

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**In the Matter of the Petition of)
Eschelon Telecom of Utah, Inc. for)
Arbitration with Qwest Corporation,)
Pursuant to 47 U.S.C. Section 252 of the)
Federal Telecommunications Act of 1996)**

DOCKET NO. 07-2263-03

**REBUTTAL TESTIMONY
OF
KAREN A. STEWART
FOR
QWEST CORPORATION**

**(Disputed Issue Nos. 4-5 (a, b, c), 9-31, 9-32, 9-33, 9-34, 9-35, 9-36, 9-39, 9-41, 9-42,
9-50, 9-51, 9-52, 9-53, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a, b, c, d, e), 9-59, 9-61,(a,
b, c) and 24-92)**

QWEST EXHIBIT 3R

JULY 27, 2007

TABLE OF CONTENTS

I. IDENTIFICATION OF WITNESS	1
II. DISPUTED ISSUES	1
ISSUE NOS. 4-5 (A, B AND C) - DESIGN CHANGES	1
ISSUE NO. 9-31 - ACCESS TO UNES	10
ISSUE NOS. 9-33 AND 9-34 – QWEST NETWORK MAINTENANCE AND MODERNIZATION ACTIVITIES	18
ISSUE NOS. 9-37 THROUGH 9-42 – WIRE CENTER ISSUES	25
ISSUE NO. 9-53 - ACCESS TO UCCRE	26
ISSUE NO. 9-55 - COMBINATIONS OF LOOPS AND TRANSPORT	33
ISSUE NOS. 9-56 AND 9-56A – SERVICE ELIGIBILITY CRITERIA AUDITS	40
ISSUE NOS. 9-58 (ALL A, B, C, D, E) ORDERING, BILLING, AND CIRCUIT ID FOR COMMINGLED ARRANGEMENTS	44
ISSUE NO. 9-59 - ESCHELON ALTERNATE COMMINGLED EEL REPAIR LANGUAGE	66
ISSUE NOS. 9-61(A, B, C) LOOP-MUX COMBINATIONS	68
III. CONCLUSION	76

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME.

A. My name is Karen A. Stewart. I filed direct testimony in this proceeding on June 29, 2007.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to the direct testimony of Eschelon witnesses Douglas Denney and Michael Starkey relating to the following issues as they are numbered in Eschelon's petition for arbitration: Issue Nos. 4-5 (a, b, c), 9-31, 9-33, 9-34, 9-39, 9-41, 9-42, 9-51, 9-53, 9-55, 9-56, 9-56a, 9-58, 9-58 (a, b, c, d, e), 9-59, 9-61,(a, b, c).

II. DISPUTED ISSUES

Issue Nos. 4-5 (A, B and C) - Design Changes

Q. BASED ON THE PARTIES DIRECT TESTIMONY, WHAT ISSUES RELATING TO DESIGN CHANGES REMAIN UNRESOLVED?

A. There are two issues relating to design changes that remain in dispute. First, the parties continue to disagree concerning whether a charge for changes to connection facility assignments ("CFAs") should apply in the circumstance where a CFA is required while Qwest and Eschelon are performing a coordinated cut-over. This dispute is designated as Issue No. 4-5(a). Second, Mr. Denney's direct testimony confirms that there is a fundamental disagreement between Qwest and Eschelon concerning the rates that should apply to design changes involving unbundled dedicated interoffice transport ("UDIT"), unbundled loops, and CFA changes that Eschelon requests. This issue is designated as Issue No. 4-5(c). In the testimony that follows, I respond to Eschelon's assertions relating to CFA design changes and also address some the flawed assumptions underlying the

1 rates Eschelon is proposing for design changes. Qwest witness Terri Million also
2 addresses these issues in her testimony, and she describes the single rate Qwest is
3 proposing for all design changes and the basis for that proposal.

4 **Q. WHICH ISSUES INVOLVING DESIGN CHANGES ARE NO LONGER IN**
5 **DISPUTE?**

6 A. The parties have resolved the definition of "design change," and that issue is
7 therefore no longer in dispute. In addition, Qwest is agreeing to Eschelon's
8 proposed language for ICA Sections 9.2.3.8 and 9.2.4.4.2 – which is encompassed
9 by Issue No. 4-5—that involves references to the fact that the ICA includes design
10 change charges for unbundled loops. Accordingly, Issue No. 4-5 is also closed.
11 Further, as I describe in my direct testimony, Qwest has accepted Eschelon's
12 proposed language for ICA Section 9.6.3.6 that refers to the presence of design
13 change rates for UDITs in Exhibit A of the ICA. As Mr. Denney confirms at page
14 40 of his direct testimony, Qwest's acceptance of this language resolves Issue No.
15 4-5(b).

16 **Q. WITH RESPECT TO THE DESIGN CHANGE ISSUES STILL IN**
17 **DISPUTE, AT PAGE 28 OF HIS TESTIMONY, MR. DENNEY ASSERTS**
18 **THAT THERE IS A RISK THAT QWEST WILL STOP PROVIDING**
19 **DESIGN CHANGE SERVICES TO ESCHELON. IS THIS ASSERTION**
20 **CORRECT?**

21 A. No. Contrary to Mr. Denney's assertion, Qwest will continue to provide design
22 change services to Eschelon at the rates for design changes listed in Exhibit A
23 and, accordingly, has agreed to include in the ICA the definition of "design
24 change" that Eschelon itself has proposed. The real dispute relating to design
25 changes is not whether Qwest will agree to provide them but, instead, whether
26 Eschelon will agree to rates that compensate Qwest for the costs it incurs to
27 perform them.

1 **Q. MR. DENNEY ALSO ASSERTS AT PAGE 35 THAT QWEST INTENDS**
2 **TO CHARGE A TARIFFED RATE FOR DESIGN CHANGES WITHOUT**
3 **OBTAINING THE COMMISSION'S APPROVAL TO ASSESS A**
4 **TARIFFED RATE. IS HIS ASSERTION CORRECT?**

5 A. No. While Qwest believes that design changes are not a service required under
6 Section 251 of the Act and therefore are not governed by the Act's cost-based
7 pricing requirement, Qwest is not seeking to establish that right in the Utah
8 interconnection agreement with Eschelon.

9 *Issue No. 4-5(a)*

10 **Q. WITH RESPECT TO CHARGES FOR CFA CHANGES, HAS MR.**
11 **DENNEY ACCURATELY DESCRIBED THE WORK REQUIRED FOR**
12 **CFAs AND THE COSTS ASSOCIATED WITH THEM?**

13 A. No. As an initial matter, it is important to be clear about why Qwest is required to
14 make CFA changes and to incur the costs they impose. CFA changes occur when
15 a customer desires to obtain service from Eschelon instead of from Qwest or
16 another carrier. After the new connect service order is submitted by Eschelon, a
17 Qwest engineer must connect the customer's loop to Eschelon's equipment
18 collocated in a Qwest central office. To enable Qwest to perform this connection
19 on its behalf, Eschelon provides Qwest with a "connecting facility assignment" or
20 CFA on the interconnection distribution frame ("ICDF") in Qwest's central office.
21 In other words, Eschelon identifies the specific place on the ICDF where the
22 Qwest engineer should connect the loop. In some cases, the ICDF locations that
23 Eschelon gives Qwest are incorrect, thus requiring a Qwest technician to remove
24 the loop from one location on the ICDF and to reconnect the loop to another
25 location on the ICDF or to another frame in the central office.

26 Mr. Denney has mischaracterized the work required for a CFA change by
27 simplistically analogizing it to unplugging a lamp from a socket and replugging it

1 into a different socket.¹ Moreover, while Mr. Denney focuses on the technician-
2 related work required for CFAs, he fails to recognize that technician time is not
3 included in the costs underlying Qwest's proposed the rate for design changes, as
4 Ms. Million can confirm. Accordingly, in the end, his testimony relating to this
5 issue is not even relevant.

6 **Q. AT PAGES 46-47 OF HIS DIRECT TESTIMONY, MR. DENNEY**
7 **PROVIDES EXAMPLES OF CHARGES THAT ESCHELON HAS BEEN**
8 **ASSESSED FOR CFAs IN AN ATTEMPT TO DEMONSTRATE THAT**
9 **ESCHELON HAS PAID UNREASONABLE AMOUNTS FOR CFAs.**
10 **WHAT DO THESE EXAMPLES ACTUALLY REVEAL ABOUT THE**
11 **CFA ISSUE?**

12 A. It is important to emphasize that since Eschelon provides the CFAs to Qwest, it is
13 Eschelon's responsibility to have a quality control process in place to manage its
14 CFAs. If it takes Eschelon multiple attempts to find a valid CFA, as suggested by
15 Mr. Denney's examples, this reflects Eschelon's lack of inventory quality control
16 in a central office, which can also be a significant issue when it comes to timely
17 repair issues. While these examples suggest that Eschelon's inventory records are
18 seriously inaccurate, Qwest follows specific and established procedures to ensure
19 that its records are accurate. Accordingly, when a CFA change occurs, Qwest
20 confirms if a design change is required, and then makes all of the systems changes
21 necessary to have a correct engineering record for that UNE.

22 If Eschelon is concerned about the costs it incurs for CFAs, it should improve its
23 quality controls, not attempt to deny Qwest the full recovery of the costs imposed
24 by Eschelon's use of defective CFAs. Indeed, the fact that Eschelon required
25 Qwest to perform multiple CFA changes, as occurred in Mr. Denney's examples,
26 demonstrates why it is essential that Qwest be compensated for these activities.
27 Qwest should not be required to perform work caused by Eschelon's incorrect

¹ See Denney Direct at p.51.

1 CFAs and then have Eschelon fail to provide full compensation and cost recovery
2 for the work it imposed.

3 **Q. DOES A CLEC HAVE THE ABILITY TO MINIMIZE COSTS OF CFA**
4 **CHANGES BY MINIMIZING THE NUMBER OF CFA CHANGES THAT**
5 **ARE REQUIRED?**

6 A. Yes. CFA assignments are controlled and inventoried by the CLEC. If the CLEC
7 has a quality control process in place for inventorying CFAs, then last minute
8 changes to CFAs should rarely occur. In the rare situation of a CFA change
9 requested by Qwest, Qwest does not charge the CLEC a CFA design change
10 charge. Therefore, the root cause of the vast majority of CFA design change
11 charges is poor quality control of CFA assignments on the part of the CLEC. The
12 proper and fair way for Eschelon to minimize the costs of CFAs is for it to
13 exercise sound quality control in its selection of proper, working CFAs, so that
14 CFA changes are rarely needed. It does not make good policy sense to allow
15 CLECs to have a poor quality process and for Qwest to bear the cost of this
16 through below-cost CFA design change charges. When Eschelon requests CFA
17 changes, it must be required to compensate Qwest for the significant time and
18 expense of carrying out those changes.

19 **Q. IS MR. DENNEY CORRECT IN ASSERTING AT PAGES 49-52 OF HIS**
20 **DIRECT TESTIMONY THAT THE COSTS QWEST INCURS FOR CFA**
21 **DESIGN CHANGES PERFORMED DURING COORDINATED CUT-**
22 **OVERS ARE MINIMAL AND LESS THAN OTHER CFA DESIGN**
23 **CHANGES?**

24 A. No. The presence of a Qwest technician in a central office who is performing a
25 coordinated cut-over does not in any way affect, much less eliminate, the primary
26 activities and costs that CFA changes require. First, a CFA change requires
27 Qwest to reprocess a new order, which includes detailed review of the order, for
28 the new CFA. There is no central office technician activity involved with this
29 reprocessing, and therefore, the presence of a technician in the central office to

1 perform a coordinated cut-over does not eliminate or in any way reduce the
2 activities and costs required to reprocess a new order. Second, a CFA change
3 requires a Qwest engineer to "redesign" the CFA by conducting a review of a
4 computer database to determine if Qwest's available facilities can accommodate
5 the new CFA assignment. Again, there is no central office technician activity
6 involved with these redesigns and therefore a technician's performance of a
7 coordinated cut-over has no effect on the tasks and costs required for redesigns.
8 Third, the presence of a Qwest technician for a cut-over does not eliminate the
9 need for a technician to disconnect a UNE connection from a frame and reconnect
10 it to another location on the frame or to another frame altogether. Fourth,
11 regardless whether a technician is already in a central office, Qwest must update
12 its downstream operation support systems to reflect the new, correct CFA
13 information.

14 **Q. HOW DO THESE FACTS DEMONSTRATING THE LACK OF A**
15 **RELATIONSHIP BETWEEN A COORDINATED CUT-OVER AND THE**
16 **WORK REQUIRED FOR CFAS DESIGN CHANGES AFFECT THE**
17 **RATE ESCHELON IS PROPOSING FOR CFAS?**

18 A. As I discuss below, Eschelon is proposing a rate for CFA design changes of only
19 \$5.00 when a CFA assignment is changed during a coordinated cut-over. The
20 entire premise of Eschelon's rate proposal is that the cut-over eliminates the need
21 for Qwest to perform most of the activities required for a CFA design change. In
22 fact, as demonstrated in the preceding answer, the coordinated cut-over does not
23 eliminate activities Qwest must perform to carry out a CFA design change and,
24 accordingly, Eschelon's proposed rate of \$5.00 significantly underestimates the
25 costs Qwest incurs. The rate would impermissibly prevent Qwest from
26 recovering its costs in violation of Qwest's right of cost recovery under the Act.

27 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. 4-5(A)?**

28 A. The Commission should reject the language that Eschelon is proposing for
29 Section 9.2.3.9 that would improperly prevent Qwest from fully recovering the

1 costs it incurs for CFA changes. There is no factual basis for Mr. Denney's
2 assertion that the presence of a Qwest technician during a coordinated cut-over
3 reduces the costs of CFA design changes. Nor is there any factual basis for his
4 claim that the rate for CFA design changes should be less than the rates for other
5 design changes. As Ms. Million discusses in her testimony, the cost study that
6 Qwest relies upon, and that this Commission has used to set the rate for design
7 changes, includes CFA design changes.

8 *Issue No. 4-5(c)*

9 **Q. WHAT TYPES OF DESIGN ACTIVITIES MUST QWEST PERFORM**
10 **FOR DESIGN CHANGES INVOLVING UNBUNDLED LOOPS?**

11 A. Qwest must perform multiple activities to provide CLECs with design changes for
12 unbundled loops. These activities are triggered by Eschelon's submission of a
13 supplemental order or verbal CFA change request, which requires a Qwest
14 engineer to analyze the existing order and design the new order to determine if a
15 change in the design is necessary to meet the requirements of the new order.
16 These activities impose costs that Qwest must be permitted to recover through a
17 design change charge.

18 **Q. IS THERE MERIT TO MR. DENNEY'S CLAIM THAT THE COSTS OF**
19 **DESIGN CHANGES FOR LOOPS ARE LESS THAN THOSE FOR**
20 **DESIGN CHANGES FOR UDIT?**

21 A. No. There is no basis for this assumption, since DS1 and DS3 unbundled loops
22 on fiber systems may require the same type of re-design work as is required for
23 UDIT using similar fiber muxing equipment. In claiming that loop design
24 changes are less costly than UDIT design changes, Mr. Denney asserts that the
25 use of "Local Service Requests" ("LSRs") for loops instead of the "Access
26 Service Requests" ("ASRs") used for UDIT contributes to the alleged lower cost
27 of loop design changes. As described at pages 53-56 of his direct testimony, he
28 bases this assertion on the claim that ASRs "are more manually-intensive" than

1 LSRs. The flaw in this analysis is that Mr. Denney fails to account for the re-
2 design work that may be required because of the use of fiber-muxing equipment.
3 Mr. Denney also ignores the fact, as confirmed by Ms. Million, that this
4 Commission set a design change rate, based on a cost study that establishes a
5 single, averaged rate for UDIT, loop, and CFA design changes.

6 **Q. IS MR. DENNEY CORRECT IN ASSERTING THAT QWEST DOES NOT**
7 **HAVE AN EXISTING RIGHT TO ASSESS LOOP OR CFA DESIGN**
8 **CHANGE CHARGES IN UTAH?²**

9 A. No. Mr. Denney bases this assertion on an out-of-context statement that I made in
10 the Minnesota arbitration that "neither Qwest's SGAT nor the parties' current ICA
11 includes a design change charge for loops."³ However, that statement was unique
12 to Minnesota and accurately reflects the fact that under a prior Minnesota cost
13 docket order, the absence of a commission-ordered design change rate in that state
14 prevented Qwest from charging a design rate and from recovering its costs in that
15 state. That is not the case in Utah. Thus, the design change rate is included in the
16 "Miscellaneous Charges" section of Exhibit A to the existing Qwest-Eschelon
17 Utah ICA and, accordingly, Qwest has a contractual right to collect the charge
18 and to recover the costs it incurs to provide Eschelon and other CLECs with
19 design changes.

20 **Q. IS MR. DENNEY'S POSITION CONSISTENT WITH THE RIGHT**
21 **QWEST HAS UNDER THE TELECOMMUNICATIONS ACT TO**
22 **RECOVER THE COSTS IT INCURS TO PROVIDE ACCESS TO UNES?**

23 A. No. Mr. Denney does not contest the fact that Qwest incurs costs to provide
24 Eschelon with loop and CFA design changes. Instead, his position is that under
25 the *existing* ICA, Qwest should not be permitted to recover these costs because

² See Denney Direct at pp. 43 to 44.

³ See Denney Direct at p. 44.

1 there is no Commission approved rate for these activities. He is plainly
2 attempting to deny Qwest recovery of costs that he acknowledges are incurred.
3 That position is inconsistent with the right Qwest has under Section 252(d) of the
4 Telecommunications Act of 1996 to recover the costs it incurs to provide access
5 to UNEs. In addition, for purposes of the ICA being arbitrated in *this* case,
6 Eschelon is proposing rates for loop and CFA design changes that, as Ms. Million
7 confirms, are less than the costs Qwest's incurs. Eschelon's proposed rates would
8 deny Qwest full recovery of its costs, which it is clearly entitled to under the Act.

9 **Q. AT PAGES 40-43 OF HIS DIRECT TESTIMONY, MR. DENNEY CLAIMS**
10 **THAT QWEST'S DECISION TO BEGIN CHARGING FOR LOOP**
11 **DESIGN CHANGES DEMONSTRATES THAT QWEST SELECTIVELY**
12 **USES THE CMP PROCESS TO THE DISADVANTAGE OF CLECs. IS**
13 **MR. DENNEY'S CLAIM CORRECT?**

14 A. No. Qwest witness, Renee Albersheim, responds in detail in her rebuttal
15 testimony to Eschelon's inaccurate claim that Qwest somehow improperly uses
16 the Change Management Process ("CMP") process only for its benefit and not for
17 the benefit of CLECs.

