always receive the FOC before the due date").

⁶³ Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest.

⁶⁴ Minnesota arbitration, Albersheim MN Reply, p. 16 lines 2-3. *See also* Arizona arbitration, Albersheim Rebuttal, p. 21 lines 9-15; *id.* p. 26 line 20.

1 explained how it was documented by Qwest in CMP minutes and why “always”
2 does not mean “always.”

3 With respect to the example, for the first time, on May 8, 2007, during the hearing
4 in the Qwest-Eschelon Washington ICA arbitration, Ms. Albersheim testified as
5 follows:

6 Q. And Qwest's response was, this example is noncompliance to a
7 documented process; do you see that?

8 A. Yes, and what Phyllis was speaking of there was a documented
9 internal process. In this example as it turns out the jeopardy cleared
10 two days earlier. It is the internal process of Qwest to send the
11 FOC as soon as the jeopardy clears. That was not done in this case,
12 so it was a violation of our internal documented process.

13 Q. And it goes on to say, yes, an FOC should have been sent prior
14 to the due date; do you see that?

15 A. Yes, because the jeopardy cleared prior to the due date.⁶⁵

16 Ms. Albersheim attempts to make a distinction, but it is a distinction without a
17 difference. Both companies agree that Qwest did not comply with the jeopardies
18 process in this example.⁶⁶ Eschelon has described the non-compliance as not
19 sending the FOC the day before the new due date, consistent with Qwest’s
20 separate clear statement in CMP at the time (irrespective of this particular
21 example) that the CLEC should “*always* receive the FOC before the due date.”⁶⁷

⁶⁵ Washington arbitration, Transcript (May 8, 2007), p. 162 lines 6-18.

⁶⁶ Eschelon will assume, for the purposes of discussion only, that Ms. Albersheim is correct that in this particular example the jeopardy cleared two days earlier but Qwest neglected to send the FOC (rather than, as happens in other situations, Qwest clears the jeopardy later), although Qwest has not taken that position previously in arbitrations and I do not recall Qwest describing the facts in that manner in CMP at the time.

⁶⁷ Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest.

1 Qwest now characterizes the non-compliance as not sending the FOC as soon as
2 the jeopardy cleared, the end result of which is that Qwest did not send the FOC
3 the day before the new due date. Qwest admits the non-compliance is on Qwest's
4 side. It is out of Eschelon's control (i.e., not caused by Eschelon).

5 In the past, Qwest has sometimes provided the reason the FOC was not provided
6 the day before the new due date, but Qwest acknowledged that providing an FOC
7 before the new due date was part of its process. As I explained in my direct
8 testimony, after the Change Request closed subject to compliance issues, Qwest
9 continued to recognize that Qwest's process was to send an FOC before the due
10 date (i.e., a "timely" FOC) and treated Qwest failure to do so in particular cases as
11 non-compliance with its process.⁶⁸ For example, Qwest told Eschelon at that time
12 that, in five examples for which Qwest said "a FOC was not sent *timely prior to*
13 *the due date*," Qwest provided coaching to the non-compliant Qwest employee(s)
14 and indicated Qwest would continue to monitor compliance with the process.⁶⁹
15 Qwest's use of "timely" before "prior to" the due date shows that Qwest also
16 understood that a "timely" FOC is one delivered "prior to" the due date.⁷⁰ For
17 these five examples, unlike Ms. Albersheim's explanation of the above example

⁶⁸ Johnson Direct, p. 81 line 15 -82 line 2.

⁶⁹ Exhibit Eschelon 3.71, pp. 7-8 (Qwest service manager email dated Aug. 25, 2004) (emphasis added); *id.* p. 7 ("Five of the LSRs in the spreadsheet are where a ***FOC was not sent timely prior to the due date*** . . . Qwest will continue to monitor this") (emphasis added); *id.* p. 8 ("5 were due to the issue described above with resolving the facility really late in the process; 5 of those will be addressed through coaching").

⁷⁰ *See id.* p. 7.

1 (when Qwest now says the jeopardy was cleared in a timely manner two days
2 earlier), Qwest explained that the jeopardy was cleared in an untimely manner in
3 the five examples.⁷¹ The jeopardy was cleared too late for Qwest to send a timely
4 FOC, which Qwest admitted should have been sent “prior to the due date.”⁷²
5 Both the untimely clearing of the jeopardy and the untimely FOC were on
6 Qwest’s side (i.e., not caused by Eschelon).

7 These examples show that the reason Qwest fails to send an FOC prior to the due
8 date may vary, including situations in which the clearing of the jeopardy is timely
9 but Qwest sends no FOC or sends it late, and the clearing of the jeopardy is
10 untimely so the FOC is also untimely. **Regardless of the reason Qwest did not**
11 **comply with its commitment to always send the FOC before the due date, two**
12 **facts remain constant: (1) the non-compliance is on Qwest’s side; and (2) as**
13 **a result of Qwest’s non-compliance, Eschelon does not receive proper notice**
14 **to allow it to prepare to accept service delivery.** Qwest’s conduct places
15 Eschelon in the same bind whether Qwest did not comply with its commitment to
16 always send the FOC before the due date because it failed to clear the jeopardy in
17 a timely manner or it cleared the jeopardy in a timely manner but failed to send a
18 timely FOC. Qwest committed in CMP to always send the FOC the day before

⁷¹ Qwest’s service manager said that the Qwest non-compliance (which she referred to as a “breakdown”) in these five examples was not in the delayed order process itself (*e.g.*, a jeopardy was cleared but a timely FOC prior to the due date was not sent) but the failure to send a timely FOC was caused by Qwest “resolving the facility issue late in the process and still attempting to meet the customers due date.” *See id.*

⁷² *See id.* p. 7.

1 the new due date.⁷³ As reflected in Eschelon’s proposal for Issue 12-72, when
2 Qwest fails to do so for any reason on its side, Qwest may attempt service
3 delivery, but it is unreasonable to designate a failed delivery due to Qwest’s non-
4 compliance on its side as an Eschelon-caused (CNR) jeopardy.

5 **Q. IN HER DIRECT TESTIMONY, MS ALBERSHEIM DESCRIBES THE**
6 **PHRASE “THE DAY BEFORE” IN ESCHELON’S PROPOSAL AS A**
7 **“REQUIREMENT.”⁷⁴ IS ANY SUGGESTION BY MS. ALBERSHEIM**
8 **THAT QWEST CANNOT PROCEED WITH DELIVERY IF IT FAILS TO**
9 **MEET SUCH A “REQUIREMENT” ACCURATE?**

10 A. No. This is part of Qwest’s claim that Eschelon’s proposal “force[s] extra time”
11 in to the process and causes delay.⁷⁵ In her direct testimony, Ms. Albersheim
12 adds: “That . . . is meaningless in situations where a facility problem is cleared on
13 the same day an order is due.”⁷⁶ Eschelon is *not* proposing that, in any
14 circumstance (with or without an FOC; on the original due date or on another
15 date⁷⁷), Qwest cannot attempt to deliver the circuit or that Qwest must wait to

⁷³ Exhibit Eschelon 3.72, p. 5, March 4, 2004 CMP ad hoc call minutes prepared by Qwest.

⁷⁴ Albersheim Direct, p. 56 lines 36-37.

⁷⁵ Washington arbitration (Albersheim Responsive) (Dec. 4, 2006), p. 58 line 21 – p. 59, line 1 (“If a jeopardy situation can be resolved on the original due date, all parties should try to ensure that it is. This is in the best interests of the end-user customer. It makes no business sense to force extra time into the process that could guarantee the original due date is *not* met. But that is exactly what Eschelon’s 24-hour advance notice requirement would do.”). See Johnson Direct, p. 80.

⁷⁶ Albersheim Direct, p. 57 lines 1-2.

⁷⁷ The “original” due date means the due date requested by CLEC on its order (*i.e.*, the date in jeopardy). Qwest sometimes refers to the “due date” without distinguishing whether it means the original date, the new due date, or the date of attempted delivery without an FOC identifying the

1 deliver the FOC before attempting delivery. This is self-evident from the
2 language of Eschelon’s proposal (see below). Eschelon wants Qwest to use best
3 efforts to deliver the circuit on the due date, just as Eschelon uses best efforts to
4 accept the circuit on the due date,⁷⁸ and Eschelon’s language therefore *requires*
5 best efforts. Given Qwest’s claims, the language of Eschelon’s proposed
6 language for Issue 12-72 – showing Eschelon has committed to use best efforts –
7 bears repeating:

8 **Issue 12-72 (with emphasis added):**

9 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these
10 types are: (1) CLEC or CLEC End User Customer is not ready or
11 service order is not accepted by the CLEC (when Qwest has tested
12 the service to meet all testing requirements.); and (2) End User
13 Customer access was not provided. For these two types of
14 jeopardies, Qwest will not characterize a jeopardy as CNR or send
15 a CNR jeopardy to CLEC if a Qwest jeopardy exists, *Qwest*
16 *attempts to deliver the service*, and Qwest has not sent an FOC
17 notice to CLEC after the Qwest jeopardy occurs but at least the day
18 before Qwest attempts to deliver the service. *CLEC will*
19 *nonetheless use its best efforts to accept the service*. If needed,
20 the Parties will attempt to set a new appointment time on the same
21 day and, if unable to do so, Qwest will issue a Qwest Jeopardy
22 notice and a FOC with a new Due Date.

23 Eschelon’s proposed language clearly states that, even when Qwest falls down
24 and does not provide an FOC or provides an untimely FOC, Eschelon “will

new due date. There is no properly established due date until Qwest sends an FOC with a new due date after the jeopardy is cleared. (*See* ICA Section 9.2.4.4.1) In other words, Qwest is making delivery unexpectedly without properly establishing the due date. (Eschelon may refer to the date of attempted delivery as the new due date for ease of reference, but I wanted to clarify that it is not properly a new due date until an FOC is sent with that date.) In any event, whether the unexpected delivery occurs on the original due date or another date, under Eschelon’s proposed language, Eschelon will use best efforts to accept service delivery.

1 nonetheless use its best efforts to accept the service.”⁷⁹ The proposal is fully
2 consistent with Qwest’s stated position that “if a jeopardy situation can be
3 resolved on the original due date, all parties should try to ensure that it is.”⁸⁰ In
4 fact, Eschelon’s language shows a commitment to do so. In other words, if “a
5 facility problem is cleared on the same day the order is due,”⁸¹ Eschelon’s
6 language provides that the companies will try to ensure service delivery.
7 Eschelon’s language also ensures that when, despite best efforts the circuit cannot
8 be delivered, Qwest does not benefit by blaming Eschelon for its failure to
9 provide proper notice through an erroneous classification of the jeopardy.⁸² *More*
10 *importantly*, Eschelon’s language ensures that the end user customer will not
11 experience avoidable delay due to Qwest’s failure to provide proper notice,
12 because the language requires the companies to “attempt to set a new appointment
13 time *on the same day*.” As discussed,⁸³ if Qwest erroneously classifies the

⁷⁸ See, e.g., Exhibit Eschelon 3.75 (Examples: No FOC After Qwest Facility Jeopardy yet Eschelon Accepts Circuit).

⁷⁹ Eschelon Proposed ICA Section 12.2.7.2.4.4.1.

⁸⁰ Washington arbitration, Albersheim Responsive, p. 58 lines 21-22.

⁸¹ Albersheim Direct, p.57 lines 1-2.