18 **Q. HAS MR. DENNEY PROVIDED ANY COST SUPPORT FOR**
19 **ESCHELON'S PROPOSAL TO USE DIFFERENT DESIGN CHANGE**
20 **RATES FOR UDIT, LOOPS, AND CFAS?**

21 A. No. Mr. Denney proposes design change rates of \$35.89 for UDIT, \$30.00 for
22 loops and \$5.00 for CFA changes, stating only that these rates are "reasonable"
23 because design changes for loops and CFAs allegedly cost less than design
24 changes for UDIT. As I describe above, Mr. Denney's descriptions of the work
25 Qwest must perform for loop and CFA design changes are inaccurate and
26 incomplete. Thus, the premise for the different rates he proposes – that loop and
27 CFA design changes involve significantly less work – is wrong. Equally
28 important, Mr. Denney does not provide a cost study, cost data, or even a
29 spreadsheet showing a cost calculation to support these proposals. Without such

1 information, there is of course no way for the Commission to determine that the
2 rates are compensatory and consistent with the Act's requirement that Qwest
3 recover its costs.

4 **Q. IS MR. DENNEY CORRECT IN ASSERTING AT PAGES 53 THAT THIS**
5 **COMMISSION'S APPROVED DESIGN CHANGE RATE OF \$35.89 ONLY**
6 **APPLIES TO UDIT?**

7 A. No. In adopting this design change rate, the Commission did not limit application
8 of the rate to UDIT. The Commission did not suggest, as Mr. Denney claims, that
9 the design change rate it adopted applied only to a single UNE and not to other
10 UNEs. Moreover, as Qwest witness Terri Million explains in her rebuttal
11 testimony, the cost study upon which the Commission's design change rate was
12 based was not limited to UDIT-related changes and included other design
13 changes.

14 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. 4-5(C)?**

15 A. The Commission should reject Eschelon's attempt to impose rates that are
16 unsupported by any cost study or data and that contradict the permanent design
17 change rates that are in effect in this state. The Commission should direct the
18 parties to use the previously Commission-ordered design change rate for all
19 design changes.

20 **Issue No. 9-31 - Access to UNEs**

21 **Q. BEFORE RESPONDING TO MR. STARKEY'S TESTIMONY RELATING**
22 **TO THIS ISSUE, PLEASE PROVIDE A BRIEF SUMMARY OF THE**
23 **ISSUE.**

24 A. This issue involves language in Section 9.1.2 of the ICA that defines the access
25 Qwest will provide Eschelon to the UNEs that Qwest makes available under
26 Section 251(c)(3) of the Act. Consistent with applicable legal requirements,
27 Qwest has agreed to ICA language obligating it to provide Eschelon with non-

1 discriminatory access to UNEs at standard service performance levels and to
2 perform "those Routine Network Modifications that Qwest performs for its own
3 End User Customers." Mr. Starkey's testimony confirms that Eschelon's proposed
4 version of Section 9.1.2 would impermissibly expand the access Qwest provides
5 to UNEs at cost-based rates beyond the requirements imposed by governing law.

6 **Q. MR. STARKEY ASSERTS THAT WITHOUT ESCHELON'S PROPOSED**
7 **LANGUAGE IN SECTION 9.1.2, THE ICA WILL NOT HAVE**
8 **LANGUAGE ASSURING ESCHELON OF NONDISCRIMINATORY**
9 **ACCESS TO UNEs. IS THAT ASSERTION CORRECT?**

10 A. No. The parties' agreed language in Section 9.1.2 expressly and unambiguously
11 requires Qwest to provide Eschelon with nondiscriminatory access to UNEs:
12 "Qwest shall provide non-discriminatory access to Unbundled Network Elements
13 on rates, terms, and conditions that are non-discriminatory, just and reasonable."
14 It is surprising that Mr. Starkey would testify about the alleged absence of an
15 obligation in the ICA for Qwest to provide non-discriminatory access to UNEs
16 without discussing or even mentioning this clear language in Section 9.1.2 that
17 requires Qwest to provide precisely that form of access.

18 **Q. AT PAGES 136-140 OF HIS DIRECT TESTIMONY, MR. STARKEY**
19 **ALSO SUGGESTS THAT WITHOUT ADOPTION OF ESCHELON'S**
20 **PROPOSED ADDITION TO SECTION 9.1.2, THE ICA WILL NOT**
21 **ENSURE ACCESS TO UNEs EQUAL TO THAT WHICH QWEST HAS**
22 **FOR ITSELF AND THAT OTHER CLECs HAVE. IS THERE ANY**
23 **MERIT TO THAT SUGGESTION?**

24 A. No. Again, Mr. Starkey makes these assertions without recognizing the effect of
25 the agreed language in Section 9.1.2. That language expressly links the UNE
26 access to which Eschelon is entitled to the UNE access that Qwest provides to
27 itself: "Where Technically Feasible, the access and Unbundled Network Element
28 provided by Qwest will be provided in 'substantially the same time and manner' to
29 that which Qwest provides to itself or to its Affiliates." In circumstances where

1 Qwest does not provide access to UNEs to itself, the agreed language in Section
2 9.1.2 obligates Qwest to provide access to Eschelon that gives it a meaningful
3 opportunity to compete: "In those situations where Qwest does not provide access
4 to Network Elements to itself, Qwest will provide access in a manner that
5 provides [Eschelon] with a meaningful opportunity to compete."

6 Similarly, the agreed language in Section 9.1.2 ensures that Eschelon will receive
7 the same access to UNEs that other CLECs receive: "The quality of an Unbundled
8 Network Element Qwest provides, as well as the access provided to that element,
9 will be equal between all Carriers requesting access to that element." This
10 language clearly establishes that Eschelon is entitled to access to UNEs equal to
11 that provided to other CLECs.

12 **Q. IS THERE ANY SUPPORT FOR MR. STARKEY'S ADDITIONAL**
13 **SUGGESTION AT PAGES 136-141 OF HIS TESTIMONY THAT**
14 **WITHOUT ESCHELON'S PROPOSED ADDITIONS TO SECTION 9.1.2,**
15 **ESCHELON WILL NOT BE ABLE TO OBTAIN MODIFICATIONS AND**
16 **REPAIRS TO UNEs?**

17 A. No. Again, Mr. Starkey ignores agreed language in Section 9.1.2 that obligates
18 Qwest to make modifications to UNEs on a nondiscriminatory basis:

19 Qwest shall perform for [Eschelon] those Routine Network
20 Modifications that Qwest performs for its own End User
21 Customers. The requirement for Qwest to modify its network on a
22 nondiscriminatory basis is not limited to copper loops and applies
23 to all unbundled transmission facilities, including Dark Fiber
24 transport when available pursuant to Section 9.7.

25 The term "Routine Network Modifications" as used in this section is defined in
26 the ICA to include, at a minimum, the specific network modifications that the
27 FCC listed in the *Triennial Review Order* as the modifications ILECs are required
28 to provide.

1 In addition to the language quoted above, the agreed language in Section 9.1.1.2.3
2 makes it clear that Qwest will maintain and repair UNEs for Eschelon:
3 "[Eschelon's] purchase of access to a UNE does not relieve Qwest of the duty to
4 maintain, repair, or replace the UNE." Mr. Starkey also ignores this language in
5 making his inaccurate assertion that without Eschelon's proposed addition to
6 Section 9.1.2, Qwest will be free to withhold UNE maintenance and repairs.

7 **Q. IN HIS ATTEMPT TO SUPPORT ESCHELON'S PROPOSED**
8 **LANGUAGE FOR SECTION 9.1.2, AT PAGES 130-134 OF HIS**
9 **TESTIMONY, MR. STARKEY CITES TWO "EXAMPLES" THAT HE**
10 **CLAIMS DEMONSTRATE THAT QWEST WILL NOT PROVIDE**
11 **ESCHELON WITH NONDISCRIMINATORY ACCESS TO UNES. DO**
12 **THE EXAMPLES SUPPORT THAT CLAIM?**

13 A. No. The first "example" that Mr. Starkey cites involves a Qwest notice from
14 December 2005 introducing a proposed CMP change for DS1 loops. As Mr.
15 Starkey states, the notice provided that unbundled loops would not be available
16 "to serve another CLEC, IXC, or other Telecommunications Provider." Qwest
17 has since withdrawn that notice and is not imposing this limitation, which Mr.
18 Starkey knows but fails to disclose. Mr. Starkey does eventually acknowledge at
19 page 131 of his testimony that Qwest has not proposed that limitation in this
20 proceeding and that it is therefore not at issue. Qwest has agreed to the following
21 language in Section 9.1.1.2.1, which establishes that the restriction on the use of
22 UNEs to which Mr. Starkey refers will not apply: "Except as provided in this
23 Section 9.1.1.2.1 and in Section 9.23.4.1, Qwest shall not impose limitations,
24 restrictions, or requirements on requests for, or the use of, Unbundled Network
25 Elements for the service [Eschelon] seeks to offer."

26 The second "example" that Mr. Starkey refers to is a September 2006 CMP notice
27 regarding a process clarification for CFA changes that did not deny access to any
28 UNEs or UNE activities. Rather, it was a reasonable clarification by Qwest
29 regarding the process for CFA changes on the due date. Qwest was attempting to

1 address concerns created by CLECs who were abusing the CFA change process.
2 When CLECs do not have an adequate CFA management system in place, they
3 frequently attempt to demand the ability to make numerous verbal changes to
4 orders that can turn a non-coordinated cut into a coordinated cut. The CMP
5 notice to which Mr. Starkey refers was an outgrowth of this situation, as Qwest
6 was facing the risk that unlimited verbal changes to orders would interfere with its
7 ability to complete all service orders due on a particular day within a reasonable
8 period of time. That result not only would have had negative consequences for
9 Qwest, but it also would have unfairly affected CLECs that provide correct,
10 working CFAs in advance of due dates for orders. Qwest's CMP notice reflected
11 an attempt to address this untenable situation.

12 **Q. ARE ESCHELON'S PROPOSED ADDITIONS TO SECTION 9.1.2**
13 **CONSISTENT WITH THE OBLIGATIONS ILECS HAVE TO PROVIDE**
14 **ACCESS TO UNEs?**

15 A. No. Eschelon's proposal to include "move," "add to," and "change" as part of
16 "accessing" UNEs would potentially obligate Qwest to provide a form of access
17 that it does not provide to other CLECs or to its own retail customers. Further,
18 Eschelon's language implies that access to or use of a UNE entitles it to moves,
19 adds and changes at no additional charge. That result would violate Qwest's right
20 of cost recovery.

21 Moreover, as I describe in my direct testimony, Eschelon's proposed addition
22 violates the long-established rule that an ILEC is only required to provide access
23 to its existing network, not access to "a yet unbuilt superior one."⁴ Under
24 Eschelon's proposed language, Qwest could be required to build new facilities and
25 to provide access to "a yet unbuilt superior network." For example, the undefined
26 requirement for Qwest to "add to" UNEs could obligate Qwest to build new
27 facilities and to go beyond the routine network maintenance that ILECs must

1 provide. Similarly, Eschelon does not define the meaning of "changing the
2 UNE," thereby leaving the door open to changes that go beyond routine network
3 maintenance.

4 In the *Triennial Review Order* ("TRO"), the FCC ruled at paragraph 632 that
5 ILECs must provide "routine network modifications" to unbundled transmission
6 facilities and loops. In that same paragraph, the FCC defined these modifications
7 as "those activities that incumbent LECs regularly undertake for their own
8 customers," while establishing that routine modifications "do not include the
9 construction of new wires." By proposing the vague requirement for Qwest to
10 provide "moves," "adds," and "changes," Eschelon is going beyond the routine
11 network modifications Qwest is providing for its own customers in violation of
12 the *TRO*. Since the ICA already includes agreed language ensuring that Eschelon
13 will receive UNE access equal to that which Qwest's retail customers receive,
14 Eschelon's proposed language is not necessary to ensure equal access and would
15 serve only as a potential vehicle for Eschelon to demand superior access.

16 **Q. AS YOU DESCRIBE THE DIFFERENCES IN INTERPRETATION**
17 **BETWEEN QWEST AND MR. STARKEY REGARDING ESCHELON'S**
18 **PROPOSED LANGUAGE, THE DISPUTE SEEMS TO POTENTIALLY**
19 **BOIL DOWN TO QWEST'S ABILITY TO CHARGE FOR ACTIVITIES**
20 **AND TO RECOVER ITS COSTS. IS THAT AN ACCURATE**
21 **PERCEPTION?**

22 A. I believe so. With that in mind and with the benefit of Eschelon's testimony,
23 Qwest has developed a proposal that addresses both parties' concerns. Using
24 Eschelon's language as a starting point and with Qwest's red-lined changes, Qwest
25 proposes the following language:

26 **Additional activities available for Access to Unbundled Network**
27 **Elements includes moving, adding to, repairing and changing the**

⁴*Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

1 UNE (through, e.g., design changes, maintenance of service
2 including trouble isolation, additional dispatches, and cancellation
3 of orders) **at the applicable rate.**

4 Qwest offers this language as a good faith effort to settle this dispute between the
5 parties. The proposal does not eliminate all of Qwest's concerns about the
6 ambiguity of Eschelon's language, but it eases that concern by including language
7 that ensures cost recovery for the activities required by the language.

8 **Q. WHAT IS THE BASIS FOR YOUR CONCERN THAT ESCHELON'S**
9 **PROPOSAL MAY BE DESIGNED TO PREVENT QWEST FROM**
10 **RECOVERING THE COSTS OF THE ACTIVITIES LISTED IN THE**
11 **PROPOSAL?**

12 A. In the companion arbitration in Minnesota, Mr. Denney testified in reference to
13 the activities listed in Eschelon's proposed language that "those types of things are
14 already covered in the recurring rates."⁵ He asserted further that because the costs
15 of all of the activities required by Eschelon's language are allegedly already
16 included in monthly recurring rates, adoption of Eschelon's language would not
17 require the development of any new rates or rate elements or payment by
18 Eschelon of any rates other than the existing recurring rates for UNEs.⁶ Further,
19 in the recent arbitrations in Colorado and Washington, Mr. Starkey has testified
20 that the terms "move," "add to," and "change" include "thousands" of activities,
21 including some activities are not known today and will evolve as technology
22 changes.⁷ Taken together, the testimony of Mr. Denney and Mr. Starkey shows
23 that the real purpose of Eschelon's proposal is not to add another cumulative
24 guarantee against nondiscrimination but, instead, to obtain potentially "thousands"
25 of activities that may relate to UNEs without paying any further charges and
26 certainly without paying any charges that are set by tariffs. Neither Mr. Denney

⁵ Minnesota Hearing Transcript, Vol. 4, p. 207, lines 17-18. Qwest will provide a copy of this excerpt during the hearing.

⁶ See Qwest Exhibit 3R.1 (Minnesota Hearing Transcript, Vol. 4) at 206:22 – 208:6.

1 nor any other Eschelon witness has provided evidence that the costs of the
2 undefined activities encompassed by Eschelon's language are included in any
3 recurring rates.

4 **Q. CAN YOU PROVIDE AN EXAMPLE OF A RATE FOR AN ACTIVITY**
5 **THAT QWEST BELIEVES IS NOT INCLUDED IN THE MONTHLY**
6 **RATE OF A UNE?**

7 A. Yes. The unbundled transport section of Exhibit A to the ICA includes rates for
8 UDIT Rearrangements. There are examples of various moves of the UDIT
9 termination a CLEC may request. Based on the testimony of Mr. Denny cited
10 above, Qwest is concerned that the "moving" portion of the Eschelon proposed
11 section 9.1.2 could result in Eschelon disputing the application of this rate.

12 **Q. DOES QWEST'S PROPOSED USE OF "AT THE APPLICABLE RATE"**
13 **MEAN THAT QWEST INTENDS TO CHARGE TARIFFED RATES FOR**
14 **MOST OF THE ACTIVITIES ENCOMPASSED BY "MOVING, ADDING**
15 **TO, REPAIRING, AND CHANGING?"**

16 A. No. Qwest recognizes that many activities encompassed by these terms are
17 associated with providing "access" to a UNE and are therefore governed by cost-
18 based rates. However, these terms are both broad and undefined, and the
19 "thousands" of activities Eschelon claims they encompass could easily include
20 activities that are not part of "access" to a UNE and that are not governed by the
21 required of cost-based rates. To provide for this likelihood, Qwest has proposed
22 it's "at the applicable rate language." By contrast, Eschelon's proposal would
23 improperly require Qwest to perform thousands of activities, many of which
24 Eschelon cannot even identify today, either at no charge at all beyond a monthly
25 UNE recurring rate or at cost-based rates with no possibility of applying tariffed
26 rates for activities that are not within the obligations of Section 251 of the Act.

⁷ See Qwest Exhibit 3R.2 (Washington Hearing Transcript) at 213:25 – 214:15.

1 **Q. PLEASE SUMMARIZE QWEST'S POSITION RELATING TO ISSUE NO.**
2 **9-31.**

3 A. Through the parties' agreed language in Section 9.1.2, Qwest has fully committed
4 to provide Eschelon with the access to UNEs required by the Act and that other
5 CLECs in Utah receive. Eschelon's proposed addition to the parties' agreed
6 language should be rejected because it is overly broad, could be misinterpreted to
7 imply that the listed activities are to be performed at no additional charge or at an
8 incorrect charge, and could create obligations that the Act does not impose.
9 Notwithstanding these concerns and in the interest of narrowing the parties'
10 disputes, Qwest would agree to the modified version of Eschelon's proposal set
11 forth above, which assures Qwest of the cost recovery to which it is entitled under
12 the Act.

13 **Issue Nos. 9-33 and 9-34 – Qwest Network Maintenance and Modernization**
14 **Activities**

15 *Issue No. 9-33*

16 **Q. MR. STARKEY ASSERTS AT PAGE 145 OF HIS DIRECT TESTIMONY**
17 **THAT ESCHELON'S "ADVERSE AFFECT" LANGUAGE MUST BE**
18 **INCLUDED IN THE INTERCONNECTION AGREEMENT TO ENSURE**
19 **THAT QWEST'S MAINTENANCE AND MODERNIZATION**
20 **ACTIVITIES DO NOT PREVENT ESCHELON FROM PROVIDING**
21 **"WORKING SERVICE" TO ITS CUSTOMERS. HAS QWEST EVER**
22 **PUT AN ESCHELON CUSTOMER OUT OF SERVICE BECAUSE OF**
23 **NETWORK MAINTENANCE OR MODERNIZATION ACTIVITIES?**

24 A. Mr. Starkey does not identify any occasions in which Qwest put an Eschelon
25 customer out of service because of an activity involving network maintenance or
26 modernization, and I am not aware of any occasions in which that has occurred.
27 The absence of any such incidents demonstrates the hypothetical nature of Mr.
28 Starkey's concerns and shows that his attempt to paint a dire picture of the risks
29 arising from Qwest's maintenance and modernization activities is exaggerated.

1 **Q. IS MR. STARKEY CORRECT IN ASSERTING THAT QWEST HAS NOT**
2 **PROVIDED ANY ASSURANCE THAT ITS NETWORK**
3 **MODERNIZATION AND MAINTENANCE ACTIVITIES WILL NOT**
4 **HARM ESCHELON'S CUSTOMERS?**

5 A. No. Mr. Starkey ignores agreed language in Section 9.1.9 in which Qwest
6 commits that "[n]etwork maintenance and modernization activities will result in
7 UNE transmission parameters that are within transmission limits of the UNE
8 ordered by [Eschelon]." This language already provides Eschelon with
9 contractual protection against network activities that hypothetically could put
10 Eschelon customers out of service. This language requires Qwest to ensure that
11 its network maintenance and modernization activities do not result in transmission
12 parameters that fail to meet those Eschelon can reasonably expect for the UNEs it
13 orders unless Qwest has given advance notice subject to FCC rules. In addition,
14 Qwest has provided further protection to Eschelon and its customers by agreeing
15 in Section 9.1.9 that "modifications and changes to UNEs" may result in only
16 "minor changes to transmission parameters." As this language shows, contrary to
17 Mr. Starkey's claim, Qwest has agreed to language that protects Eschelon and its
18 customers from the hypothetical situation of changes to UNEs arising from
19 network maintenance and modernization activities that could put Eschelon
20 customers out of service.

21 **Q. IN VIEW OF THE PARTIES' AGREED LANGUAGE LIMITING THE**
22 **CHANGES IN TRANSMISSION PARAMETERS THAT CAN RESULT**
23 **FROM NETWORK ACTIVITIES, IS THERE ANY LEGITIMATE NEED**
24 **FOR ESCHELON'S VAGUE REQUIREMENT THAT MODERNIZATION**
25 **AND MAINTENANCE ACTIVITIES MAY NOT "ADVERSELY**
26 **AFFECT" SERVICE TO ANY END USER CUSTOMERS?**

27 A. No. There is no legitimate need for Eschelon's proposed language. Indeed,
28 Qwest is very concerned that the vagueness of Eschelon's proposal would lead to
29 time-consuming disputes between the parties about whether a network activity
30 had an "adverse effect" on an Eschelon customer. As I describe in my direct

1 testimony, this language is not tied to any industry standard or identifiable metric,
2 and is therefore subject to broad interpretation and dispute. The vagueness of the
3 language would leave Qwest guessing as to whether a network change is
4 permitted under the ICA, which could have the undesirable effect of discouraging
5 Qwest from carrying out network maintenance and modernization activities.

6 In addition, Eschelon's proposed language focuses improperly on the service that
7 Eschelon is providing to its customers instead of the service that Eschelon orders
8 and receives from Qwest. When Qwest provides a UNE to Eschelon, it can only
9 be responsible for the quality of that network element. There are other factors
10 within Eschelon's control and beyond Qwest's control that affect the quality of
11 service Eschelon's customers receive, and it is therefore improper to establish a
12 standard for Qwest that focuses on the service Eschelon provides to its customers.

13 **Q. DOES MR. STARKEY EXPLAIN THE MEANING OF ESCHELON'S**
14 **"NOT ADVERSELY AFFECT" LANGUAGE IN HIS TESTIMONY?**

15 A. No. Although Mr. Starkey acknowledges Qwest's criticism that Eschelon's
16 proposal is impermissibly vague, nowhere in his testimony does he provide any
17 meaningful definition of what it means to "adversely affect" service to an
18 Eschelon customer. His inability to provide a definition further confirms the
19 ambiguity of the standard and the likelihood that it would lead to disputes
20 between the parties.

21 **Q. MR. STARKEY SUGGESTS AT PAGES 154-159 OF HIS DIRECT**
22 **TESTIMONY THAT ESCHELON WILL NOT BE PROTECTED FROM**
23 **CUSTOMER DISRUPTION EVEN IF QWEST MAINTAINS AND**
24 **MODERNIZES ITS NETWORK IN ACCORDANCE WITH INDUSTRY**
25 **STANDARDS. DOES MR. STARKEY PROVIDE MEANINGFUL**
26 **SUPPORT FOR THIS STATEMENT?**

27 A. No. The only support for this statement that Mr. Starkey offers is a vague
28 description of an occasion in which Qwest allegedly provided Eschelon with non-

1 working circuits that met industry standards for permissible decibel ("db") loss.
2 According to Mr. Starkey, the fact that the circuits allegedly were non-working,
3 even though they met industry standards for db loss, demonstrates that industry
4 standards are of limited utility in measuring performance. This claim ignores the
5 long-standing importance of industry standards for establishing performance and
6 quality expectations and for measuring performance. In addition, the one-time
7 occurrence that Mr. Starkey describes did not even involve a network
8 modernization or maintenance activity. Instead, it involved the installation of a
9 new service that did not initially work but that Qwest engineers quickly and
10 effectively corrected.

11 It is a matter of common sense that without quantifiable performance metrics, it is
12 very difficult to measure performance. That is why the telecommunications
13 industry has created standards bodies and invested very significant resources to
14 develop reliable, quantifiable performance metrics. The single occurrence that
15 Mr. Starkey describes hardly justifies the conclusion that compliance with
16 industry standards is irrelevant to protecting against consumer disruption. Mr.
17 Starkey is forced to reach that unfounded conclusion only because he is in the
18 difficult position of trying to defend Eschelon's standard-less "no adverse effect"
19 proposal.

20 **Q. DOES ESCHELON HAVE AN ALTERNATIVE PROPOSAL FOR THIS**
21 **ISSUE?**

22 A. Yes. Eschelon has the following alternative proposal based on language ordered
23 by the Administrative Law Judges and adopted by the Minnesota Commission in
24 the Minnesota arbitration: "If such changes result in the CLEC's End User
25 Customer experiencing unacceptable changes in the transmission of voice or data,
26 Qwest will assist the CLEC in determining the source and will take the necessary
27 corrective action to restore the transmission quality to an acceptable level if it was
28 caused by the network changes." Eschelon has also proposed an additional
29 modification to section 9.1.9 of "Such notices will contain the location(s) at

1 which the changes will occur including, if the changes are specific to an End User
2 Customer, the circuit identification, if readily available.” I address this proposal
3 in the following section of my testimony involving Issue 9-34.

4 **Q. DOES THIS ALTERNATIVE PROPOSAL ELIMINATE THE CONCERNS**
5 **YOU DISCUSS ABOVE?**

6 A. No. The proposal raises some of the same concerns as Eschelon's original
7 proposal. Specifically, the reference to "unacceptable changes" is as vague as
8 Eschelon's "no adverse affect" language. Eschelon does not define
9 "unacceptable" or tie the term to any measurable industry standard. In addition,
10 while the proposal would require Qwest to restore transmission quality to "an
11 acceptable level," Eschelon does not define what is "acceptable" or tie this term to
12 any industry standard. As a result, Qwest would have no meaningful way of
13 knowing, first, whether a change to its network is permitted under the ICA or,
14 second, what specific corrective steps to take in response to an impermissible
15 change.

16 For example, what if an area code split discussed below is an “unacceptable
17 change” for an end user customer? Qwest could not possibly make the change
18 “acceptable” by reversing the area code split. Qwest would be in the position of
19 potentially violating the ICA through no fault of its own, but rather, because it
20 followed an order from this Commission order while also meeting all FCC notice
21 requirements. Moreover, in the event of an area code split, requiring Qwest to
22 attempt to locate every Eschelon customer in that area code and to send a list of
23 affected customers to Eschelon would result in unnecessary investments of time
24 and money. Eschelon knows which of its customers are within particular area
25 codes and likely would not make any use of a list provided by Qwest of customers
26 within the area code (assuming Qwest could even identify Eschelon's customers.)
27 Even with a list from Qwest, Eschelon would have to compile its own list because
28 it would need all the names and billing addresses for its affected customers in
29 order to send them any required notifications.

1 **Q. DOES ESCHELON'S USE OF THE DEFINED TERM, "END-USER**
2 **CUSTOMER," ALSO CREATE A CONCERN REGARDING BOTH THIS**
3 **ALTERNATIVE PROPOSAL AND ESCHELON'S ORIGINAL**
4 **PROPOSAL?**

5 A. Yes. Eschelon's use of the defined term, "CLEC's End User Customer," would
6 improperly expand the prohibition against "unacceptable changes" to third party
7 retail customers, including customers of carriers other than Qwest and Eschelon.
8 "End User Customer" is defined in Section 4.0 of the ICA as "a third party retail
9 customer that subscribes to a Telecommunications Service provided by either of
10 the Parties or by another Carrier or by two or more Carriers." The use of this term
11 expands the prohibition against changes that are "unacceptable" or that have an
12 undefined "adverse effect" beyond Eschelon's customers to all "third party retail
13 customers," including customers of carriers that are not parties to this ICA. This
14 broad expansion of the no "adverse effect" prohibition even further limits Qwest's
15 ability to engage in network modernization and maintenance activities. Further,
16 by including the term "End-User Customer" in its proposed language for Section
17 9.1.9, Eschelon is attempting to regulate Qwest's relationship with other CLECs
18 through this ICA that is between only Eschelon and Qwest. It is clearly improper
19 to attempt through this ICA to set terms and conditions for Qwest's relationship
20 with other CLECs.

21 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. 9-33?**

22 A. The Commission should reject Eschelon's vague proposals because they are not
23 tied to any measurable metric, the ICA already protects Eschelon against network
24 changes that alter transmission parameters, and both proposals would create
25 counter-productive disincentive for Qwest to modernize and maintain its network.

26

1 *Issue No. 9-34*

2 **Q. IN DISCUSSING THE NOTICE OF NETWORK CHANGES THAT**
3 **QWEST WILL PROVIDE TO ESCHELON, MR. STARKEY STATES**
4 **THAT QWEST WILL NOT AGREE TO PROVIDE THE "LOCATION"**
5 **OF CHANGES, AS THAT TERM HAS BEEN DEFINED BY THE FCC. IS**
6 **THAT ASSERTION CORRECT?**

7 A. No. As I describe in my direct testimony, Qwest is committing to provide notices
8 that meet the requirements of the FCC's notice rule relating to network changes
9 set forth in 47 C.F.R. § 51.327. Consistent with the requirements of that rule,
10 Qwest will include in the notice information indicating the locations at which
11 network changes will occur. Mr. Starkey asserts that the FCC's reference to
12 "location" effectively means that an ILEC must provide the address of every
13 CLEC customer whose service could be affected by a change to the network.
14 However, the FCC uses the term "location" in Rule 51.327 not to refer to the
15 addresses of CLEC customers but, instead, to refer to "the location(s) at which the
16 changes will occur." In other words, an ILEC must identify the location in its
17 network where the change will occur, which would, in turn, allow CLECs to
18 determine based on their own records whether any of their customers could be
19 affected by the change.

20 **Q. IS MR. STARKEY CORRECT IN SUGGESTING AT PAGE 160 THAT**
21 **THE INTENT OF THE FCC'S RULES RELATING TO NOTICE OF**
22 **NETWORK CHANGES REQUIRES QWEST TO INCLUDE CIRCUIT**
23 **IDENTIFICATION NUMBERS OF ESCHELON CIRCUITS IN ITS**
24 **NOTICES?**

25 A. No. There is no requirement in Rule 51.327(a)(2) or any other FCC rule relating
26 to notice for an ILEC to provide circuit ID numbers for CLEC circuits that are
27 potentially affected by a network change. Eschelon has access to the circuit ID
28 numbers of the circuits it obtains from Qwest. If Eschelon wants to know the ID
29 numbers of circuits that may be affected by a network change, it can obtain that

1 information from its own records after learning from Qwest the location of the
2 network change. Eschelon should not be permitted to force Qwest to research this
3 information – which would have to be done manually – when the information is
4 readily available to Eschelon.

5 **Q. HAS ESCHELON ALSO SUBMITTED AN ALTERNATIVE PROPOSAL**
6 **FOR THIS ISSUE?**

7 A. Yes. Eschelon has offered the following alternative proposal based on language
8 ordered by the Administrative Law Judges in the Minnesota arbitration: "Such
9 notices will contain the location(s) at which the changes will occur including, if
10 the changes are specific to an End User Customer, the circuit identification, if
11 readily available."

12 **Q. DOES THIS PROPOSAL ELIMINATE THE CONCERNS YOU HAVE**
13 **DISCUSSED RELATING TO ESCHELON'S APPROACH TO THIS**
14 **ISSUE?**

15 A. No. While this alternative proposal is an improvement on Eschelon's original
16 proposal, it still improperly attempts to shift the burden of determining circuit IDs
17 from Eschelon to Qwest. Because Eschelon has access to circuit IDs in its own
18 records and Qwest has neither ready access to those IDs nor a legal obligation to
19 provide them, Eschelon's alternative proposal is improper and should be rejected.
20 Consistent with the FCC's rules relating to notice, the Commission should reject
21 Eschelon's attempt to shift responsibility for locating circuits IDs onto Qwest.

22 **Issue Nos. 9-37 through 9-42 – Wire Center Issues**

23 **Q. HAVE THE PARTIES REACHED A SETTLEMENT RELATING TO THE**
24 **WIRE CENTER ISSUES?**

25 A. Yes. On June 20, 2007, Qwest and Eschelon jointly filed in this proceeding a
26 motion for single compliance filing of the interconnection agreement and, if
27 granted, a revised schedule. In that motion, the parties explained that they have

1 entered into a multi-state settlement that, if approved by the Commission, will
2 resolve the "wire center issues" encompassed by Arbitration Issue Nos. 9-37
3 through 9-42. The parties explained further that they were submitting the
4 settlement agreement for Commission approval in the "wire center docket,"
5 Docket No. 06-049-40. In view of the settlement, the parties requested that if the
6 Commission granted the parties' request for a single compliance filing, the
7 schedule in this proceeding be modified to defer any testimony on the wire center
8 issues until after the Commission rules on the requested approval of the settlement
9 agreement in the wire center docket.

10 On June 27, 2007, Qwest and a group of CLECs submitted the multi-state
11 settlement agreement to the Commission in the wire center docket, along with a
12 motion requesting approval of the agreement. That motion is pending, and the
13 Commission has requested that interested parties submit comments on the
14 settlement agreement by July 30, 2007.

15 In view of the pending settlement agreement and the procedural status of the wire
16 center issues, Qwest is not currently submitting testimony on Arbitration Issue
17 Nos. 9-37 through 9-42. Qwest reserves its right to file testimony on these issues
18 if the Commission does not approve the settlement agreement.

19 **Issue No. 9-53 - Access to UCCRE**

20 **Q. PLEASE PROVIDE AN OVERVIEW OF ISSUE NO. 9-53 AND YOUR**
21 **INITIAL RESPONSE TO THE TESTIMONY OF MR. DENNEY.**

22 A. Issue No. 9-53 originated from Eschelon's initial request that Qwest place the
23 "Unbundled Customer Controlled Rearrangement Element" ("UCCRE") product
24 in the ICA at Section 9.9. However, as confirmed by Mr. Denney,⁸ as a re-write
25 of its rules pursuant to the *TRRO*, the FCC has removed from Rule
26 51.319(d)(2)(iv) the requirement for ILECs to provide digital cross-connects for

1 UCCRE.⁹ UCCRE was the product that Qwest developed to meet the previous
2 FCC requirement. As I discuss below, Mr. Denney asserts incorrectly that
3 another FCC rule regarding simple central office cross-connects could be
4 interpreted as requiring access to UCCRE.

5 In addition, Mr. Denney's testimony does not include any claim that Eschelon's
6 has any impending plans to use UCCRE or any impending need for it. Its concern
7 relating to this issue is apparently hypothetical.

8 **Q. MR. DENNEY ASSERTS (PAGES 109, 117-118) THAT IF QWEST DOES**
9 **NOT OFFER UCCRE IN THE ICA, ESCHELON WILL EXPERIENCE**
10 **DISCRIMINATION AND BE AT A COMPETITIVE DISADVANTAGE. IS**
11 **THERE ANY BASIS FOR THIS CLAIM?**

12 A. No. As an initial matter, neither Eschelon nor any other CLEC has ever ordered
13 UCCRE service from Qwest in Utah or in any other state. Having never had a
14 need for UCCRE, Eschelon has little basis for complaining that it will be
15 competitively disadvantaged without the service in the future.

16 In addition, Qwest is discontinuing UCCRE for all CLECs entering into new
17 ICAs and for all other CLECs when their current ICAs eventually expire. Thus,
18 Qwest is not singling out Eschelon, as Mr. Denney suggests. Instead, given the
19 FCC's removal of UCCRE from its unbundling rules and the lack of CLEC
20 demand for the service, Qwest is moving toward elimination of the service
21 offering for all CLECs. The only difference among the CLECs is the timing of
22 Qwest's elimination of UCCRE. For CLECs like Eschelon that are entering into
23 new ICAs, Qwest is eliminating the UCCRE offering now by not including it in
24 the new ICAs. For CLECs with ICAs that contain the UCCRE offering and that
25 are not expiring soon, the offering will remain in their ICAs until they enter into

⁸ See Denney Direct at pp. 122-123.

⁹ See and compare former 47 C.F.R. § 51.319(d)(2)(iv) and current 47 C.F.R. § 51.319(d)(2).

1 new agreements. However, those CLECs, like Eschelon, have not demonstrated
2 any demand for UCCRE.

3 **Q. IN HIS DIRECT TESTIMONY AT PAGE 117, MR. DENNEY CITES TO**
4 **THE FACT THAT UCCRE IS AVAILABLE UNDER THE AT&T ICA AS**
5 **EVIDENCE OF THE DISCRIMINATORY COMPETITIVE**
6 **DISADVANTAGE THAT ESCHELON WOULD FACE IF UCCRE IS NOT**
7 **INCLUDED IN ITS ICA. HAS AT&T EVER ORDERED UCCRE FROM**
8 **QWEST UNDER THEIR ICAs?**

9 A. No. Neither AT&T nor any other CLEC has ever ordered UCCRE. Mr. Denney's
10 claim of discriminatory competitive disadvantage lacks credibility especially
11 given that neither the CLEC he cites nor any other CLEC have ever ordered
12 UCCRE under their ICAs, and Eschelon itself has never ordered the service.