⁸² See Qwest Request for Reconsideration, Minnesota arbitration (April 9, 2007), p. 5 (regarding Qwest’s Performance Assurance Plan (PAP): if “the Qwest technician classifies the order as customer not ready, it is excluded from the calculation entirely”).

⁸³ Johnson Direct, p.63.

1 jeopardy as Eschelon-caused (CNR), the requested due date is necessarily *three*
2 *days* out,⁸⁴ instead of the same day.

3 To demonstrate Eschelon's commitment on this point, Eschelon has provided
4 Exhibit Eschelon 3.75 comprising a list of more than one hundred examples
5 when, despite the lack of proper notice (i.e., no FOC after a Qwest facility
6 jeopardy), Eschelon uses best efforts to accept the circuit and is successful in
7 doing so when Qwest unexpectedly attempts to deliver service. These are
8 examples of the situations covered by Eschelon's proposed language, in which:

- 9 • Qwest sends a facility jeopardy indicating Eschelon should not prepare
10 unless Qwest advises Eschelon that the jeopardy condition has been
11 resolved.⁸⁵
- 12 • Qwest fails to send any FOC with a due date after the facility jeopardy
13 (which would have advised Eschelon that the jeopardy condition had been
14 resolved and when to expect delivery, if it had been sent).⁸⁶
- 15 • Qwest unexpectedly attempts to deliver service anyway.

16 Eschelon's devotion to ensuring the best interests of the End User Customer is
17 evident from these examples: A comparison of the data in the column labeled

⁸⁴ Exhibit Eschelon 1.5, Minnesota arbitration Tr. Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim). *See also* Qwest Request for Reconsideration, Minnesota Arbitration (Apr. 9, 2007), p. 3 (“Eschelon accurately indicated to the Commission that, when Qwest classifies an order as customer not ready, Eschelon is required to supplement its order to reflect a new due date that at least three days out.”).

⁸⁵ Johnson Direct, p. 91 line 14 -92 line 2 (quoting Qwest's Provisioning and Installation Overview PCAT).

⁸⁶ *See* ICA Section 9.2.4.4.1: “. . . If Qwest must make changes to the commitment date, Qwest will promptly issue a Qwest Jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also *submit a new Firm Order Confirmation* that will clearly identify the new Due Date.” (emphasis added). This language is not only closed in the proposed ICA, but also it appears in the SGAT and Qwest's own negotiations template.

1 'Eschelon Requested Due Date' to the data in the column 'Completion Date,'
2 shows that in the vast majority of these examples, the service was delivered on
3 Eschelon's original requested due date. In other words, these examples illustrate
4 the point made under Eschelon's language: That Eschelon would either accept
5 delivery using best efforts or have an opportunity to schedule a new appointment
6 on the *same day*. Under Qwest's approach (which is apparent from the "Qwest
7 Review" column in Exhibit Eschelon 3.76⁸⁷), if despite best efforts the companies
8 are not able to complete delivery, Qwest will assign a CNR jeopardy, and the loop
9 order will be delayed *three days*.⁸⁸

10 Eschelon has committed in its proposed contract language to continuing to use
11 best efforts in this manner. When, through no fault of its own, it cannot accept
12 the circuit due to Qwest's failure to provide the required advance notice, however,
13 Qwest should not be allowed to force an unnecessary request for a three-day
14 delay.

15 **Q. PLEASE RESPOND TO MS. ALBERSHEIM'S CLAIM THAT**
16 **ESCHELON'S PROPOSED LANGUAGE SHOULD BE HANDLED IN**
17 **THE CMP BECAUSE IT INVOLVES "PROCESS DETAIL."⁸⁹**

⁸⁷ Johnson Direct, pp. 37-41.

⁸⁸ Exhibit Eschelon 1.5, Minnesota arbitration Tr. Vol. 1, p. 36, line 20 – p. 37, line 2 (Ms. Albersheim).

⁸⁹ Albersheim Direct, p. 57 lines 5 & 10-11.

1 A. This issue has already been through CMP. In fact, jeopardies have a long history
2 in CMP. That history and later events (which are summarized on pages 81-83 of
3 my direct testimony), show that sending this issue back to CMP will only delay
4 resolution of the issue. Qwest is unilaterally disregarding the results of
5 Eschelon's extensive efforts in CMP,⁹⁰ the agreed upon CMP results,⁹¹ and
6 Qwest's own CMP procedures (under which, if Qwest had wanted to properly
7 change those results, it should have submitted a change request at that time
8 instead of unilaterally disregarding the process).⁹² Sending it back to CMP now
9 would allow Qwest to avoid an arbitration decision after Eschelon has expended
10 the resources to bring this issue to the Commission in this arbitration. And, given
11 Qwest's position on this issue, there is no reason to believe that Qwest would
12 suddenly change that position in CMP, which would force Eschelon back before
13 the Commission to request the ruling it seeks here. A Commission decision is
14 needed in this arbitration to resolve the dispute and avoid future additional
15 litigation of the same issue.

16 Ms. Albersheim cites both of Qwest's proposed criteria or tests for determining
17 whether an issue allegedly belongs only in CMP so that it must be excluded from

⁹⁰ See references to Eschelon's participation (including my own participation) in Exhibit Eschelon 3.72, Exhibit Eschelon 3.73 and Exhibit Eschelon 3.74.

⁹¹ Johnson Direct, p. 75 lines 6-18, quoting from Exhibit Eschelon 3.74, p. 3 & Exhibit Eschelon 3.72, p. 5.

⁹² Qwest Exhibit 1.1 (CMP Document), pp. 42-45.