13 **Q. MR. DENNEY APPEARS TO ASSUME THAT QWEST CANNOT STOP**
14 **OFFERING A PRODUCT OR SERVICE ELIMINATED BY THE FCC**
15 **UNLESS IT OBTAINS APPROVAL FROM A STATE COMMISSION. IS**
16 **THERE ANY BASIS FOR THAT ASSUMPTION?**

17 A. No. There is nothing in the *TRO* or the *TRRO* suggesting that ILECs must seek
18 approval from a state commission before discontinuing the UNEs and services
19 that the FCC eliminated from Section 251 in those orders. On the contrary, the
20 FCC made it clear in the *TRRO* that its changes in unbundling requirements are to
21 be implemented through the interconnection negotiation process, not by seeking
22 approval of the changes from state commissions. Thus, the FCC states at
23 paragraph 233 of the *TRRO* that "the incumbent LEC and competitive LEC must
24 negotiate in good faith regarding any rates, terms, and conditions necessary to
25 implement our rule changes."

26 Mr. Denney attempts to single out UCCRE by claiming that Qwest should be
27 required to go to the Commission to seek approval to stop offering the product,
28 instead of relying on the ICA negotiation process. There is no such requirement

1 and, indeed, Qwest has proceeded just as the FCC has directed by relying on the
2 ICA negotiation process.

3 **Q. GIVEN THAT THE FCC HAS DIRECTED ILECs AND CLECs TO RELY**
4 **ON THE ICA NEGOTIATION PROCESS TO IMPLEMENT CHANGES**
5 **IN UNBUNDLING REQUIREMENTS, IS IT INEVITABLE THAT THE**
6 **TIMING OF NEGOTIATIONS WILL VARY TO SOME EXTENT FROM**
7 **ONE CLEC TO ANOTHER?**

8 A. Yes. Qwest, of course, cannot renegotiate ICAs with all CLECs at precisely the
9 same time. As a result, it is unavoidable that changes in the FCC's unbundling
10 requirements will be implemented sooner for some CLECs than for others. For
11 example, if Qwest and a CLEC mutually agree upon all the provisions of a re-
12 negotiated ICA implementing the *TRO* and *TRRO*, that agreement likely can be
13 completed and approved in a matter of a few months. By contrast, if Qwest and a
14 CLEC do not agree on the provisions required to implement the *TRO* and the
15 *TRRO* and are required to arbitrate, it would take much longer to complete and
16 have the agreement approved. As a result, for some period of time, one CLEC is
17 likely to have an ICA with different unbundling requirements than are in another
18 CLEC's ICA. The differences in the ICAs are not the result of discrimination, as
19 Mr. Denney would suggest, but are instead the result of inevitable differences in
20 timing.

21 **Q. WHEN IT HAS ELIMINATED THE OBLIGATION TO PROVIDE**
22 **CERTAIN PRODUCTS AND ELEMENTS, HAS THE FCC RECOGNIZED**
23 **THAT THERE MAY BE A PERIOD OF TIME DURING WHICH A**
24 **PRODUCT OR ELEMENT WILL CONTINUE TO BE AVAILABLE TO**
25 **SOME CARRIERS WHILE NOT BEING AVAILABLE TO OTHER**
26 **CARRIERS?**

27 A. Yes. The FCC has used the concept of "grandfathered" service to give carriers
28 that have relied on a product or service time to adjust to the elimination of the
29 product or service. In these circumstances, the FCC has adopted transitional

1 phase-outs for carriers that have previously relied on the product or service, while
2 making the product or service immediately unavailable to carriers that did not
3 previously rely on it. For example, while the FCC eliminated the high frequency
4 portion of the loop ("HFPL") as a UNE in the *TRO*, it permitted CLECs with
5 existing "line sharing arrangements" to continue obtaining the HFPL at whatever
6 rate the ILEC was charging prior to the *TRO*.¹⁰ However, those pre-*TRO* rates
7 were no longer available for CLECs that did not have "grandfathered" line sharing
8 arrangements. Those CLECs were required to pay different rates that the FCC
9 established as part of its phase-out of the HFPL as a UNE.¹¹

10 As this example shows, the FCC recognizes that there will be timing differences
11 among CLECs in the implementation of its network unbundling orders. These
12 differences do not result in a form of discrimination prohibited by the Act;
13 instead, they are the result of necessary and often unavoidable differences in the
14 timing of implementation of the FCC's orders and contract replacements.

15 **Q. IN THE UNLIKELY EVENT THAT ESCHELON HAS A NEED FOR**
16 **UCCRE, CAN IT OBTAIN THE SERVICE FROM QWEST EVEN IF IT IS**
17 **NOT INCLUDED IN THE ICA?**

18 A. Yes. As I discuss in my direct testimony, in the unlikely event that Eschelon has
19 a need for UCCRE, it can obtain the service through Qwest's retail Command-A-
20 Link tariff.

21 **Q. IS MR. DENNEY CORRECT IN STATING THAT THE FCC DID NOT**
22 **INTEND TO ELIMINATE UCCRE EVEN THOUGH THE FCC HAS**
23 **REMOVED ACCESS TO DIGITAL CROSS-CONNECT SYSTEMS FROM**
24 **ITS NETWORK UNBUNDLING RULES?**

25 A. No. As Mr. Denney acknowledges, UCCRE service is provided through access to
26 digital cross-connect systems. Prior to the *TRO*, FCC Rule 51.319(d)(2)(iv)

¹⁰ *TRO*, at ¶ 264.

1 required ILECs to provide access to the functionality of digital cross-connect
2 systems. Following the *TRO*, as Mr. Denney admits (at page 123), the FCC
3 eliminated this provision, thereby establishing that ILECs are not required to
4 provide access to the functionality of digital cross-connect systems. Because
5 UCCRE service is dependent upon access to these systems, the FCC's elimination
6 of this unbundling obligation necessarily established that ILECs have no
7 obligation to provide unbundled access to UCCRE service.

8 Mr. Denney's suggestion that the FCC did not truly intend to eliminate access to
9 digital cross-connect systems and UCCRE when it modified its unbundling rules
10 after the *TRO* is inaccurate. First, if there were any merit to the argument that the
11 FCC's unbundling rules should not be implemented as they are written, but should
12 instead be implemented as a party believes they were intended, the rules would be
13 completely malleable and uncertain. I am not a lawyer, but I do not believe that is
14 how agency rules and regulations are implemented. Second, there is no basis for
15 Mr. Denney's conclusion that the FCC did not intend to eliminate access to digital
16 cross-connect systems in its post-*TRO* rules. If that were the case, the FCC would
17 have corrected its alleged oversight through an errata or some other corrective
18 measure. That it has not done so confirms that it deliberately eliminated UCCRE
19 from its unbundling rules.

20 **Q. DOES THE REQUIREMENT IN RULE 51.305(A)(2)(IV) FOR ILECs TO**
21 **PROVIDE INTERCONNECTION AT "CENTRAL OFFICE CROSS-**
22 **CONNECT POINTS" IMPLICITLY IMPOSE A REQUIREMENT TO**
23 **PROVIDE ACCESS TO CROSS-CONNECT SYSTEMS, AS MR. DENNEY**
24 **SUGGESTS (PAGE 123)?**

25 A. No. If the FCC had intended to continue requiring ILECs to provide access to
26 UCCRE, it would not have deleted the rule requiring that access in reliance on a
27 different rule that does not mention access to cross-connect systems. It is simply

¹¹ *TRO*, at ¶ 265.

1 illogical to assume, as Mr. Denney does, that FCC chose to move from a clear
2 requirement in a former rule to a vague, inferential requirement based on a rule
3 that does not even address UCCRE.

4 **Q. SHOULD QWEST HAVE THE RIGHT TO STOP OFFERING A SERVICE**
5 **LIKE UCCRE THAT THE FCC HAS ELIMINATED FROM ITS**
6 **UNBUNDLING RULES AND THAT CLECs DO NOT ORDER?**

7 A. Yes. If the FCC determines that there is no longer a competitive need for ILECs
8 to offer a product or a service, ILECs have no legal obligation to continue
9 offering the product or service in new ICAs. Under Mr. Denney's argument and
10 Eschelon's proposal for Sections 9.9 and 9.9.1, Qwest would be denied the
11 benefits from these changes in the law for indefinite periods of time because old
12 ICAs do not include the new legal requirements. The result would be that Qwest
13 would be forced to enter into new ICAs that reflect old law and competitive
14 conditions that no longer exist. That approach is not consistent with sound public
15 policy and law, as it would fail to give effect to the FCC's determinations of what
16 the current law should be based on competitive conditions.

17 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATION FOR ISSUE NO. 9-**
18 **53.**

19 A. The Commission should reject Eschelon's attempt to impose unnecessary
20 administrative and notice requirements for a product that Qwest has no legal
21 obligation to offer and for which CLECs, including Eschelon, have shown no
22 demand. In addition, there is no reasonable basis for requiring Qwest to maintain
23 external and internal documentation, pricing and ordering information for a
24 service that has never been ordered. Thus, the Commission should reject
25 Eschelon's proposed Sections 9.9 and 9.9.1 and exclude UCCRE from the ICA.

1 **Issue No. 9-55 - Combinations of Loops and Transport**

2 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTES**
3 **ENCOMPASSED BY ISSUE NO. 9-55.**

4 A. While Issue No. 9-55 encompasses multiple provisions of the ICA, there are a
5 small number of fundamental differences in the parties' positions that account for
6 the parties' conflicting ICA language for these provisions. Generally, Qwest's
7 proposed Section 9.23.4 describes the terms and conditions for Enhanced
8 Extended Loops ("EELs"), Commingled EEL circuits and High Capacity EELs.
9 The Qwest EEL product offering consists of a combination of an Unbundled Loop
10 and UDIT. However, in response to Eschelon's proposal, Qwest agreed to remove
11 the terms and conditions associated with commingling (*i.e.*, the combining of a
12 UNE and non-UNE network circuit) from Section 9.23 and to create a new ICA
13 Section 24 dedicated to commingling. This change in structure has challenged
14 both parties to make sure the necessary terms and conditions are described in each
15 section and to make sure that inappropriate duplication does not occur.

16 **Q. PLEASE DESCRIBE THE SPECIFIC DISPUTE RELATING TO ISSUE**
17 **NO. 9-55.**

18 A. The dispute covered by Issue No. 9-55 arises from Eschelon's attempt to define a
19 "Loop-Transport Combination" as a generic "umbrella" EEL, and then sweep
20 unique products and commingled circuits with unique terms and conditions under
21 this umbrella. Specifically, the products are: EELs, Commingled EEL circuits
22 (which is an arrangement where either an EEL transport or EEL loop circuit is
23 connected to a private line circuit), and High Capacity EELs.¹² The problem with
24 Eschelon's proposal is that Qwest does not have a "Loop-Transport Combination"
25 generic EEL offering. Through its proposed language, Eschelon is attempting to
26 either create a product offering that does not exist, or eliminate the distinctions
27 between the product offerings and commingled arrangement identified above. In

1 either case, Qwest opposes this attempt on Eschelon's part to create a new Qwest
2 product and, accordingly, objects to inserting the term "Loop-Transport
3 Combinations" in the ICA provisions. Qwest further opposes Eschelon's attempts
4 to add confusion regarding the unique terms and conditions relating to EELs,
5 Commingled EEL circuits, and High Capacity EELs.

6 **Q. AT PAGE 196, MR. STARKEY CLAIMS THE USE OF LOOP-**
7 **TRANSPORT COMBINATION IS "EFFICIENT" BECAUSE YOU DON'T**
8 **HAVE TO LIST ALL THREE TERMS MULTIPLE TIMES. DO YOU**
9 **AGREE?**

10 A. No. The three EELs identified by Mr. Starkey (*i.e.*, EELs, Commingled EEL
11 circuits and High Capacity EELs) have different terms and conditions that apply
12 to each arrangement and, accordingly, should be listed and addressed separately.
13 There is nothing "efficient" about to trying to discuss three distinct service
14 arrangements as if they are a single product. On the contrary, the use of the same
15 name for different products with distinct attributes will cause confusion and
16 potential inefficiency.

17 **Q. DO YOU HAVE ANY COMMENTS REGARDING MR. STARKEY'S**
18 **STATED BUSINESS REASON FOR WANTING TO INCLUDED "LOOP-**
19 **TRANSPORT COMBINATIONS" IN THE ICA?**

20 A. Yes. Mr. Starkey states at pages 190 that if a combination is created between a
21 UNE circuit and a non-UNE (*e.g.*, private line) circuit, then the UNE circuit terms
22 and conditions should be included in the ICA so that this Commission retains
23 jurisdiction over the UNE circuit. Mr. Starkey suggests this is Eschelon's only
24 objective in proposing this language.

25

¹² Eschelon proposed ICA at Section 9.23.4.

1 **Q. WHAT IS QWEST'S RESPONSE TO THIS CONCERN AND OBJECTIVE**
2 **OF ESCHELON'S?**

3 A. Setting aside Qwest's concerns that the Eschelon language goes way beyond, and
4 is not consistent with, Eschelon's stated objectives, Qwest is in conceptual
5 agreement with Eschelon -- the ICA should govern the rates, terms and conditions
6 of the UNE circuit in a commingled arrangement, and the appropriate tariff or
7 price list should cover the rates, terms and conditions of the private line circuit in
8 the commingled arrangement.

9 However, as I stated above, Eschelon's language is not consistent with (and
10 clearly goes beyond) this clear and simple objective. Eschelon attempts to
11 modify, change and add ambiguities to numerous ICA provisions toward the
12 supposed end of achieving this objection. If this is Eschelon's actual objective,
13 then Qwest proposes the following ICA language to address Eschelon's concerns
14 and to settle Issue No. 9-55:

15 When a UNE circuit is commingled with a non-UNE circuit, the rates,
16 terms and conditions of the ICA will apply to the UNE circuit
17 (including Commission jurisdiction) and the non-UNE circuit will be
18 governed by the rates, terms and conditions of the appropriate Tariff.¹³

19 Qwest would agree to insert this language both in Section 9.23 and in the
20 Eschelon-proposed Section 24 Commingling section of the ICA. This is a clear
21 and straightforward manner for addressing Eschelon's expressed concerns without
22 creating undue confusion in Section 9.23 of the ICA. In fact, Qwest has already
23 made such a commitment at section 24.1.2.1. Nonetheless, Qwest would agree to
24 state it again to assure Eschelon that this is not a problem that needs extensive and
25 confusing edits to the ICA.

¹³ "Tariff" as used in the ICA is a defined term that refers to Qwest interstate tariffs and state tariffs, price lists and price schedules.

1 **Q. YOU STATE THAT ESCHELON'S LANGUAGE GOES BEYOND**
2 **ESCHELON'S STATED OBJECTIVE. CAN YOU PROVIDE AN**
3 **EXAMPLE TO SUPPORT YOUR STATEMENT?**

4 A. Yes. I did not have to search far to confirm the legitimacy of this concern. In its
5 own testimony, Eschelon states: "Eschelon proposes use of the term 'Loop
6 Transport Combination,' which would include Commingled EELs as being
7 ordered through the LSR process."¹⁴ This statement sheds light on Eschelon's true
8 motive, since the "Loop Transport Combination" umbrella product would impose
9 significant process and systems changes on Qwest. This is because Qwest's
10 current systems require the use of both LSRs and ASRs for Commingled EELs,
11 and Eschelon's proposal would eliminate the use of ASRs for this product.

12 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE**
13 **ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE**
14 **CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-**
15 **TRANSPORT UMBRELLA TERM?**

16 A. Qwest is concerned that Eschelon is seeking to have Qwest's special access and
17 private line circuit's terms and conditions be governed by the ICA. This is
18 improper because special access and private line services are provided pursuant to
19 tariffs, not pursuant to Section 251 of the Act, and, accordingly, terms and
20 conditions for these services are found in the governing tariffs, not in ICAs.
21 Moreover, in combination with its demands that commingled arrangements be put
22 in place with a single order, or LSR, and be billed in Qwest's "CRIS" billing
23 system, Eschelon is attempting directly to have this Commission (via an ICA
24 arbitration) force Qwest to change its special access and private line service order
25 process and billing arrangements. By eliminating the commingling restriction, the
26 FCC modified the rules to permit CLECs to commingle UNEs and combinations
27 of UNEs with services (*e.g.*, switched, special access and private line services
28 offered pursuant to tariff) that a requesting carrier has obtained at wholesale from

1 an ILEC pursuant to any method other than unbundling under section 251(c)(3) of
2 the Act. Wholesale services such as switched and special access services have
3 always been separate and distinct products from those UNE products provided to
4 CLECs under the terms and conditions of their ICA. Each of these products,
5 whether it is tariffed or UNE, has its own established ordering, provisioning, and
6 billing systems and methods. Eliminating the commingling restriction did not
7 change that, and nowhere in the *TRO* or *TRRO* does the FCC require ILECs to
8 modify the rate, terms and conditions of their special access and private lines
9 services, beyond removing any commingling with UNE restrictions. The FCC
10 only required the ILECs to perform the necessary functions to effectuate such
11 commingling upon request. Qwest has established provisioning processes and
12 methods for all commingled arrangements to meet that requirement and has
13 provided for billing of the UNE rates to the UNE circuit and the appropriate
14 special access and/or private line tariff rates to the tariffed circuit.

15 **Q. ON PAGE 190, MR. STARKEY IMPLIES THAT QWEST, VIA THE ICA,**
16 **IS ATTEMPTING TO HAVE THE UNE PORTIONS OF A**
17 **COMMINGLED ARRANGEMENT BE COVERED BY ITS TARIFFS. DO**
18 **YOU AGREE WITH THIS ACCUSATION?**

19 A. No. Qwest has not made any attempt to have the terms and conditions for UNEs
20 be dictated by the terms in its tariffs that govern access services. Mr. Starkey
21 does not provide any support for his accusation. In fact, in agreed ICA language,
22 Qwest commits as follows:

23 24.1.2.1 The UNE component(s) of any Commingled arrangement is
24 governed by the applicable terms of this Agreement. The other
25 component(s) of any Commingled arrangement is governed by the terms
26 of the alternative service arrangement pursuant to which that component
27 is offered (e.g., Qwest's applicable Tariffs, price lists, catalogs, or
28 commercial agreements). Performance measurements and/or remedies
29 under this Agreement apply only to the UNE component(s) of any
30 Commingled arrangement. Qwest is not relieved from those

¹⁴ See Denney Direct at pp. 144-145.

1 measurements and remedies by virtue of the fact that the UNE is part of
2 a Commingled arrangement.