1 the ICA (process detail and multiple CLECs).⁹³ Mr. Starkey explains how
2 labeling an issue as a process or involving process may lead to inconsistent or
3 unjust results because it is fairly circular, with the chosen label often restating the
4 desired result.⁹⁴ He provides examples showing that Qwest’s multiple-CLEC test
5 also leads to inconsistent results.⁹⁵ With respect to jeopardies specifically, Qwest
6 has admitted with respect to key aspects of Eschelon’s proposal that it cannot
7 “imagine any circumstances under which a CLEC might want something
8 different.”⁹⁶

9 **Q. PLEASE RESPOND TO MS. ALBERSHEIM’S “GENERAL OBJECTION”**
10 **THAT ESCHELON’S PROPOSED LANGUAGE PRECLUDES QWEST**
11 **FROM RESPONDING TO CHANGES TO INDUSTRY STANDARDS FOR**
12 **JEOPARDY NOTICES AND CHANGE REQUESTS SUBMITTED BY**
13 **OTHER CLECS THROUGH CMP.**⁹⁷

14 A. Mr. Starkey addresses Qwest’s general objections to including language in the
15 ICA in the first section of his direct and rebuttal testimony, dealing with CMP and
16 contractual certainty. I will briefly address these two points which Ms.
17 Albersheim addresses with respect to jeopardies.

⁹³ Albersheim Direct, p. 57 lines 7-15.

⁹⁴ Starkey Direct, pp. 20-22.

⁹⁵ Starkey Direct, pp. 21-23.

⁹⁶ Arizona arbitration Tr., Vol. 1, p. 64, lines 5-14 (Ms. Albersheim); see also Arizona arbitration Tr. at Vol. 1, p. 64, line 19 – p. 65, line 3 (Ms. Albersheim).

⁹⁷ Albersheim Direct, p. 57 lines 7-15.

1 First, while Ms. Albersheim claims that inclusion of Eschelon’s proposed ICA
2 language would preclude Qwest from responding to “changes to industry
3 standards for jeopardy notices,”⁹⁸ she does not name any industry standard that
4 says – or may reasonably be expected to say in the future – “a Qwest-caused
5 jeopardy may be classified as CLEC-caused jeopardy.” It does not make sense.

6 Second, Qwest’s position that if Eschelon obtains its proposed contract language,
7 no other CMP participant will be able to request a change until Qwest first obtains
8 an agreement from Eschelon for contract modification⁹⁹ can be applied equally to
9 other, similar, provisions of the contract to which Qwest made this same argument
10 but later agreed to include in the ICA.¹⁰⁰ This suggests Qwest merely wants the
11 decision to be made at its discretion rather than by this Commission.
12 Additionally, Qwest’s statement assumes incorrectly that ICA provisions may not
13 overlap or conflict with the PCAT so that a change in CMP could not occur
14 without a corresponding change in the ICA. Section 1.0 of the CMP Document
15 (Qwest Exhibit 1.1 & Exhibit Eschelon 3.10), however, provides that they may

⁹⁸ Albersheim Direct, p. 57 lines 12-13.

⁹⁹ Albersheim Direct, p. 58 lines 1-2.

¹⁰⁰ See, e.g., the agreed-upon language in: Sections 9.1.2.1.3.2.1; 9.1.2.1.3.2.2; 9.2.2.3.2 & 9.2.2.16 (Issue 9-32, Delayed Orders): Section 12.1.5.4.7; 12.1.5.5 & 12.1.5.4.8 (Issues 12-65, 12-66 & 12-66(a), Communications with Customers): Section 12.2.3.2 (Issue 12-68 Supplemental Orders): Section 12.2.7.2.3 (Issue 12-70, PSOs): Section 12.2.7.2.6.1 and subpart (Issue 12-74 Fatal Rejection Notices): Sections 12.3.1 and subpart & Section 12.4.3.6.3 (Issue 12-75 & 12-75(a) Tag at Demarcation Point): Sections 12.3.7.1.1, 12.3.7.1.2 (Issues 12-76 & 12-76(a) Loss and Completion Reports: Section 12.4.3.5 (Issue 12-81, Test Parameters): and Sections 12.4.4.1; 12.4.4.2 & 12.4.4.3 (Issue 12-86, Trouble Report Closure).

1 conflict and, when they do, Eschelon’s ICA controls for Eschelon,¹⁰¹ as further
2 discussed by Mr. Starkey.¹⁰²

3 **Q. PLEASE RESPOND TO QWEST’S STATEMENT THAT OTHER CLECS**
4 **HAVE SUBMITTED CHANGE REQUESTS TO CMP TO CHANGE**
5 **JEOPARDY NOTICES.**¹⁰³

6 A. Ms. Albersheim states that a “review of the CMP change request archives shows
7 that change requests have been submitted by Eschelon, McLeodUSA, MCI,
8 Qwest, and Sprint.”¹⁰⁴ She does not provide any additional information, however.
9 Eschelon, therefore, conducted its own review of Qwest’s CMP archive and found
10 eleven change requests on this subject.¹⁰⁵ It is not surprising to find that none of
11 these change requests asked Qwest to stop providing CLECs with notice before
12 delivering service or change the process to say that Qwest may classify a Qwest-
13 caused jeopardy as CLEC-caused jeopardy. Of the eleven change requests
14 located by Eschelon, four were withdrawn, four were completed, and three were
15 denied. The four completed change requests asked Qwest to send FOCs before

¹⁰¹ See also Exhibit Eschelon 3.11, p. 2-3 (Gap Analysis #150) (CMP redesign meeting minutes addressing CMP in relation to ICAs); Exhibit Eschelon 2.24 (Minnesota Arbitrators’ Report, ¶ 21).

¹⁰² See, e.g., Starkey Direct, pp. 27-29.

¹⁰³ Albersheim Direct, p.57 line 17 – 58, line 2.

¹⁰⁴ Albersheim Direct, p. 57 lines 19-20.