3 Qwest has been clear that when two circuits are commingled, each circuit retains
4 the appropriate terms and conditions. Mr. Starkey's unsupported accusations are
5 clearly at odds with the Qwest-approved ICA language. As I stated above, it is
6 Eschelon's proposed melding of EELs, Commingled EEL circuits and High
7 Capacity EELs into a single umbrella product that creates the confusion regarding
8 this issue.

9 **Q. MR. STARKEY QUOTES FCC REFERENCES TO "LOOP- TRANSPORT**
10 **COMBINATIONS" IN HIS TESTIMONY AS SUPPORT FOR**
11 **ESCHELON'S LANGUAGE.¹⁵ WHAT IS YOUR RESPONSE TO THESE**
12 **FCC REFERENCES?**

13 A. Both references, to paragraphs 575 and 576 of the *TRO*, discuss "UNE
14 combinations," which means a combination that is made up of a UNE loop and
15 UNE transport. Neither of these cites discusses combinations between UNEs and
16 non-UNEs. There is no basis for Mr. Starkey's leap of logic under which he
17 assumes that that because the FCC discusses "UNE Combinations," Eschelon is
18 some how free to attempt to thrust upon Qwest a new loop-transport definition
19 that covers UNE combinations and UNEs with private line combinations.

20 Mr. Starkey's next two FCC references, to paragraphs 584 and 593 of the *TRO*,
21 actually support Qwest's language. Paragraph 584 notes that UNE and private
22 line combinations are clearly identified as "commingled" loop transport
23 combinations, and paragraph 593 further defines such arrangements as a
24 "commingled EEL." Commingled EEL is Qwest's name for UNE and private line
25 loop-transport combinations. His final cite to paragraph 594 again modifies loop-
26 transport combinations with the "commingled" descriptor.

¹⁵ See Starkey Direct at p. 195.

1 In summary, none of the FCC references identified by Mr. Starkey supports
2 Eschelon's proposal for use of a confusing umbrella definition of "loop-transport
3 combination" that attempts to cover UNE combinations and UNEs with private
4 line combinations.

5 **Q. IN SUMMARY, WHY SHOULD THE COMMISSION ADOPT QWEST'S**
6 **PROPOSAL AND REJECT ESCHELON'S USE OF THE TERM "LOOP-**
7 **TRANSPORT COMBINATIONS?"**

8 A. The FCC uses the term "loop-transport combination" to generally describe
9 varieties of EELs, not to establish an unbundled product separate from EELs. By
10 contrast, Eschelon uses "loop-transport combination" as a defined term that
11 applies equally to EELs, High Capacity EELs, and Commingled EELs. Although
12 "loop-transport combination" is not a Qwest product, Eschelon improperly
13 proposes to assign product attributes to it. *See, e.g.,* §§ 9.23.4.4.3.1 (Intervals);
14 9.23.4.5.1.1 (Billing); 9.23.4.6.6 (BANS).

15 Qwest has developed and implemented separate and distinct systems, procedures
16 and provisioning intervals for EELs, UNEs and tariffed private line services and
17 is under no legal requirement to implement costly modifications to provide
18 Eschelon's proposed "loop-transport combination" umbrella product.

19 If Eschelon's true concern is that UNEs be governed under the ICA and
20 Commission jurisdiction while non-UNE (*e.g.,* private line) circuits be governed
21 under the applicable tariff, Qwest's proposed ICA language addresses that
22 concern. Qwest recommends the Commission adopt the Qwest proposed
23 language and that it reject the Eschelon "Loop-Transport Combination" language.

24

1 **Issue Nos. 9-56 and 9-56a – Service Eligibility Criteria Audits**

2 **Q. MR. DENNEY EXPLAINS AT PAGE 125 OF HIS DIRECT TESTIMONY**
3 **THAT ESCHELON'S PROPOSAL RELATING TO SERVICE**
4 **ELIGIBILITY AUDITS IS PREMISED ON THE ASSUMPTION THAT**
5 **THE FCC PERMITS ILECs TO CONDUCT THESE AUDITS ONLY**
6 **UPON A SHOWING OF CAUSE? IS MR. DENNEY CORRECT IN**
7 **ASSERTING THAT AN ILEC MUST STATE THE REASON OR CAUSE**
8 **BEFORE CONDUCTING AN AUDIT?**

9 A. No. This issue involves a straightforward interpretation and application of the
10 FCC's rulings in the *TRO* relating to the rights of ILECs to conduct audits to
11 determine if CLECs are complying with the service eligibility requirements that
12 apply to High Capacity EELs. Mr. Denney relies on a partial, incomplete quote
13 and an inaccurate description of the FCC's rulings in an attempt to support his
14 assertion that "Qwest is required by the FCC to have cause before conducting an
15 audit regarding CLEC compliance with service eligibility requirements." An
16 accurate reading of the *TRO* shows that the FCC did not impose a "cause"
17 requirement for ILEC audits.

18 Moreover, a "for cause" requirement would inevitably lead to disputes and delays,
19 since it is likely that Qwest and Eschelon would not agree on what is a reasonable
20 "cause." This is particularly likely given the vagueness of the term, as proposed
21 by Eschelon. The end result would be that Qwest's attempts to exercise its legal
22 right to conduct audits would be forced into a lengthy, time-consuming dispute
23 resolution processes. That is not what the FCC envisioned when it granted ILECs
24 audit rights without imposing any "for cause" requirement.

25

1 **Q. PLEASE DESCRIBE THE AUDIT RIGHTS THAT THE FCC GRANTED**
2 **ILECS IN THE *TRO* FOR DETERMINING CLEC COMPLIANCE WITH**
3 **THE SERVICE ELIGIBILITY CRITERIA.**

4 A. Contrary to Mr. Denney's assertion, the FCC did not condition ILEC audit rights
5 on a demonstration of cause or its reason to believe that a CLEC is violating the
6 service eligibility criteria. Instead, as described in paragraph 626 of the *TRO*, an
7 ILEC is permitted to "obtain and pay for an independent auditor to audit, on an
8 annual basis, compliance with the qualifying service eligibility criteria." The
9 auditor must issue an opinion regarding the requesting carrier's compliance with
10 the criteria. If the auditor determines that the CLEC is not in compliance, the
11 CLEC must make true-up payments, convert non-complying circuits to the
12 appropriate service, and may have to pay the costs of the independent auditor. If
13 the auditor concludes that the CLEC is complying with the criteria, the ILEC must
14 reimburse the CLEC for the costs associated with the audit. Nowhere in this
15 description of ILEC audit rights does the FCC refer to or impose a demonstration
16 of reason or cause requirement.

17 **Q. SINCE THE FCC DID NOT IMPOSE A REASON OR CAUSE**
18 **REQUIREMENT FOR SERVICE ELIGIBILITY AUDITS, IS THE AUDIT**
19 **PROCESS SUBJECT TO POTENTIAL ABUSE BY THE ILECS, AS MR.**
20 **DENNEY CLAIMS?**

21 A. No. While the FCC did not impose a reason or cause requirement, it did take
22 steps to ensure that ILECs would not abuse the audit process. Specifically, as I
23 describe above, the FCC established that if an auditor concludes that the CLEC is
24 complying with the service eligibility criteria, the ILEC must reimburse the CLEC
25 for the costs associated with the audit. This reimbursement obligation gives
26 ILECs a strong incentive not to conduct abusive audits. Indeed, the FCC stated in
27 paragraph 628 of the *TRO* that the intent of this reimbursement requirement for
28 ILECs is to "eliminate the potential for abusive or unfounded audits." In addition,
29 the *TRO* establishes that ILECs are permitted to conduct audits only "on an annual
30 basis," which further prevents ILECs from conducting abusive audits. It is

1 through this reimbursement scheme and the annual limit on audits, not through a
2 "cause" requirement, that the FCC eliminated the potential for abusive audits.

3 **Q. HOW DOES MR. DENNEY INACCURATELY QUOTE THE *TRO* IN**
4 **CLAIMING THAT THE FCC IMPOSED A REASON OR CAUSE**
5 **REQUIREMENT FOR SERVICE ELIGIBILITY AUDITS?**

6 A. Mr. Denney relies on a partial quote of paragraph 621 of the *TRO* where the FCC
7 quotes a prior order in which it said that audits "will not be routine practice" and
8 will be undertaken only when the ILEC has a concern about compliance with the
9 service eligibility criteria. The first problem with Mr. Denney's presentation of
10 this quote is that the statement is from an FCC order – the *Supplemental Order*
11 *Clarification* – that was superseded by the *TRO*'s pronouncements relating to
12 service eligibility requirements and ILEC audit rights. It is curious that Mr.
13 Denney does not quote or describe in any detail the FCC's rulings in the *TRO*
14 relating to audit rights, since those rulings are the FCC's latest and last word on
15 the subject. The second problem with Mr. Denney's reliance on this quote is that
16 he fails to discuss the footnote – footnote 1898 from the *TRO* – that follows the
17 paragraph from which the quote is taken. In that paragraph, the FCC summarizes
18 the audit rights it established in the *Supplemental Order Clarification*.
19 Conspicuously absent from that summary is any mention of a "for cause"
20 requirement. In summary, Mr. Denney's attempt to take a single sentence (out of
21 an entire section describing audit rights) out of context is not persuasive. The
22 FCC has been consistent and specific regarding ILECs' audit rights; if it had
23 intended to impose a "for cause" requirement, it would have said so.

24

1 **Q. MR. DENNEY ALSO IMPLIES (PAGE 125) THAT QWEST HAS NOT**
2 **AGREED TO REIMBURSE ESCHELON FOR THE COSTS OF AN**
3 **AUDIT IF AN AUDITOR DETERMINES THAT ESCHELON IS**
4 **COMPLYING WITH THE SERVICE ELIGIBILITY CRITERIA? IS**
5 **THAT ASSERTION ACCURATE?**

6 A. No. Mr. Denney has overlooked or ignored an agreed provision in the ICA under
7 which Qwest commits very clearly that it will reimburse Eschelon for the costs of
8 an audit that results in a finding that Eschelon is complying with the service
9 eligibility criteria. Section 9.23.4.3.1.3.5 could not be any clearer:

10 To the extent the independent auditor's report finds that [Eschelon]
11 complied in material respects with the Service Eligibility Criteria, Qwest
12 must reimburse [Eschelon] for [Eschelon's] costs associated with the
13 audit, including staff time and other appropriate costs for responding to
14 the audit (*e.g.*, collecting data in response to auditor's inquiries, meeting
15 for interviews, etc.).

16 As this language shows, the reimbursement scheme that the FCC adopted as
17 protection against abusive audits is in the ICA. There is therefore no practical
18 need and no legal basis for Eschelon's "cause" proposal.

19 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

20 A. The Commission should reject Eschelon's proposed addition to Section
21 9.23.4.3.1.1, and thereby allow Qwest to retain the limited audit rights granted by
22 the FCC in the *TRO*. Further, for the same reasons that I describe above, the
23 Commission should reject Eschelon's demand that Qwest provide information
24 about specific circuits that may not be in compliance with the service eligibility
25 requirements as a pre-condition to an audit. There is no cause requirement for
26 audits and certainly no mention anywhere by the FCC of a requirement to identify
27 specific circuits as a pre-condition to an audit. Furthermore, any such
28 requirement could result in additional disputes and delays in Qwest's exercise of
29 its established right to conduct audits, as Eschelon could impose delay by
30 triggering a debate concerning whether "cause" for an audit exists.

1 **Issue Nos. 9-58 (ALL A, B, C, D, E) Ordering, Billing, and Circuit ID for**
2 **Commingled Arrangements**

3 **Q. PLEASE PROVIDE A SUMMARY OF THIS ISSUE.**

4 A. Issue No. 9-58 and the related sub-issues (a, b, c, d, e) involve process-related
5 disputes between the parties. When a CLEC orders either an EEL loop or EEL
6 transport commingled with a private line transport circuit or a channel termination
7 circuit (a Commingled EEL), it is necessary to order, provision and bill each
8 circuit out of the appropriate Qwest service order systems and to follow the
9 established processes Qwest has for these products. For example, when a CLEC
10 orders an EEL loop commingled with a private line transport circuit, the design of
11 Qwest's systems and processes requires that the CLEC order the EEL loop by
12 submitting a LSR. Qwest bills the CLEC for this network element through its
13 "CRIS" system. By contrast, the design of Qwest's systems and processes
14 requires that the CLEC order the private line transport circuit by submitting an
15 ASR, and Qwest bills the CLEC for this circuit through a different billing system
16 referred to as the "IABS system." Each circuit is separate and, to permit proper
17 tracking of the product for provisioning and billing purposes, is assigned its own
18 circuit ID. Moreover, the EEL loop is provided pursuant to terms and conditions
19 that are specific to that facility, and the private line transport circuit is provided
20 based on specifically defined terms and conditions set forth in tariffs.

21 This dispute arises because of Eschelon's demands that Qwest modify its systems
22 and processes so that commingled EELs are provisioned and processed as though
23 they are a single, unified UNE element, instead of a combination of two very
24 distinct circuits with distinct characteristics and provisioning requirements.
25 Eschelon's proposals in this regard would require very significant changes to
26 Qwest's systems and processes at a very substantial cost. In addition to the fact
27 that Qwest has no obligation to make such changes, Eschelon apparently is not
28 proposing to compensate Qwest for the costs they would impose.

1 Issue No. 9-58 is also connected to Issue No. 9-55 and Eschelon's attempt to
2 define a "Loop-Transport Combination" as a generic "umbrella" EEL
3 encompassing EELs, Commingled EELs, and High Capacity EELs. The net
4 result is that Eschelon is requesting that the ICA govern the Qwest special access
5 and private line circuits that comprise a commingled arrangement.

6 **Q. WHAT CONCERNS DOES QWEST HAVE ABOUT HAVING THE**
7 **ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE**
8 **CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP-**
9 **TRANSPORT UMBRELLA TERM?**

10 A. As I discuss above, Qwest is concerned that Eschelon is seeking to have Qwest's
11 special access and private line circuit terms and conditions be governed by the
12 ICA. This is improper because these are tariffed services that Qwest does not
13 provide pursuant to Section 251 of the Act, and, therefore, ICA terms and
14 conditions do not apply to them. Moreover, the combination of Eschelon's
15 demands that commingled arrangements be put in place with a single LSR and be
16 billed in CRIS is a direct attempt to have this Commission (via an ICA
17 arbitration) force Qwest to change its special access and private line service order
18 process and billing arrangements.¹⁶

19 By eliminating the former restriction on commingling in the *TRO*, the FCC
20 modified the rules to permit CLECs to commingle UNEs and combinations of
21 UNEs with services (*e.g.*, switched, special access and private line services
22 offered pursuant to tariff) that a requesting carrier has obtained at wholesale from
23 an ILEC pursuant to any method other than unbundling under section 251(c)(3) of
24 the Act. Wholesale services such as switched and special access services have
25 always been separate and distinct products from those UNE products provided to
26 CLECs under the terms and conditions of their ICA. Each of these products,
27 whether the product is tariffed or a UNE, has its own established ordering,

¹⁶ See Denney Direct at pp. 143-159.

1 provisioning, and billing systems and methods. Eliminating the commingling
2 restriction did not change this. Nowhere in the *TRO* or *TRRO* does the FCC
3 require ILECs to modify the rate, terms and conditions of their special access and
4 private lines services, beyond removing any commingling with UNE restrictions.
5 The FCC only required the ILECs to perform the necessary functions to effectuate
6 such commingling upon request. Qwest has established provisioning processes
7 and methods for all commingled arrangements to meet that requirement. Qwest's
8 processes and methods provide for billing of the UNE rates to the UNE circuit
9 and the appropriate special access and/or private line tariff rates to the tariffed
10 circuit.

11 **Q. MR. DENNEY SUGGESTS ON PAGE 141 THAT THE REQUIREMENT**
12 **TO ORDER COMMINGLED EELs IN THE MANNER PROPOSED BY**
13 **QWEST IS SO ONEROUS AND INEFFICIENT THAT THE**
14 **COMMINGLED EEL WOULD NOT BE USEFUL TO CLECs. DO YOU**
15 **HAVE ANY COMMENTS?**

16 A. Yes. A Commingled EEL is a commingled arrangement, consisting of an EEL
17 transport or EEL Loop circuit connected to a Private Line transport or Private
18 Line channel termination circuit. Both the UNE and the Private Line circuits are
19 ordered and billed separately, and there are numerous possible variations that do
20 not lead to a Commingled EEL being defined as a single product offering, as
21 Eschelon is demanding that Qwest create and develop.

22 Moreover, numerous UNE, access and private line network arrangements require
23 multiple orders to be placed and multiple circuit IDs to be managed. Even
24 Eschelon acknowledges with its language at Section 9.23.4.5.4 that multiplexed
25 facilities require at least two service orders and multiple circuits IDs. The typical
26 arrangement of 28 DS1s multiplexed on to a DS3 facility will have up to 29
27 different circuit IDs. This is true in the UNE EEL, special access and private line
28 arena. Eschelon has not suggested that Qwest commingle two separate facilities
29 of different bandwidth/capacity into one order, one bill, and one circuit ID. I fail

1 to understand how having a Commingled EEL arrangement -- when the private
2 line circuit and the EEL circuit are the same bandwidth capacity -- provisioned
3 with two service orders and two circuit IDs would be so burdensome as to cause
4 CLECs to not find this a useful offering.

5 **Q. DOES QWEST ANTICIPATE THERE WILL BE A LARGE VOLUME OF**
6 **CLEC ORDERS FOR A SINGLE BANDWIDTH COMMINGLED EEL**
7 **ARRANGEMENT?**

8 A. No. When available, Eschelon will select the "all UNE EEL" option, which does
9 not implicate the ordering and provisioning concerns that Eschelon expresses.
10 Eschelon's statements about the difficulty of having to manage one additional
11 circuit ID and one additional service order per Commingled EEL therefore
12 revolve around a very narrow application -- that of a single bandwidth
13 Commingled EEL when the all UNE loop and transport EEL is not available. It is
14 not realistic that this narrow circumstance could have the broad market
15 implications that Mr. Denney suggests.

16 **Q. WHEN WOULD YOU TYPICALLY SEE A SINGLE BANDWIDTH**
17 **COMMINGLED EEL UTILIZED BY A CLEC?**

18 A. Generally, a CLEC's first choice will be to use UNE transport and UNE loops
19 (when available) to make a UNE EEL. In the event one or the other is not
20 available, then a CLEC will use a special access or private line circuit with a UNE
21 circuit in a commingled arrangement (*i.e.*, a Commingled EEL). Qwest agrees
22 with Mr. Denney that the need for a same bandwidth Commingled EEL typically
23 arises when the transport is between non-impaired wire centers, resulting in a
24 CLEC being required to use tariffed transport with a UNE loop.¹⁷

25

¹⁷ See Denney Direct at p.170.