¹⁰⁵ See Exhibit Eschelon 3.77 to my direct testimony. The change request are numbers SCR021403-1 (MCI); 5097684 (McLeod); 4381492 (Sprint); PC072303-1 (Eschelon); PC081403-1 (Eschelon); PC022105-1 (Eschelon); SCR030204-04 (Eschelon); SCR021904-02 (Eschelon); PC112901-1 (Qwest); 30623 (Qwest). For completeness Eschelon also added change request SCR061405-03ESDR made by VCI Company – a CLEC not named by Ms. Albersheim on this point. Albersheim Direct, p. 57, line 20.

1 sending jeopardies; to not prematurely identify a jeopardy as CNR before 5pm on
2 the due date; to allow the CLEC a designated time frame to respond to a released
3 delayed order after Qwest sends an updated FOC and before Qwest places a CNR
4 jeopardy on the request; and to automate Qwest's internal jeopardy process (a
5 Qwest change request).¹⁰⁶ None of the requested changes (whether completed,
6 withdrawn, or denied) would require a change to the interconnection agreement
7 language proposed by Eschelon. Although Qwest states that CMP is "intended to
8 give all parties equal participation when it comes to changing Qwest's
9 processes,"¹⁰⁷ only Qwest may unilaterally deny a change request in CMP, as
10 Qwest did for three of these eleven change requests.¹⁰⁸

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

12 **Issue No. 12-87: ICA Section 12.6.9.4**¹⁰⁹

13 **Q. MS. ALBERSHEIM DESCRIBES OPERATIONAL SUPPORT SYSTEMS**
14 **("OSS").¹¹⁰ IS HER DESCRIPTION THE SAME AS THE DESCRIPTION**
15 **IN THE PROPOSED ICA OR THE FCC'S DEFINITION?**

¹⁰⁶ See Exhibit Eschelon 3.77.

¹⁰⁷ Albersheim Direct, p. 57 lines 14-15.

¹⁰⁸ See Starkey Direct pp. 46-47 (discussion of voting in CMP).

¹⁰⁹ Throughout discussion of Issue 12-87 there are references to the Implementation Guidelines. Excerpts are included with my testimony as Exhibit Eschelon 3.83.

¹¹⁰ Albersheim Direct, p. 58 lines 12-20.

1 A. Not to the extent she equates OSS with computer systems.¹¹¹ Although I agree
2 with Ms. Albersheim’s apparent suggestion that, for purposes of Issue 12-87, we
3 are generally discussing systems testing, Ms. Albersheim does not clarify that the
4 definition of the term OSS is broader overall. Closed language in Section 12.1.1
5 of the ICA describes OSS as using both “electronic gateways and manual
6 processes.” Similarly, the FCC has said: “the Commission defined OSS as
7 consisting of pre-ordering, ordering, provisioning, maintenance and repair, and
8 billing functions supported by an incumbent LEC’s databases and information.
9 OSS includes the manual, computerized, and automated systems, together with
10 associated business processes and the up-to-date data maintained in those
11 systems.”¹¹² As this definition is discussed with respect to other issues (such as
12 Issues 12-67(d)-(f) regarding placement of expedite language in Section 12¹¹³),
13 the definition should be clear.

14 **Q. MS. ALBERSHEIM DESCRIBES CERTIFICATION TESTING.¹¹⁴ IS HER**
15 **DESCRIPTION THE SAME AS THE DESCRIPTION IN THE PROPOSED**
16 **ICA, AND IS IT CONSISTENT WITH QWEST’S OWN**
17 **INTERPRETATION OF THE CMP DOCUMENT OVER TIME?**

¹¹¹ Ms. Albersheim also uses the phrase “computer system or process” (p. 58 line 14) but she does not use the term “manual process.”

¹¹² *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, ¶ 425, cited by Mr. Starkey at Starkey Direct, p. 46 and Mr. Denney at Denney Direct, p. 179.

¹¹³ Denney Direct, pp. 178-179.

1 A. No. Closed language in Section 12.6.8 states that CLEC must perform
2 *certification* testing of exchange protocol “prior to using” an interface. The ICA
3 distinguishes certification testing from re-certification testing. *Re-certification* is
4 defined in the ICA as the process by which CLECs demonstrate the ability to
5 generate correct functional transactions for “enhancements not previously
6 certified.”¹¹⁵ Similarly, the Qwest Implementation Guidelines state:
7 “Recertification is the process by which CLECs demonstrate the ability to
8 correctly generate and accept transactions that were updated for the new
9 release.”¹¹⁶ Qwest’s description of certification testing as ensuring transactions
10 can be processed¹¹⁷ does not make this distinction between certification testing
11 and re-certification testing, even though the distinction is important for Issue 12-
12 87.

13 Under Eschelon’s language, if Eschelon is not certified (*i.e.*, it is *not* a re-
14 certification), controlled production testing will be required. This is the required
15 testing in the CMP Document referenced by Ms. Albersheim.¹¹⁸ Qwest admits
16 that it has not required controlled production testing for re-certification.¹¹⁹ The

¹¹⁴ Albersheim Direct, p. 61 lines 4-9.

¹¹⁵ Section 12.6.4 of the proposed ICA (closed language), cited in Johnson Direct, p. 98.

¹¹⁶ See Exhibit Eschelon 3.83, p. 5 (Version 21, p. 41); *id.* p. 11 (Version 20, p. 41); *id.* p. 19 (Version 19.2, p. 48), cited in Johnson Direct, pp. 97-99.

¹¹⁷ Albersheim Direct, p. 61 lines 7-8.

¹¹⁸ Albersheim Direct, p. 61 line 30 – 62 line 2, citing Exhibit Qwest 1.1 (CMP Document), Chapter 11, p. 84; *see also* Albersheim Direct, p. 65.

¹¹⁹ See Johnson Direct, pp. 102-103, quoting Arizona arbitration, Albersheim Direct, p. 99, line 24 – p. 100, line 4.