1 **Q. WHAT IS THE SPECIFIC DISPUTE ENCOMPASSED BY ISSUE NO. 9-**
2 **58?**

3 A. Issue No. 9-58 involves Eschelon's attempt to require Qwest to overhaul its
4 systems and processes to make them capable of handling a single LSR service
5 order request whenever Eschelon orders any product encompassed by its "Loop-
6 Transport Combination" umbrella term. *See* Echelon's proposed language for
7 Sections 9.23.4.5.1, 9.23.4.5.1.1 and 9.23.4.5.4.

8 **Q. DOES THIS CREATE CONCERNS FOR QWEST RELATING TO ITS**
9 **PROVISIONING AND INSTALLATION PROCESSES?**

10 A. Yes. In particular, these concerns arise when the request is for a Commingled
11 EEL. As I describe above, when a CLEC orders an EEL Loop commingled with
12 a special access transport circuit, the design of Qwest's systems and processes
13 requires that the CLEC order the EEL loop by submitting a LSR. Qwest bills the
14 CLEC for this network element through its "CRIS" system. By contrast, the
15 design of Qwest's systems and processes requires that the CLEC order the special
16 access transport circuit by submitting an ASR, and Qwest bills the CLEC for this
17 circuit through a different billing system referred to as the "IABS system."

18 **Q. WHAT IS YOUR RESPONSE TO ESCHELON'S PROPOSALS THAT**
19 **THE COMMINGLED EEL BE IMPLEMENTED ON A SINGLE LSR?¹⁸**

20 A. Eschelon's proposal to use the remarks section of the LSR to install a UNE circuit
21 commingled with a private line circuit is not reasonable or feasible with the
22 current Qwest provisioning systems. The remarks section can be utilized to
23 convey information at the time of ordering or repair. However, once the initial
24 activity has been completed, Qwest's systems do not retain, much less read, the
25 remarks section of the original LSR. This fact is even more critical, as I discuss
26 later in this section, in connection with Eschelon's request for a single circuit ID
27 for commingled arrangements.

¹⁸ *See* Denney Direct at p.145.

1 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SYSTEM THAT CANNOT**
2 **READ THE REMARKS SECTION?**

3 A. Yes. UNEs are subject to specific performance indicator measurements ("PIDs")
4 and potential "PAP payments" by Qwest for failing to meet performance metrics.
5 Special access and private line arrangements are not subject to the same
6 performance indicator measurements and potential PAP payments. If Qwest were
7 required to create a hybrid product (such as would result if all of Eschelon's
8 proposals in 9-58 a, b, c, d, e were adopted by the Commission) that was a mix of
9 both the UNE circuit and private line facilities, it would be inappropriate to
10 subject Qwest to UNE-specific PIDs and potential payments on this hybrid
11 product.

12 If a single LSR and single circuit ID (as Eschelon proposes in Issue 58(a)) were
13 utilized, Qwest's systems would not recognize what part of the hybrid circuit has
14 an installation and/or repair issue linked to a specific performance indicator
15 measurement and potential payment. In addition, our systems used to track these
16 measurements do not read and filter results by the remarks section of the LSR.
17 While Qwest believes the complete Eschelon proposal in Issue Nos. 9-58 a, b, c,
18 d, and e should be rejected, at a minimum, the Commission would need to
19 exclude such hybrid products from the Utah UNE-specific performance indicator
20 measurements.

21 **Q. DOES QWEST COMMIT IN THE ICA THAT THE UNE CIRCUIT**
22 **COMMINGLED WITH A PRIVATE LINE CIRCUIT (COMMINGLED**
23 **EEL) WILL BE PROPERLY MEASURED BY PIDs, AND IF**
24 **APPROPRIATE, THAT PAP PAYMENTS WILL BE MADE IF THERE IS**
25 **A PERFORMANCE ISSUE WITH UNE?**

26 A. Yes. Qwest has made that commitment in the ICA at Section 24.1.2.1:

27 24.1.2.1 The UNE component(s) of any Commingled arrangement is
28 governed by the applicable terms of this Agreement. The other
29 component(s) of any Commingled arrangement is governed by the terms

1 of the alternative service arrangement pursuant to which that component is
2 offered (e.g., Qwest's applicable Tariffs, price lists, catalogs, or
3 commercial agreements). Performance measurements and/or remedies
4 under this Agreement apply only to the UNE component(s) of any
5 Commingled arrangement. Qwest is not relieved from those
6 measurements and remedies by virtue of the fact that the UNE is part of a
7 Commingled arrangement.

8 The Qwest process for Commingled EELs thus expressly establishes application
9 of the correct performance measurements for the UNE circuit component of the
10 Commingled EEL.

11 **Q. HAS ESCHELON OFFERED TO REIMBURSE QWEST FOR ANY**
12 **ADDITIONAL COSTS THAT ITS PROPOSAL WOULD CAUSE QWEST**
13 **TO INCUR?**

14 A. No. I am not aware that Eschelon has made any offer to reimburse Qwest for the
15 unique service ordering process costs that its single LSR demand would create.

16 **Q. ARE OTHER CLECs USING QWEST'S EXISTING SYSTEMS AND**
17 **PROCESSES TO ORDER COMMINGLED EELs?**

18 A. Yes. Despite Mr. Denney's statements on page 141, other CLECs are finding the
19 Qwest Commingled EEL to be a useful product, and Qwest is successfully
20 provisioning other CLEC's requests for commingled EELs based on the process
21 outlined by Qwest in its proposed Section 9.23.4.5. Qwest is not aware of a
22 single CLEC that has claimed that the Commingled EEL ordering process is so
23 "difficult" that it is ordering private line services as an alternative. As described
24 in my direct testimony, the requirement for two separate orders and two separate
25 circuit IDs is consistent with at least one other ILEC's ordering process for
26 commingled arrangements.

27

1 **Q. DOES QWEST BELIEVE THAT THIS ARBITRATION IS THE**
2 **CORRECT FORUM FOR DISCUSSING DETAILED OPERATIONAL**
3 **SUPPORT SYSTEMS (OSS)-RELATED CHANGES, SUCH AS**
4 **ESCHELON'S SINGLE LSR REQUEST?**

5 A. No. Qwest has developed and implemented OSS-related procedures and intervals
6 for UNE EELs, and UNEs commingled with special access circuits and is under
7 no legal requirement to modify these systems to support Eschelon's proposed
8 "Loop-Transport Combination" single umbrella OSS process concept. Mr.
9 Denney is incorrect when he claims on pages 142-143 that Eschelon is not asking
10 Qwest to modify systems and incur costs. Such modifications as Eschelon
11 proposes in Issue No. 9-58 would require Qwest to incur significant OSS-related
12 costs that it is entitled to recover under the Act.

13 Further, the CMP was approved as part of Section 271 proceedings by both this
14 Commission and the FCC for the purpose of providing a vehicle to address the
15 types of changes in OSS-related processes and systems changes that impact
16 UNEs. From a CLEC's perspective, the purpose of CMP is to provide the CLEC
17 community with a meaningful opportunity to modify Qwest's OSS-related
18 systems, processes and procedures. CMP also allows CLECs collectively to
19 prioritize what changes should be made to OSS-related systems and whether the
20 costs to make any specific change to those systems is worthwhile. This stands in
21 contrast to Eschelon's attempt here to circumvent the CMP process and have this
22 arbitration proceeding redefine OSS-related service order changes without the
23 prioritization input from the whole CLEC community, and without allowing other
24 CLECs to weigh in on their willingness to pay for such changes. In summary,
25 even if the changes to the LSR ordering process that Eschelon is proposing were
26 appropriate – which they are not – the CMP is the proper forum for raising any
27 concerns with UNEs. For more detail regarding CMP, please see the testimony of
28 Qwest witness Renee Albersheim.

1 **Q. ARE THERE OTHER STAKE HOLDERS, BESIDES CLECs, THAT**
2 **WOULD BE IMPACTED BY THE CHANGES ESCHELON DEMANDS?**

3 A. Yes. Interexchange carriers ("IXCs") use Access Service Requests ("ASRs") and
4 the Integrated Access Billing System ("IABS") billing in addition to CLECs.
5 Any changes made to these process and systems impact these large users. In
6 addition, ordering and billing requirements for IABS and the Customer Records
7 Information System ("CRIS") are governed by the Ordering and Billing Forum
8 ("OBF") (a national forum) and are set on a national basis. While there may be
9 some options concerning how to implement these national standards, it is an
10 extensive and lengthy process to review and implement any significant changes to
11 them because so many carriers are affected by the changes. Clearly, Qwest
12 cannot change its ordering and billing practices simply because one CLEC wants
13 Qwest to do so.

14 **Q. HAS A CMP REVIEW BEGUN FOR COMMINGLED EELs?**

15 A. Yes. Commingling is a requirement that resulted from the *TRO* and *TRRO*
16 proceedings that required ILECs to provide commingled arrangements between
17 UNEs and special access and private lines. Therefore, CMP is the appropriate
18 forum for potential *TRO*- and *TRRO*-generated systems changes. Initially,
19 numerous CLECs, including Eschelon, agreed that *TRRO* legal issues were not
20 settled, and that the change request intended to complete *TRRO*-related work
21 should be deferred pending completion of the *TRRO* wire center dockets in
22 Qwest's states. However, since then, Qwest has reactivated the *TRO/TRRO*-
23 related CR and discussions are under way as to how best to review the various
24 systems and process changes that occurred as a result of these FCC orders. For
25 more detail regarding CMP and *TRRO* related changes, please see the testimony
26 of Qwest witness Renee Albersheim.

27

1 **Q. WHAT DOES QWEST RECOMMEND THE COMMISSION ORDER**
2 **WITH RESPECT TO ISSUE NO. 9-58?**

3 A. The Commission should reject Eschelon's attempt to force Qwest to modify its
4 systems and processes for special access and private line to accommodate
5 Eschelon's proposed and improper "Loop-Transport Combination" umbrella term.
6 Under Eschelon's proposal, Qwest would be required to (1) create an entirely new
7 and unique hybrid service, and (2) permit Eschelon to submit one LSR to order
8 this hybrid service. Qwest's existing ordering, provisioning, and billing processes
9 already provide the ability to commingle tariffed special access and UNE services
10 when properly requested via their respective ordering processes. Qwest's
11 commingling processes are no different than those implemented by other ILECs.

12 To the extent that Eschelon has any concerns, the Commission should indicate
13 that Eschelon can properly address its OSS-related concerns for UNEs in the
14 appropriate *TRO/TRRO* related CMP proceeding. Via CMP, Eschelon has the
15 opportunity to work with the CLEC community to prioritize any OSS changes and
16 how such costs will be recovered. Thus, an acceptance of the Qwest proposed
17 language does not foreclose Eschelon's opportunity to have its requests reviewed
18 via CMP.

19 Moreover, UNEs are subject to specific Performance Indicator Measurements
20 ("PIDs") and potential payments. It would be inappropriate to apply these
21 measurement and payment provisions to the "Loop-Transport combination," since
22 these combinations contain a non-UNE private line circuit that is not subject to
23 these provisions.

24 In summary, the Commission should allow this section to remain as proposed by
25 Qwest and consistent with the current Qwest methods and procedures for
26 processing not only EEL services commingled with tariffed services, but also all
27 commingling requests.

28

1 **Q. WHAT IS THE SPECIFIC DISPUTE IN ISSUE NO. 9-58(A)?**

2 A. Issue No. 9-58(a) involves Eschelon's attempt to force Qwest to change its
3 processes by requiring Qwest to utilize a single circuit ID for all of Eschelon's
4 proposed "Loop-Transport Combination" umbrella of offerings, including for
5 Commingled EELs.

6 **Q. IS IT NECESSARY FOR QWEST TO HAVE SEPARATE CIRCUIT IDs**
7 **FOR THE DIFFERENT CIRCUITS THAT COMPRISE A COMMINGLED**
8 **EEL?**

9 A. Yes. Eschelon's demand that Qwest use a single circuit ID for commingled EELs
10 instead of separate identification numbers for the UNE and non-UNE (special
11 access and/or private line) circuits is improper for several reasons. Many of the
12 factors that I have described above apply with equal force to Eschelon's single
13 circuit ID request. First, circuit IDs often include product-specific information
14 that Qwest relies upon for proper processing, monitoring of performance indicator
15 measurements and billing of products. Using a circuit ID assigned to a UNE for a
16 tariffed service may result in miss-identification of the service and lead to billing
17 and other errors. Second, there is no legal requirement for Qwest to change its
18 systems for this purpose; indeed, Qwest uses separate circuit ID numbers for other
19 CLECs, so adoption of that approach for Eschelon will not result in unequal
20 treatment. Third, CMP is the correct forum to address such OSS-related process
21 changes. Fourth, it would be very costly for Qwest to modify its operational
22 systems to meet Eschelon's demand for use of the same circuit ID number after a
23 conversion. As far as I am aware, Eschelon is not proposing to compensate
24 Qwest for the costs to implement this very substantial change.

25 **Q. WHY IS CMP, NOT THIS ARBITRATION, THE CORRECT FORUM**
26 **FOR ESCHELON TO SEEK THE USE OF A SINGLE CIRCUIT ID FOR**
27 **COMMINGLED ARRANGEMENTS?**

28 A. Eschelon's demand for a single circuit ID involves processes that will affect the
29 whole CLEC community, not just Eschelon, as it relates not only to the actual

1 billing processes, but also to how costs will be recovered of changes to the billing
2 systems. It is inappropriate for Eschelon to drive significant system changes that
3 could result in higher OSS-related costs for all other CLECs, none of whom have
4 a voice in this arbitration decision-making process. This demand should therefore
5 be addressed through the CMP, not through an arbitration proceeding involving a
6 single CLEC.

7 **Q. YOU MENTIONED THE CIRCUIT ID CONTAINS INFORMATION**
8 **ABOUT THE SPECIFIC CIRCUIT. COULD YOU PLEASE PROVIDE**
9 **EXAMPLES OF THE TYPE OF INFORMATION?**

10 A. Yes. In his testimony, Mr. Denney makes reference to the simplicity of
11 Eschelon's proposals that Qwest use some note in the remarks section to identify
12 that a circuit ID is in error and thus does not correctly identify the circuit. I have
13 discussed above how the remarks section is not retained in the Qwest systems. In
14 addition, given the mixed or hybrid nature of what Eschelon is proposing, the
15 question becomes how would downstream systems be able to identify and manage
16 the facility properly if the circuit ID they are using does not accurately reflect the
17 nature of the circuit?

18 By way of illustration, set forth below is the circuit ID of an unbundled DS-1 loop
19 and a private line DS-1 channel termination (the closest equivalent to a DS1
20 unbundled loop) service, along with an indicator of what each character means:

21 DS-1 Private Line Service: 15/HCGS/147426/NW

22 DS-1 Unbundled Loop: 3/HCFU/105228/NW

23 The first two characters or in this case numbers (15 and 3) are the prefix
24 and they indicate the LATA and the type of circuit. For this instance:

25 15 denotes Private Line in LATA 628 in MN

26 3 denotes Unbundled DS-1 Loop in LATA 628 in MN

1 The next four characters are the service code and service modifiers and in
2 this case:

3 HCGS denotes the DS-1 Service Technical Characteristics (HC)
4 and it is an interstate service (GS)

5 HCFU denotes the DS-1 Service Technical characteristics (HC)
6 and it is intrastate service (FU)

7 The next set of six numerical characters is the serial number of the circuit.
8 It is necessary to issue a new serial number to ensure that no duplication
9 occurs. This serial number is generated automatically.

10 The last two characters represent the region where the circuit exists and in
11 this case it is Northwest.

12 When a circuit ID does not actually reflect the service being provided, it can
13 cause errors in provisioning, billing and documentation of service quality. To
14 have a single circuit ID for commingled EELs would require Qwest to develop
15 and implement a new circuit identification for what is essentially a hybrid product
16 within Qwest's pre-order, order, provisioning, circuit inventory and tracking,
17 repair, and billing systems. Again, circuit IDs are developed using a national
18 Telcordia standard. Qwest cannot simply decide to "make up" a new way of
19 using the circuit IDs without it potentially having a national impact. Major
20 changes also would be required for all of Qwest's associated technical
21 publications that support these systems. This would be an extremely time-
22 consuming and expensive undertaking. Further, given the service performance
23 measurements issues discussed above, it may not be possible to identify and apply
24 appropriate PID and PAP measurements to the product.

25 **Q. PLEASE RESPOND TO MR. DENNEY'S STATEMENT IMPLYING AT**
26 **PAGE 129 HOW A COMMINGLED EEL REPLACES AN EXISTING**
27 **FACILITY.**

28 A. Generally, commingled EELs can be installed in two ways -- through a
29 completely new installation or through a conversion. In a conversion situation,
30 the same network facilities are commonly used to convert from an all UNE EEL

1 (or all private line service) to a Commingled EEL arrangement. However, to state
2 that this is only a name and price change that effectively could be carried out on
3 the back of an envelope (*i.e.*, using the remarks section of the order), as Mr.
4 Denney suggests, fails to recognize the fact that each of the circuits in the
5 commingled arrangement have different rates, terms and conditions of service.

6 One analogy is basic residential telephone service (the 1FR) as compared to the
7 flat business line (1FB). It is true that the same facilities can be used (or even
8 converted) from one to the other, and there is a corresponding name and price
9 change. However, the differences in terms and conditions can be very different.
10 For a residential line new connect, Qwest may have a Provider of Last Resort
11 (POLR) obligation to build, while the business line may not. The business line
12 telephone number may be advertised in the business section of the directory while
13 a residential line is not. A business line may be serving a 9-1-1 center and
14 eligible for Telecommunications Service Priority (TSP), and therefore have
15 priority restoration in an emergency, while the residential line may not.

16 The fact that the same network facilities are utilized is not a reason to put in place
17 a process that does not insure that the correct terms and conditions of service are
18 followed for each circuit in a commingled arrangement.

19 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. 9-58(A)?**

20 A. For the reasons that I describe above and in my direct testimony, the Commission
21 should adopt Qwest's proposed language for Section 9.23.4.5.4 and reject
22 Eschelon's language that would require the use of a single circuit ID for
23 commingled EELs and all so-called "Loop-Transport Combinations."

24 **Q. PLEASE DESCRIBE THE DISPUTE RELATING TO ISSUE NO. 9-58(B).**

25 A. This issue arises because of Eschelon's demand that for each so-called "Loop-
26 Transport Combination, "Qwest should use a single billing account number
27 ("BAN") – or issue a single bill – for the different circuits that are commingled."
28 Eschelon presents this demand in its proposed language for Section 9.23.4.6.6.

1 Because Qwest opposes this improper demand, it recommends that Eschelon's
2 proposed Section 9.23.4.6.6 should be excluded from the ICA.

3 **Q. WHY IS ESCHELON'S DEMAND FOR USE OF A SINGLE BILLING**
4 **ACCOUNT NUMBER IMPROPER?**

5 A. Eschelon's demand that Qwest use a single BAN for the elements comprising a
6 commingled EEL or for Eschelon's proposed "Loop-Transport Combination" fails
7 to recognize that BANs contain essential product-specific information that affects
8 the proper billing for products. This information affects, for example, whether a
9 product is billed at a UNE-based rate or at a tariffed rate. Without separate BANs
10 for the distinct products that comprise commingled arrangements, billing errors
11 would be inevitable.

12 In addition, BANs are a national billing standard governed by the OBF (a national
13 ordering and billing forum). These national standards ensure that all IXC and
14 CLEC customers can expect standardized ordering and billing requirements
15 regardless of which state or ILEC they are ordering service from.

16 **Q. WOULD IT BE COSTLY FOR QWEST TO MODIFY ITS SYSTEMS AND**
17 **PROCESSES TO PERMIT THE USE OF A SINGLE BILLING ACCOUNT**
18 **NUMBERS FOR A COMMINGLED ARRANGEMENT?**

19 A. Yes. Eschelon's demand for a single BAN would impose very substantial costs
20 on Qwest because of the systems changes that would be required. Qwest has no
21 legal obligation to make those changes, and, moreover, Eschelon apparently is not
22 offering to compensate Qwest for the costs of performing them. Qwest has
23 developed and implemented systems, procedures and intervals for EELs, UNEs
24 and tariffed services and is under no legal requirement to modify these systems to
25 provide Eschelon's proposed "Loop-Transport Combination" product. Moreover,
26 this attempt to force Qwest to move special access and/or private line billing from
27 IABS to CRIS is asking this Commission to reach in to the special access terms
28 and conditions via the ICA. This is improper, and, in reality, it potentially

1 becomes a form of rate ratcheting that Qwest is explicitly not required to do for
2 CLECs per the *TRO*.

3 **Q. HAS ESCHELON PROPOSED ANY ALTERNATIVE LANGUAGE FOR**
4 **ITS PROPOSED SECTION 9.23.4.6.6 RELATING TO A SINGLE**
5 **BILLING ACCOUNT NUMBER?**

6 A. Yes. Issue No. 9-58(c) involves Eschelon's alternative proposal for Section
7 9.23.4.6.6, which Eschelon apparently advocates if the Commission rejects its
8 improper request for single BANs with commingled arrangements. Eschelon's
9 alternative proposal is as follows:

10 **9.23.4.6.6 For each Point-to-Point Commingled EEL (see Section**
11 **9.23.4.5.4), so long as Qwest does not provide all chargeable rate**
12 **elements for such EEL on the same Billing Account Number (BAN),**
13 **Qwest will identify and relate the components of the Commingled**
14 **EEL on the bills and the Customer Service Records. Unless the**
15 **Parties agree in writing upon a different method(s), Qwest will relate**
16 **the components of the Commingled EEL by taking at least the**
17 **following steps:**

18 **9.23.4.6.6.1 Qwest will provide, on each Connectivity Bill each**
19 **month, the circuit identification (“circuit ID”) for the non-**
20 **UNE component of the Commingled EEL in the sub-account**
21 **for the related UNE component of that Commingled EEL;**

22 **9.23.4.6.6.2 Qwest will assign a separate account type to**
23 **Commingled EELs so that Commingled EELs appear on an**
24 **account separate from other services (such as special**
25 **access/private line);**

26 **9.23.4.6.6.3 Each month, Qwest will provide the summary BAN**
27 **and sub-account number for the UNE component of the**
28 **Commingled EEL in a field (e.g., the Reference Billing Account**
29 **Number, or RBAN, field) of the bill for the non-UNE**
30 **component; and**

31 **9.23.4.6.6.4 For each Commingled EEL, Qwest will provide on**
32 **all associated Customer Service Records the circuit ID for the**
33 **UNE component; the RBAN for the non-UNE component; and**
34 **the circuit ID for the non-UNE component.**

1 **Q. IS ESCHELON'S ALTERNATIVE OR BACK-UP VERSION OF SECTION**
2 **9.23.4.6.6 APPROPRIATE?**

3 A. No. Eschelon's back-up version of Section 9.23.4.6.6 suffers from most of the
4 same flaws that characterize its original version. Most significantly, this version,
5 like the original version, would require major changes to Qwest's systems and
6 processes. Even a casual review of the extensive list above reveals the inaccuracy
7 of Mr. Denney's statements that Eschelon is not asking Qwest to modify systems
8 or incur costs to meet their various proposals.¹⁹ I am not exactly sure who Mr.
9 Denney thinks would work for free to modify the Qwest systems and/or to
10 perform extensive manual labor on the Eschelon bills each month to perform the
11 tasks listed above.

12 As I stated in my direct testimony, under Eschelon's back-up version of Section
13 9.23.4.6.6, Qwest would be required, at a minimum to: (1) modify its systems and
14 processes to include on bills for the UNE circuit of commingled EELs the circuit
15 ID of the non-UNE component; (2) create an entirely separate account type within
16 its billing systems for commingled EELs; (3) modify its systems and processes to
17 include on bills for the non-UNE circuit of commingled EELs "the summary
18 BAN and sub-account number for the UNE component;" and (4) modify its
19 systems and processes to include on all customer service records for commingled
20 EELs "the circuit ID for the UNE circuit; the RBAN for the non-UNE component;
21 and the circuit ID for the non-UNE circuit."

22 These major changes to Qwest's billing systems and processes, which Qwest
23 would be implementing solely in response to Eschelon's request, would impose
24 upon Qwest very substantial costs. Qwest has no legal obligation to modify its
25 systems and processes in this way, and, moreover, Eschelon has no legitimate
26 business justification for these far-reaching modifications.

¹⁹ See Denney Direct at pp 142-143.

1 **Q. WHY IS CMP, NOT THIS ARBITRATION PROCEEDING, THE**
2 **CORRECT FORUM FOR ESCHELON TO ADDRESS BILLING**
3 **CONCERNS FOR UNEs IN A COMMINGLED ARRANGEMENT?**

4 A. At the risk of sounding repetitive, all of Issue No. 58 (a, b, c, d, e), to the extent
5 they impact access to UNEs, affect all CLECs, not just Eschelon, and therefore
6 should be addressed through the CMP, not through an arbitration proceeding
7 involving a single CLEC. This is particularly true in these billing issues, since
8 Eschelon is unwilling to make special arrangements with Qwest agreeing to pay
9 for the systems and ongoing manual personnel work that is going to be necessary
10 to meet its billing demands.

11 **Q. WHAT DOES QWEST RECOMMEND WITH RESPECT TO BOTH**
12 **ISSUE NOS. 9-58(B) AND (C)?**

13 A. For the reasons I describe above and in my direct testimony, the Commission
14 should reject both of Eschelon's BAN proposals and not include in the ICA any of
15 the language Eschelon proposes for Section 9.23.4.6.6 and its sub-parts. In
16 particular, the Commission should reject Eschelon's improper attempt to have the
17 terms and conditions of Qwest special access and private line tariffs governed by
18 the ICA.

19 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE NO. 9-**
20 **58(D).**

21 A. Issue No. 9-58(d) relates directly to Eschelon's demands described above
22 involving single LSRs, single circuit IDs, and single BANs for commingled
23 EELs. In its proposed Sections 9.1.1.1.1 and 9.1.1.1.1.2, Eschelon sets forth these
24 same proposals for what it refers to as "Other Arrangements." By "other
25 arrangements," Eschelon is apparently referring to commingled arrangements
26 other than commingled EELs.

27

1 Q. WHAT IS ESCHELON SPECIFICALLY PROPOSING FOR THESE
2 "OTHER ARRANGEMENTS?"

3 A. Even though these "other arrangements" do not exist, and may never exist,
4 Eschelon is nevertheless proposing specific requirements for these non-existent
5 and undefined "other arrangements":

6 **9.1.1.1.1 Commingled EELs are addressed in Section 9.23. For any**
7 **other Commingled arrangement, the following terms apply, in**
8 **addition to the general terms described in Section 24:**

9 **9.1.1.1.2 When a UNE or UNE Combination is connected or**
10 **attached with a non-UNE wholesale service, unless it is not**
11 **Technically Feasible or the Parties agree otherwise, CLEC**
12 **may order the arrangement on a single service request; if a**
13 **circuit ID is required, there will be a single circuit ID; and all**
14 **chargeable rate elements for the Commingled service will**
15 **appear on the same BAN. If ordering on a single service**
16 **request, using a single identifier, and including all chargeable**
17 **rate elements on the same BAN is not Technically Feasible,**
18 **Qwest will identify and relate the elements of the arrangement**
19 **on the bill and include in the Customer Service Record for**
20 **each component a cross reference to the other component, with**
21 **its billing number, unless the Parties agree otherwise.**

22 Q. IS ESCHELON'S PROPOSAL APPROPRIATE?

23 A. No. As I described in my direct testimony, there is no basis for Eschelon's
24 attempt to impose upon Qwest the duty to specific processes for unknown and
25 undefined commingled arrangements.

26 Q. MR. DENNEY STATES THAT THIS IS SUBJECT TO THE PARTIES
27 AGREEING UPON TECHNICAL FEASIBILITY.²⁰ DOES THIS CAVEAT
28 PROVIDE REASSURANCE TO QWEST?

29 A. No. When Qwest and Eschelon cannot agree on what is technically feasible
30 within Qwest's systems for defined commingled arrangements, I have little
31 confidence that the parties will agree in the future upon processes for "other

²⁰ See Denney Direct at 151.

1 arrangements." In addition, there is a huge difference between "technically
2 feasible" and financially prudent. With this type of broad language, Eschelon
3 could attempt to prove some process was technically feasible for a product for
4 which there is little or no demand, with little regard (if any) of the actual cost to
5 Qwest of actually putting the process in place. This is particularly troublesome
6 for potentially low volume, as yet unidentified, "other arrangements."

7 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE NO. 9-58(D)?**

8 A. The Commission should reject Eschelon's billing proposals for non-existent
9 "other arrangements" and exclude Eschelon's proposed Sections 9.1.1.11 and
10 9.1.1.1.2 from the ICA. Clearly, the parties should address any concerns
11 regarding new arrangements when any such arrangements are specifically
12 identified.

13 **Q. PLEASE DESCRIBE THE DISPUTE ENCOMPASSED BY ISSUE NO. 9-
14 58(E).**

15 A. This dispute is a continuation of Eschelon's attempt to eliminate the basic
16 differences between the UNE and non-UNE circuits (*e.g.*, special access and/or
17 private line) of commingled EEL arrangements and to impose upon Qwest
18 ordering, billing, and provisioning processes that ignore those differences. The
19 dispute also is a continuation of Eschelon's demand for Qwest to make major,
20 costly changes to its systems and processes without compensation. In this
21 particular case, Eschelon is seeking to eliminate the separate and distinct
22 provisioning intervals that apply to the UNE and non-UNE circuits (*e.g.*, special
23 access and/or private line) of the commingled EELs. "Provisioning intervals"
24 refer to the period of time between Qwest's receipt of an order from a CLEC and
25 Qwest's installation or provisioning of the service or facility the CLEC ordered.

26 **Q. WHAT IS QWEST'S PROPOSAL FOR ISSUE NO. 9-58(E)?**

27 A. Qwest's proposal preserves the necessary distinctions between the UNE and non-
28 UNE circuits of commingled EELs and properly recognizes that different and

1 separate provisioning intervals are required for each component. Qwest's
2 proposal is as follows:

3 24.3.2 The service interval for Commingled EELs will be as follows. For
4 the UNE component of the EEL see Exhibit C. For the tariffed component
5 of the EEL see the applicable Tariff.

6 **Q. DOES QWEST HAVE A LEGITIMATE NEED TO USE DIFFERENT AND**
7 **SEPARATE PROVISIONING INTERVALS FOR THE UNE AND NON-**
8 **UNE CIRCUIT OF COMMINGLED EELs?**

9 A. Yes. For engineering and legal reasons, it is essential for Qwest to use and
10 preserve the different provisioning intervals that apply to the UNE and non-UNE
11 circuits (*e.g.*, special access and/or private line) of commingled EELs. First, the
12 service orders for each circuit must be complete before they are submitted and
13 Qwest can begin the installation process. When the UNE is processed first, the
14 UNE circuit ID becomes essentially the CFA for the special access private line
15 circuit. For these reasons, it is essential from an installation and engineering
16 perspective to have separate provisioning intervals for the UNE and non-UNE
17 circuits.

18 From a legal perspective, the terms and conditions for the non-UNE circuits of
19 commingled EELs are typically set forth in interstate and intrastate tariffs that
20 include provisioning intervals. As the Commission is well aware, tariffs are
21 binding and Qwest does not have discretion to deviate from them. Because
22 Eschelon's proposal for the use of single provisioning intervals for commingled
23 EELs could force Qwest to deviate from tariffed provisions, the proposal is
24 improper.

25 **Q. BEGINNING AT PAGE 152, MR. DENNEY STATES THAT “ESCHELON**
26 **AGREES TO A LENGTHENED INTERVAL.” DO YOU BELIEVE THIS**
27 **IS CORRECT?**

28 A. My understanding of the testimony is that Eschelon is stating only that it will
29 “agree” to the longest interval. In the example provided by Mr. Denney, that

1 interval is the special access and/or private line circuit installation interval, which
2 Mr. Denney mischaracterizes as “agreeing to a lengthened interval.” The private
3 line tariff and special access installation intervals are not subject to modification
4 in this arbitration and/or in the ICA. Thus, Eschelon does not have the ability to
5 “agree” to an interval -- the interval is as stated in the Qwest Service Interval
6 Guide for tariffed services. All Eschelon is apparently acknowledging is that
7 Eschelon is required to follow the interval for special access and private line
8 tariffs when installing these circuits.

9 **Q. MR. DENNEY DISCUSSES AN INSTALLATION INTERVAL EXAMPLE**
10 **(PAGE 154) THAT INCLUDES THE FIRM ORDER COMMITMENT**
11 **(“FOC”) INTERVAL. DO YOU HAVE ANY COMMENTS ON HIS**
12 **EXAMPLE?**

13 A. Yes. For the example he provided, the FOC would be 48 hours, not the 72 hours
14 he erroneously suggests. He states that the requirement to have the FOC from one
15 circuit to complete the order for the second circuit results in a potential
16 installation delay of the FOC interval, but that delay is not the 72 hours that he
17 claims. Mr. Denney goes on to say that this time period for total service delivery
18 time frame “thus diminishes the usefulness of the commingled arrangement.”
19 Given the dollar savings associated with commingled arrangements that Mr.
20 Denney outlined in his testimony at page 183 (between approximately \$210 and
21 \$82 per month over the life of the circuit), it is difficult to believe that a 48-hour
22 delay “diminishes the usefulness of the commingled arrangement” and makes it
23 “inferior,” as Mr. Denney suggests.

24 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

25 A. Qwest's language for Section 24.3.2 properly recognizes and maintains the
26 necessary distinctions between the provisioning intervals for the UNE and the
27 non-UNE circuit of commingled EELs. Accordingly, the Commission should
28 adopt Qwest's proposal and reject each of Eschelon's proposals described above
29 that would impose single provisioning intervals.

1 **Issue No. 9-59 - Eschelon Alternate Commingled EEL Repair Language**

2 **Q. PLEASE PROVIDE AN OVERVIEW OF THE DISPUTE ENCOMPASSED**
3 **BY ISSUE NO. 9-59.**

4 A. This dispute also involves commingled EELs. If the Commission rejects
5 Eschelon's demand relating to a single circuit ID for commingled EELs, as it
6 should, Eschelon is proposing alternative language in connection with Issue No.
7 9-59 that, as I describe in my direct testimony, would require Qwest to make
8 significant modifications to the systems and processes it uses for carrying out
9 repairs associated with the individual circuits that are included in commingled
10 EELs.

11 **Q. WHAT IS ESCHELON SEEKING THROUGH THIS PROPOSAL?**

12 A. Eschelon is seeking that in the event of a “trouble” associated with a commingled
13 EEL arrangement, it be permitted to submit just a single trouble report instead of
14 a report for each circuit that comprises the commingled EEL.

15 **Q. IS THERE ANY BASIS FOR MR. DENNEY'S ASSERTION AT PAGE 155**
16 **THAT QWEST'S PROPOSAL WOULD EFFECTIVELY CAUSE A**
17 **DELAY IN THE REPAIR OF A COMMINGLED EELS?**

18 A. No. If Eschelon believes, for example, that the trouble with a commingled EEL is
19 associated with the UNE circuit, it can identify the UNE as the circuit with the
20 failure and provide the circuit ID for the non-UNE special access circuit in the
21 remarks section of the trouble ticket. If Qwest then determines through the repair
22 process that the failure is with the UNE circuit, it will repair the UNE and
23 Eschelon will not have any need to submit a second repair ticket. If it turns out
24 that the trouble is associated with the non-UNE special access circuit, only then
25 will it become necessary for Eschelon to submit a second trouble ticket. In that
26 event, under Qwest's proposal, a Qwest technician would contact an Eschelon
27 employee, and they would jointly agree upon which company would submit the
28 second trouble ticket. Because Qwest will already have the test results from the

1 first trouble ticket, it will be able to immediately begin the repair process for the
2 second ticket and thereby avoid delay.

3 **Q. WOULD IT BE APPROPRIATE TO ADOPT ICA LANGUAGE UNDER**
4 **WHICH ESCHELON WOULD NEVER BE REQUIRED TO OPEN A**
5 **SECOND REPAIR TICKET FOR COMMINGLED EELs?**

6 A. No. In response to the concerns that Eschelon expressed about the repair process
7 for commingled EELs, Qwest took the significant step of agreeing to modify its
8 process to eliminate, in most cases, the need for Eschelon to submit a second
9 trouble ticket. However, it is entirely unrealistic to assume that a second trouble
10 ticket will never be needed. For example, if Eschelon incorrectly identifies the
11 trouble with a commingled EEL as being associated with the non-UNE circuit of
12 the arrangement, it is unavoidable that a second trouble ticket will have to be
13 submitted that correctly identifies the trouble as being associated with the UNE
14 circuit.