1 language in the CMP Document has not changed. If it had the meaning Ms.
2 Albersheim now appears to suggest it has, that would mean Qwest was in
3 violation of the CMP Document for the entire time that Qwest admits no
4 controlled production testing was required for re-certification.¹²⁰ Qwest's current
5 reading of the CMP Document is inconsistent with Qwest's own conduct.

6 Additionally, Qwest's reliance on the CMP Document regarding this aspect of the
7 implementation guidelines is inconsistent with Ms. Albersheim's previous
8 testimony that the Implementation guideline documents are not and should not be
9 under the CMP control.¹²¹ Mr. Starkey describes how Qwest uses CMP as either
10 a sword or a shield toward furthering its own initiatives.¹²² Qwest is willing to use
11 CMP as a sword to demand controlled production testing, even when Qwest itself
12 has interpreted the terms differently in the past, if Qwest reverses its position. For
13 terms Qwest opposes, Qwest simply unilaterally determines that CMP is
14 inapplicable, even when CMP redesign documentation shows the terms are within
15 the scope of CMP.¹²³

¹²⁰ *See id.*

¹²¹ Minnesota arbitration, MN PUC Docket No. P-5340, 421/IC-06-768, Surrebuttal Testimony of Renee Albersheim, p. 44 lines 4-10 ("Q. Mr. Webber states that the IMA implementation guideline document is not under CMP control. Is there any reason that it should be ? A. No.").

¹²² Starkey Direct, p. 42.

¹²³ See Johnson Direct, pp. 106-107. Exhibit Eschelon 3.80 to my direct testimony contains Excerpts from Final Meeting Minutes of CLEC-Qwest Change Management Process Re-design meeting dated March 5-March 7, 2002 (Att. 5, Action Item 143).

1 The existing exception to controlled production testing documented in Eschelon's
2 proposed language¹²⁴ applies only to *re*-certification. In other words, in the
3 situation described in Eschelon's proposal, certification testing has been
4 performed (*i.e.*, Eschelon is certified), and re-certification testing will be
5 performed. The issue is whether, in this circumstance (*i.e.*, *not* a new
6 implementation), controlled production testing must *also* be performed.

7 **Q. HAS QWEST RECENTLY CONFIRMED THAT THE LIST OF**
8 **REQUIREMENTS IN THE CMP DOCUMENT APPLIES TO NEW**
9 **IMPLEMENTATION TESTING AND NOT RE-CERTIFICATION?**

10 A. Yes. On April 6, 2007, Qwest issued a notice (effective immediately) regarding
11 IMA XML Release 21.0, which is attached as Exhibit Eschelon 3R.1. In Exhibit
12 Eschelon 3R.1, Qwest discusses several scenarios, some of which involve new
13 implementation (for CLECs not yet in production with XML) and others which
14 involve re-certification (for CLECs already in production with XML). For
15 example, a CLEC *on* IMA-EDI with Release 19.0 that is newly implementing
16 IMA-XML either by moving to 20.0 or skipping 20.0 and moving directly to 21.0,
17 must perform controlled production testing because the CLEC is not yet in
18 production *using* IMA-XML. On the other hand, a CLEC which previously used
19 EDI but has already moved to IMA-XML on 20.0 does not have to perform
20 controlled production testing for enhancements in future releases because the

¹²⁴ Johnson Direct, pp. 101-105.

1 CLEC is already in production using IMA-XML. Qwest summarizes how this
2 works on the last page of that exhibit, stating:

3 At the time a CLEC migrates from IMA XML 20.0 to IMA XML
4 21.0, any transaction(s) that the CLEC *does not yet have in*
5 *production using IMA XML 20.0* is considered to be a *new*
6 *implementation* effort. These transactions must be implemented
7 using the *full* initial implementation lifecycle as defined in the
8 Qwest XML Implementation Guidelines.

9 *When a CLEC migrates from IMA EDI 19.0 to either IMA XML*
10 *20.0 or IMA XML 21.0*, all transactions must be implemented
11 using the full initial implementation lifecycle as defined in the
12 *Qwest IMA XML Implementation Guidelines* located at:
13 <http://www.qwest.com/wholesale/ima/edi/document.html>. Please
14 note: The *New Implementation* testing minimum *requirements*
15 apply - including Controlled Production testing.¹²⁵

16 Note that the first quoted sentence does *not* say *all* transactions are considered to
17 be a new implementation effort. Only those transactions that the CLEC does not
18 yet have in production *using XML* are “considered to be a new implementation
19 effort.”¹²⁶ If, as in Eschelon’s case, a CLEC has already moved from 19.0 (IMA-
20 EDI) to 20.0 (IMA-XML) for at least some products, then the CLEC will have at
21 least some transactions for which it is already using 20.0 if it then migrates to a
22 later release using XML (such as 21.0). These transactions, which are in
23 production using XML, do *not* require “the full implementation lifecycle”¹²⁷ (*e.g.*,
24 controlled production testing is not required for re-certifications).

¹²⁵ Exhibit Eschelon 3R.1 (emphasis added).

¹²⁶ Exhibit Eschelon 3R.1.

¹²⁷ Exhibit Eschelon 3R.1.

1 This is further clarified in Qwest’s next paragraph, in which Qwest specifically
2 distinguishes new implementations from the discussion in the notice of re-
3 certifications. It is clear that, in the first sentence (of the second above-quoted
4 paragraph), Qwest is discussing only new implementations because the paragraph
5 expressly applies only when a CLEC migrates from IMA-EDI 19.0 to IMA-XML
6 (using either 20.0 or 21.0, as a CLEC may skip 20.0 and go directly to 21.0).
7 Both EDI and XML are application-to-application interfaces. This change in
8 application-to-application interfaces is a new implementation.¹²⁸ Ms. Albersheim
9 references Section 11.1 of the CMP Document.¹²⁹ Section 11 is entitled
10 “Application-to-Application Interface Testing.”¹³⁰ Section 11.1 (“Testing
11 Process”) lists the requirements for new implementation testing for application-to-
12 application interfaces. The requirements for new implementations and re-
13 certifications as to controlled production testing are different. Qwest recognizes
14 this in its notice when it says: “The *New Implementation* testing minimum
15 *requirements* apply – including Controlled Production testing.”¹³¹ Those
16 requirements are described in Section 11.1 of the CMP Document, including the

¹²⁸ Ms. Albersheim has admitted that Release 20.0 is a “new implementation” (*i.e.*, the term used in Eschelon’s proposed language). *See* Minnesota arbitration, Albersheim MN Surrebuttal, p. 43, lines 13-15 (“The underlying architecture of IMA Release 20 .0 is changing from EDI to XML. This is such a significant change that Qwest is treating this as a new implementation”).

¹²⁹ Albersheim Direct, p. 61 line 30 – 62 line 2, citing Exhibit Qwest 1.1 (CMP Document), Chapter 11, p. 84; *see also* Albersheim Direct, p. 65.

¹³⁰ Qwest Exhibit 1.1, p. 84.

¹³¹ Exhibit Eschelon 3R.1 (emphasis added).

1 following bullet point: “Controlled Production testing (required).”¹³² In contrast,
2 the re-certification testing requirements do not include controlled production
3 testing as CLEC is already in production using XML, as shown by the previous
4 paragraph in Qwest’s notice (the first above-quoted paragraph).

5 Consistent with the terms described in this Qwest notice, Eschelon’s proposed
6 ICA language requires controlled production testing for new implementations but
7 not for re-certifications. Other testing will be conducted per the closed language
8 of the ICA for re-certifications, but controlled production testing will not *also* be
9 performed, as Eschelon is already in production and certified.

10 **Q. MS. ALBERSHEIM DISCUSSES THE RISK OF INSUFFICIENT**
11 **TESTING.¹³³ DID YOU ADDRESS THIS ISSUE IN YOUR DIRECT**
12 **TESTIMONY?**

13 **A.** Yes. I discussed Qwest’s similar claim suggesting a threat to the industry at
14 large¹³⁴ on pages 108-109 of my direct testimony. As I said there, under
15 Eschelon’s proposed language, Qwest and Eschelon may discuss what Qwest
16 perceives as potential harm in any particular case. Eschelon has an incentive to
17 avoid risk and harm as well. In Minnesota, the ALJs specifically found that:

¹³² Qwest Exhibit 1.1, p. 85.

¹³³ Albersheim Direct, p. 62 line 19 – 63 line 3.

¹³⁴ Qwest Response to the Petition, p. 44, lines 1-2.

1 “There is no evidence that Eschelon has or would opt out of recertification testing
2 for any improper purpose.”¹³⁵

3 **Q. MS. ALBERSHEIM ALSO DISCUSSES UNSPECIFIED COSTS OF**
4 **CONTROLLED PRODUCTION TESTING AND ASSERTS THAT**
5 **CONTROLLED PRODUCTION TESTING IMPOSES MORE COSTS ON**
6 **QWEST THAN ANY ONE CLEC.¹³⁶ DOES QWEST OVERLOOK ANY**
7 **RESOURCE ISSUE?**

8 A. Yes. Qwest is much larger and has far more resources than Eschelon, as
9 described by Mr. Denney.¹³⁷ Eschelon’s business need is to avoid costly and/or
10 time consuming controlled production testing that is unnecessary because, for re-
11 certifications, the transaction has previously been in production and is simply
12 being enhanced. Qwest’s own business need is met by the current process, as
13 shown by Ms. Albersheim’s testimony that Qwest has determined that, for Qwest,
14 the benefit of controlled production currently “outweighs the cost of conducting
15 the tests.”¹³⁸ Regarding Qwest’s claims about the current process, see pages 101-
16 102 of my direct testimony.

17 **Q. HAS QWEST’S PROPOSAL¹³⁹ FOR ISSUE 12-87 CHANGED?**

¹³⁵ Exhibit Eschelon 2.24, p. 62 (MN Arbitrators’ Report, ¶258).

¹³⁶ Albersheim Direct, p. 62 line 19 – 63 line 3 & p. 65, lines 8-10.

¹³⁷ See, *e.g.*, Exhibit Eschelon 2.24, p. 64 lines 11-14.

¹³⁸ Albersheim Direct, p. 63 lines 1-3.

¹³⁹ Albersheim Direct, pp. 63-64.

1 A. Yes. Eschelon's presentation of Qwest's counter proposal (provided on page 100
2 of my direct testimony) accurately reflects the current multi-state proposed ICA
3 draft. Nonetheless, Qwest appears to have withdrawn that counter proposal.
4 Therefore, Qwest's proposal is to delete the underlined language in Eschelon's
5 proposals for Section 12.6.9.4.

6 **Q. MS. ALBERSHEIM STATES THAT THERE IS NO PRACTICAL**
7 **DIFFERENCE BETWEEN ESCHELON'S TWO ALTERNATE**
8 **PROPOSALS FOR ISSUE 12-87.¹⁴⁰ PLEASE RESPOND.**

9 A. I described Eschelon's proposals on pages 99-100 of my direct testimony. If
10 Qwest believes the effect of the two proposals is the same, then per Qwest the
11 Commission could adopt either one with the same effect. Given Qwest's alleged
12 preference for uniformity, Eschelon's proposal #1 may be preferable, as that
13 reflects the language adopted by the Minnesota commission.¹⁴¹

14 **Q. MS. ALBERSHEIM DESCRIBES CONTROLLED PRODUCTION**
15 **TESTING AND ITS RELATIONSHIP TO OSS TESTING.¹⁴² COULD MS.**
16 **ALBERSHEIM'S RESPONSE LEAVE A MIS-IMPRESSION?**

17 A. Yes. In her response, Ms. Albersheim fails to distinguish between new
18 implementations and re-certifications. Ms. Albersheim's response describes

¹⁴⁰ Albersheim Direct, p. 4 lines 25-27.