15 This is particularly the case when the repair would be handled by different Qwest
16 repair centers. Even for Qwest retail customers, a second ticket is often required
17 if a trouble is turned in on the loop portion of a private line network and the
18 trouble is in the interoffice transport of the network. Different tickets are required
19 because frequently different repair organizations work on interoffice troubles
20 versus loop repairs handled by outside technicians.

21 **Q. WHY SHOULD THE COMMISSION ADOPT THE QWEST LANGUAGE?**

22 A. Qwest's language for Sections 9.23.4.7.1 and 9.23.4.7.1.2 properly and
23 realistically recognizes when a second repair ticket may be necessary, yet it
24 allows the end-to-end repair process to begin with the issuing of a single repair
25 ticket. Accordingly, the Commission should adopt Qwest's proposal and reject
26 Eschelon's proposals described above that would inflexibly require the use of a
27 single repair ticket in all situations without regard for the ability of Qwest's

1 systems to handle that requirement or for the very substantial costs that Qwest
2 would incur just to attempt to modify its systems to meet this requirement.

3 **Issue Nos. 9-61(A, B, C) Loop-Mux Combinations**

4 **Q. PLEASE PROVIDE A REMINDER OF THE NATURE OF THE**
5 **DISPUTES ENCOMPASSED BY THIS ISSUE.**

6 A. The disputes encompassed by Issue No. 9-61 and the related sub-issues involve
7 "loop-mux combinations," or "LMCs." LMC is comprised of an unbundled loop,
8 as defined in Section 9.2 the Agreement (referred to in this Section as an LMC
9 Loop), combined with a DS1 or DS3 multiplexer (with no interoffice transport)
10 that a CLEC obtains from a tariff.

11 Qwest is under no obligation to provide a stand-alone multiplexer as a UNE. A
12 multiplexer is electronic equipment that allows two or more signals to pass over a
13 single circuit. In the example of LMC, the multiplexer allows the traffic from
14 several individual loops go over a single, higher bandwidth facility obtained
15 through a tariff. Accordingly, a CLEC must order the multiplexed facility used
16 for LMCs through the applicable tariff. LMC, therefore, involves the connecting
17 of a UNE Loop with a tariffed facility and thus constitutes a commingled
18 arrangement, since commingling is, per the FCC's ruling in the *TRO*, a connection
19 or attaching of a UNE and a wholesale non-UNE.

20 The first dispute between the parties (Issue No. 9-61) is the section of the ICA in
21 which the LMC offering should be placed. Qwest has properly included LMCs in
22 Section 24 because it is a commingling offering. Eschelon has proposed moving
23 it to the UNE Combination section in 9.23. Issue No. 9-61(a) concerns Eschelon's
24 demand that Qwest provide the stand-alone multiplexing service as a UNE instead
25 of as a tariffed facility. Issue No. 9-61(b) involves a dispute concerning whether
26 intervals for LMC should be in Exhibit C; and Issue No. 9-61-(c) involves
27 whether the rates for LMC multiplexing should be included in Exhibit A.

1 **Q. AT PAGE 198 OF HIS DIRECT TESTIMONY, MR. STARKEY IMPLIES**
2 **THAT QWEST HAS DECIDED TO STOP PROVIDING MULTIPLEXING**
3 **AT TELRIC RATES. IF THE COMMISSION RESOLVES THIS ISSUE IN**
4 **QWEST'S FAVOR, WILL MULTIPLEXING STILL BE AVAILABLE TO**
5 **ESCHELON AT TELRIC RATES?**

6 A. Yes. Eschelon will have unbundled access to multiplexing when ordering
7 Unbundled Dedicated Interoffice Transport (UDIT) in a UNE combination. Thus,
8 to the extent that Mr. Starkey is attempting to create the impression that Eschelon
9 will not have any access to multiplexing if Qwest's position is adopted, that
10 impression is inaccurate.

11 **Q. MR. STARKEY ALSO STATES AT PAGES 198 - 199 THAT ESCHELON**
12 **IS ONLY SEEKING UNBUNDLED ACCESS TO MULTIPLEXERS AT**
13 **TELRIC RATES WHEN COMBINED WITH UNEs. IS THIS CORRECT?**

14 A. No. While Eschelon is seeking to use multiplexing in UNE combinations, it also
15 is clearly seeking to use multiplexing with unbundled loops with the LMC
16 product. Since multiplexing is not a stand-alone UNE, it is not a UNE
17 combination when Qwest is asked to combine and unbundled loop and stand-
18 alone multiplexing.

19 As I described in my direct testimony and as bears repeating here, stand-alone
20 multiplexing is not a UNE that Qwest is required to provide on an unbundled
21 basis. In the decision of the FCC's Wireline Competition Bureau in the Verizon-
22 WorldCom Virginia arbitration, paragraph 491, the Bureau rejected WorldCom's
23 proposed language that would have established multiplexing as an independent
24 network element, stating that the FCC has never ruled that multiplexing is such an
25 element: "We thus reject WorldCom's proposed contract language because it
26 defines the 'Loop Concentrator/Multiplexer' as a network element, which the
27 Commission has never done."²¹ Accordingly, the use of multiplexing with a UNE

²¹ *In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the*

1 loop is not, contrary to Mr. Starkey's representation, a combination of two UNEs.
2 Instead, it is a commingled arrangement involving a UNE loop and a tariffed
3 multiplexing service.

4 **Q. IF MULTIPLEXING IS NOT A UNE, WHY DID QWEST PREVIOUSLY**
5 **MAKE MULTIPLEXING AVAILABLE UNDER ITS SGAT?**

6 A. Multiplexing is a feature functionally of combinations with transport (*e.g.*, UDIT)
7 and, as such, was included in the Qwest SGAT. Until the FCC issued the *TRO* in
8 August 2003, commingling arrangements were not available to CLECs. This
9 created somewhat of a dilemma for CLECs when they desired to connect UNE
10 loops with the much larger UDIT transport facilities terminated in their
11 collocation areas. The UDIT was then utilized to connect between their
12 collocation spaces in ILEC central offices. Without commingling, there was no
13 readily available mechanism for "handing off" UNE loops to the collocation space
14 so the UNE Loops could connect to these larger UDIT facilities. To address this
15 situation, Qwest voluntarily offered LMC, thereby allowing CLECs to connect or
16 hand off their loops to the larger transport facilities. Subsequently, the FCC's
17 Wireline Competition Bureau's statement in the Verizon-WorldCom Virginia
18 arbitration confirmed that this offering was not a UNE offering compelled by
19 Section 251 but, instead, was a voluntary offering.

20 **Q. PLEASE EXPLAIN THE RELATIONSHIP BETWEEN THE FCC'S**
21 **RULING IN THE *TRO* THAT REQUIRED ILECs TO PROVIDE**
22 **COMMINGLING AND THE NEED FOR THE LMC ARRANGEMENT**
23 **THAT QWEST HAD BEEN OFFERING UNDER ITS SGAT.**

24 A. With ILECs being required to provide commingled arrangements after issuance of
25 the *TRO*, CLECs no longer needed access to Qwest's LMC offering in order to
26 hand off loops to the larger transport facilities terminated in their collocations.

*Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-
Virginia and for Arbitration*, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039, at ¶ 494
(FCC Wireline Competition Bureau, July 17, 2002).

1 More importantly, CLECs can now terminate the unbundled loops directly on
2 their special access transport facilities terminated in the Qwest central offices. By
3 being able to purchase commingled arrangements – UNE loops commingled with
4 special access or private line tariffed service, for example – CLECs now have a
5 legally-mandated mechanism available to them through which ILECs provide
6 multiplexing in conjunction with higher bandwidth tariffed services to connect
7 UNE loops. Significantly, ILECs are not required -- and never have been
8 required -- to provide this multiplexing as a UNE on a stand-alone basis. Instead,
9 per the *TRO*, ILECs now provide multiplexing as a component of commingled
10 arrangements under which UNE loops are commingled with tariffed private line
11 services. The heart of the dispute raised by this issue is that Eschelon is
12 attempting to break out the multiplexing component of these commingled
13 arrangements and to assign UNE attributes to it, including UNE pricing and
14 provisioning intervals. There is no legal basis for assigning UNE attributes to
15 LMC. On the contrary, the Verizon-WorldCom Virginia arbitration decision
16 confirms that multiplexing stand alone from UDIT is not a UNE.

17 **Q. HAS THE FCC SPOKEN CONCERNING WHETHER UNE RATES OR**
18 **TARIFFED RATES SHOULD APPLY TO MULTIPLEXING THAT ILECs**
19 **PROVIDE FOR USE WITH COMMINGLED ARRANGEMENTS?**

20 A. Yes. In describing its commingling ruling in paragraph 583 of the *TRO*, the FCC
21 explained that commingling allows a CLEC to attach a UNE to an "interstate
22 access service." Significantly, in providing an example of a tariffed "interstate
23 access service" to which a CLEC may attach a UNE, the FCC specifically
24 referred to multiplexing: "Instead, commingling allows a competitive LEC to
25 connect or attach a UNE or UNE combination with an interstate access service,
26 *such as high-capacity multiplexing* or transport services." (Emphasis added.) In
27 the very next sentence, the FCC emphasized that "*commingling will not enable a*
28 *competitive LEC to obtain reduced or discounted prices on tariffed special*
29 *access services*" (Emphasis added.)

1 **Q. WHAT IS THE SIGNIFICANCE OF THESE STATEMENTS AND**
2 **RULING BY THE FCC?**

3 A. This portion of the *TRO* directly refutes any claim by Eschelon that it is entitled to
4 multiplexing at UNE rates, terms, and conditions when it obtains multiplexing for
5 use with commingled arrangements. First, the FCC states very clearly that the
6 multiplexing used with commingling is "an interstate access service." This
7 statement directly contradicts Eschelon's claim that the multiplexing used with
8 commingling is nothing more than a feature or function of the UNE loop
9 component of a commingled arrangement. Instead, it is a separate "access
10 service." Second, the FCC states unambiguously that when a CLEC obtains an
11 access service like multiplexing for use with commingling, it is not entitled to
12 "reduced or discounted prices on [the] tariffed special access services." In other
13 words, Eschelon is required to pay the tariffed rate for multiplexing used with
14 commingling and is not entitled to a UNE rate.

15 Clearly, the FCC's statements establish that the terms of the applicable tariffs
16 govern multiplexing, including the terms relating to provisioning intervals.
17 Accordingly, the multiplexing and non-UNE transport circuits of commingled
18 arrangements are to be provisioned based on the intervals in the tariffs, not based
19 on intervals that apply to UNEs.

20 **Q. AT PAGES 210 AND 212 OF HIS TESTIMONY, MR. STARKEY**
21 **ASSERTS THAT MULTIPLEXING IS A FEATURE, FUNCTION, OR**
22 **CAPABILITY OF UNBUNDLED LOOPS AND THAT CLECs ARE**
23 **THEREFORE ENTITLED TO ACCESS TO MULTIPLEXING AS A UNE**
24 **AND PURSUANT TO THE TYPES OF TERMS AND CONDITIONS**
25 **THAT APPLY TO UNEs. IS HE CORRECT?**

26 A. No. From both a factual basis and a legal perspective, multiplexing is not a
27 feature, function, or capability of UNE loops. From a factual perspective, central
28 office-based multiplexing is not required for a UNE loop facility to function. If
29 the functioning of a DS1 loop, for example, was dependent upon multiplexing,

1 there might be a factual argument that multiplexing is a feature or function of the
2 loop. But since a DS1 loop functions regardless whether there is multiplexing
3 used to mux together multiple loops, multiplexing cannot reasonably be viewed as
4 a "feature, function, or capability" of the loop. In addition, the multiplexing
5 function is provided through equipment that is physically separate from and
6 independent of UNE loops. That equipment is located in Qwest's central offices.
7 Qwest Exhibit 3R.3, attached to my testimony, contains diagrams that clarify the
8 differences between the multiplexing equipment used to create an unbundled loop
9 at the main distribution frame (or its equivalent) in a central office and the
10 multiplexing used to "mux" or aggregate numerous loops up to a higher capacity
11 transport facility.

12 From a legal perspective, the –Verizon-WorldCom Virginia decision confirms
13 that stand-alone multiplexing is not a UNE. In addition, the UNEs that ILECs are
14 required to provide at TELRIC rates are limited to those network elements for
15 which the FCC has made fact-based findings of competitive impairment pursuant
16 to Section 251(d)(2)(B). The FCC has never made a finding that CLECs are
17 competitively impaired without access stand-alone multiplexing at TELRIC rates
18 and has never declared that multiplexing is a UNE.

19 In sum, Mr. Starkey's inaccurate claim that stand-alone central office multiplexing
20 is a feature or function of the loop necessary to the functioning of the loop is
21 simply a thinly veiled attempt to obtain multiplexing as a UNE at low TELRIC
22 rates. There is neither a factual or legal basis for this claim.

23 **Q. IS MULTIPLEXING A FEATURE, FUNCTION, OR CAPABILITY OF**
24 **UNE TRANSPORT?**

25 **A.** Yes. Qwest agrees that when multiplexing is provided in a combination with DS1
26 or DS3 transport that meets the *TRRO* impairment criteria and hence is a UNE,
27 the multiplexing will be provided at TELRIC rates. Thus, if Eschelon requests a
28 UNE combination comprised of a UNE loop combined with UNE transport,

1 Qwest will provide multiplexing at TELRIC rates. In that circumstance,
2 multiplexing is a feature or function of UNE transport and, accordingly, UNE
3 terms and conditions, including UNE TELRIC rates, apply. By contrast, because
4 multiplexing is not a feature or function of the UNE loop, multiplexing used to
5 combine multiple unbundled loops together (without transport) is stand-alone
6 multiplexing – in other words, it is not provided as a feature or function of a
7 transport UNE. As such, that stand-alone multiplexing is not governed by UNE
8 combination rates or other UNE terms and conditions.

9 **Q. AT PAGE 212 OF HIS TESTIMONY, MR. STARKEY PROVIDES**
10 **QUOTES FROM THE FCC THAT HE CLAIMS ESTABLISH THAT**
11 **MULTIPLEXING IS A FEATURE OR FUNCTION OF THE**
12 **UNBUNDLED LOOP. DO THESE STATEMENTS FROM THE FCC**
13 **SUPPORT THAT CONCLUSION?**

14 A. No. The statements from the FCC that Mr. Starkey cites involve an entirely
15 different type of multiplexing than is at issue here. Specifically, the FCC is
16 referring in these statements to multiplexing for loops that takes place between a
17 customer's premises and a main distribution frame in a central office. In this
18 application, the FCC is being clear that to the extent any type of multiplexing
19 (such as digital loop carrier systems, which are often viewed as a form of
20 multiplexing) between the end user premises and the main distribution frame in
21 the central office is required, the ILEC must “de-mux” the loop so it can be
22 handed off to the CLEC in the central office. By contrast, the multiplexing that is
23 in dispute between Qwest and Eschelon is multiplexing that takes place not
24 between a customer's premise and the main distribution frame (or equivalent), but
25 after a fully functional loop has been terminated in the Qwest central office and a
26 CLEC wants to multiplex numerous loops together to a higher capacity transport
27 facility.

1 **Q. PLEASE TIE YOUR DISCUSSION ABOVE ESTABLISHING THAT**
2 **STAND-ALONE LOOP MULTIPLEXING IS NOT A UNE TO THE**
3 **SPECIFIC ICA PROVISIONS ENCOMPASSED BY THIS ISSUE.**

4 A. The fact that stand-alone loop multiplexing is not a UNE dictates the proper
5 outcome for each of the disputed ICA provisions encompassed by this issue.
6 First, the threshold dispute in Issue No. 9-61 is where the LMC product offering
7 should be placed in the ICA. Qwest has properly placed it in Section 24, which is
8 the commingling section that Eschelon itself requested Qwest to include in the
9 ICA. By contrast, Eschelon is proposing to include LMCs in Section 9.23 of the
10 ICA, which is within the ICA section that governs UNE combinations. UNE
11 combinations are combinations of elements that qualify as UNEs that ILECs must
12 provide under Section 251(c)(3) of the Act. Because an LMC is a combination of
13 a UNE and a tariffed multiplexing service, it is not a UNE combination but,
14 instead, is a commingled arrangement. Accordingly, LMCs should be addressed
15 in Section 24 of the ICA, not in Section 9.

16 Second, Eschelon's proposed language for ICA Section 9.23.9 and related sub-
17 parts is premised on the assumption that multiplexing is a stand-alone UNE.
18 Based on that assumption, Eschelon assigns UNE attributes, including UNE-
19 based rates, to multiplexing. For the reasons I describe above, Eschelon's premise
20 is wrong. Multiplexing is not a stand-alone UNE, and Eschelon's proposals based
21 on the assumption that it is are therefore flawed and should be rejected.

22 Third, since LMC is not a UNE combination and is a commingled service, the
23 service intervals for LMC are properly placed in the Qwest Service Interval
24 Guide, not in Exhibit C of the ICA. The Service Interval Guide sets forth the
25 intervals for commingled arrangements. By contrast, if Exhibit C is included in
26 the ICA at all, it addresses service intervals only for UNEs. Because LMC is a
27 commingled arrangement and not a UNE or UNE combination, it should not be
28 included in Exhibit C. However, the UNE loop portion of LMC does utilize the

1 EEL loop, and as such is an unbundled loop and can be treated as other unbundled
2 loops for the purposes of establishing a standard interval.

3 **III. CONCLUSION**

4
5 **Q. DO YOU HAVE ANY FINAL COMMENTS?**

6 A. Yes. Although there are substantive differences in the issues that I have
7 addressed in my testimony, there are recurring themes in the manner in which
8 Qwest and Eschelon have addressed the issues through the language they have
9 proposed for the ICA. Qwest has proposed language that recognizes and
10 incorporates the FCC's rulings in the *TRO* and *TRRO* and that recognizes the need
11 for uniform systems and processes in the service that Qwest provides to all
12 CLECs.

13 By contrast, Eschelon's proposals rely on sweeping general language that is
14 intended to impose the broadest possible unbundling, and in some cases, new
15 obligations on Qwest without regard for applicable law. Moreover, in several
16 cases, Eschelon is proposing language that is broad and vague and not susceptible
17 to either meaningful analysis by the Commission or to precise and practical
18 implementation by the parties. If the Eschelon language is adopted, this would
19 likely result in disputes concerning implementation of the ICA, which would
20 unnecessarily require the Commission and the parties to devote limited resources
21 to resolving disputes that could be avoided through the use of the type of precise
22 ICA language that Qwest is proposing.

23 For these reasons, the Commission should adopt Qwest's proposed ICA language
24 for each of the issues that I have addressed.

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

26 A. Yes.