¹⁴¹ Exhibit Eschelon 2.24, p. 62 (MN Arbitrators' Report, ¶258), adopted in Exhibit Eschelon 2.25, p. 22 (MN Order Resolving Arbitration Issues ¶1).

¹⁴² Albersheim Direct, pp. 61-62.

1 controlled production associated with new implementations, but the issue
2 regarding Eschelon's proposal is related to whether controlled production is also
3 required for re-certification. Eschelon's language requires additional testing for
4 new implementations that have not been in production. An example of a new
5 implementation effort was the change from EDI to XML in Release 20.0.
6 Because Release 20.0 is a new implementation, no CLEC had used it in
7 production.¹⁴³ Consistent with its proposed language, Eschelon performed
8 controlled production for Release 20.0 (a new implementation). For a re-
9 certification, Eschelon will perform other testing but, consistent with Qwest's
10 process today, will not also perform controlled production testing for re-
11 certifications.

12 **Q. MS. ALBERSHEIM STATES THAT ESCHELON'S PROPOSAL MAKES**
13 **TESTING "NEGOTIABLE"¹⁴⁴ AND CLAIMS THAT QWEST WOULD**
14 **NOT IMPOSE A TESTING OBLIGATION WITHOUT A REASONABLE**
15 **GOOD FAITH BASIS FOR REQUIRING SUCH TESTING.¹⁴⁵ PLEASE**
16 **RESPOND.**

17 A. Ms. Albersheim states that Eschelon's proposal "makes participation in the
18 controlled production phase of application-to-application phase of *certification*

¹⁴³ Johnson Direct, p. 111 lines 12-15.

¹⁴⁴ Albersheim Direct, p. 65 lines 4-6.

¹⁴⁵ Albersheim Direct, p.65 lines 11-12.

1 testing negotiable.”¹⁴⁶ I discussed the difference between certification and re-
2 certification testing under the closed language of the ICA above and under
3 Qwest’s current process in my direct testimony.¹⁴⁷ A reading of Eschelon’s
4 language shows that Ms. Albersheim’s statement is inaccurate. Under either
5 Eschelon alternative,¹⁴⁸ “Qwest and CLEC *will perform controlled production* for
6 new implementations.” Although Eschelon’s second proposal provides an option
7 for the companies to agree otherwise, the language requires neither company to
8 negotiate or agree. Controlled production testing is no more negotiable under
9 Eschelon’s proposed language than it is today.¹⁴⁹

10 As I discussed above regarding risks, Eschelon has a significant incentive to avoid
11 harm, and Qwest has provided no evidence that Eschelon would act with an
12 improper purpose.¹⁵⁰ If Qwest provided a valid reason why Eschelon would need
13 to perform controlled production with re-certification even though it is not
14 required today, Eschelon’s proposed language allows the companies to agree to
15 perform that additional testing when in their mutual interest.

16 **Q. MS. ALBERSHEIM ALSO ARGUES THAT ESCHELON’S PROPOSAL**
17 **MAY HAVE NEGATIVE IMPACTS ON OTHER CLECS THAT USE**

¹⁴⁶ Albersheim Direct, p. 64 line 32 – 65 line 2 (emphasis added).

¹⁴⁷ Johnson Direct, pp. 101-105.

¹⁴⁸ Albersheim Direct, p. 64 lines 25-27 (same practical effect).

¹⁴⁹ Johnson Direct, pp. 101-105.

¹⁵⁰ See also Exhibit Eschelon 2.24, p. 62 (MN Arbitrators’ Report, ¶258).

1 **OSS.¹⁵¹ PLEASE RESPOND.**

2 A. As explained in direct testimony¹⁵² and as confirmed by Ms. Albersheim until
3 recently,¹⁵³ currently controlled production testing is not required for re-
4 certification. Obviously, Qwest does not consider the fact that some CLECs will
5 forego the test for re-certification as being a threat to other CLECs, or it would
6 not have operated under this term for some time. Ms. Albersheim speculates that
7 in the future Qwest's OSS may require controlled production testing system
8 upgrades.¹⁵⁴ Eschelon's proposed language does not state that Eschelon would
9 never participate in controlled production for re-certification, as the companies
10 may agree to it if it is needed.

11 **Q. IN HER DIRECT TESTIMONY, MS. ALBERSHEIM CLAIMS THAT**
12 **ESCHELON'S LANGUAGE IS NOT ACCURATE WITH REGARD TO**
13 **RE-CERTIFICATION FOR THE CURRENT RELEASE, IMA 20.0.¹⁵⁵ IS**
14 **MS. ALBERSHEIM ACCURATE?**

15 A. No. IMA 20.0 is a new release to XML (*i.e.*, IMA 20.0 is a new implementation).
16 There is no re-certification because no CLEC has ever been certified in XML. I
17 explained the current process under Releases 19.2, 20.0, and 21.0 in my direct

¹⁵¹ Albersheim Direct, p. 86 lines 16-17.

¹⁵² Johnson Direct, p. 102 citing Qwest's *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, IMA Release 20.0 and the IMA release 21.0.

¹⁵³ Albersheim Direct, p. 66 line 3.

¹⁵⁴ Albersheim Direct, p. 66 lines 9-10.

¹⁵⁵ Albersheim Direct, p. 66 lines 1-4.

1 testimony and Exhibit Eschelon 3.83. Under all three releases, Eschelon's
2 proposed language provides – consistent with current practice – that controlled
3 production testing will be conducted for new implementations but not for re-
4 certifications. Controlled production testing was required for Release 20.0
5 because it is a new implementation, and not because any change in process
6 occurred.

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

8 A. Yes.