

**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 )**

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**DOCKET NO. 07-2263-03**

**REBUTTAL TESTIMONY**

**OF**

**WILLIAM R. EASTON**

**FOR**

**QWEST CORPORATION**

**(Disputed Issues 2-3, 2-4, 5-6, 5-7, 5-7(a), 5-8, 5-9, 5-11, 5-12, 5-13, 5-16, 7-18, 7-19, 22-88,  
22-88(a), 22-89, 22-90 and 22-90(a-e))**

**QWEST EXHIBIT 2R**

**July 27, 2007**

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1 **III. SECTION 2 DISPUTED ISSUES**

2 **Issue No. 2-3**

3 **Q. MR. DENNEY ARGUES AT PAGE 20, LINES 16-17 OF HIS TESTIMONY THAT**  
4 **QWEST “ATTEMPTS TO CREATE AN UNECESSARY DEFAULT THAT RATE**  
5 **CHANGES WILL BE APPLIED PROSPECTIVELY.” HOW DO YOU RESPOND?**

6 A. Qwest’s proposal avoids ambiguity in situations where a Commission order does not  
7 specify a true-up requirement. In such situations, the Qwest language clarifies that the  
8 appropriate implementation process is to apply the rates prospectively from the effective  
9 date of the order.

10  
11 **Q. AT PAGE 19, LINES 3-5 MR. DENNEY STATES THAT SECTION 22 OF THE**  
12 **INTERCONNECTION AGREEMENT (“ICA”) “ALREADY DEALS WITH THE**  
13 **APPLICATION OF RATES IN EXHIBIT A AND DOES SO MORE**  
14 **THOROUGHLY AND CLEARLY THAN QWEST’S PROPOSED SINGLE**  
15 **SENTENCE IN SECTION 2.2.” PLEASE COMMENT.**

16 A. Contrary to Mr. Denney’s assertion, Section 22 is silent as to what is to occur when a  
17 Commission order does not specify a true-up of past billing. Section 22.4.1.2 states:

18 22.4.1.2 If the Interim Rates are reviewed and changed by the  
19 Commission, the Parties shall incorporate the rates established by  
20 the Commission into this Agreement pursuant to Section 2.2 of this  
21 Agreement. Such Commission-approved rates shall be effective as  
22 of the date required by a legally binding order of the Commission.

23  
24 Although Mr. Denney claims on page 20 that the Qwest language creates ambiguity, he is  
25 wrong. Under Qwest’s proposal, one looks first to the commission order to determine

1 when a rate applies. If the commission order fails to address the issue, a rate change is  
2 applied prospectively. There is nothing ambiguous about Qwest's language.

3  
4 **Q. ON PAGE 22, LINES 5-11 MR. DENNEY NOTES THAT ESCHELON IS NOW**  
5 **PROPOSING ALTERNATIVE SECTION 2.2 LANGUAGE WHICH ADDRESSES**  
6 **THE ISSUE OF DISTINGUISHING BETWEEN CHANGES TO PREVIOUSLY**  
7 **APPROVED PRICES AND CHANGES TO PRICES NOT PREVIOUSLY**  
8 **APPROVED. IS IT NECESSARY TO MAKE SUCH A DISTINCTION?**

9 A. No. The Qwest language seeks to avoid ambiguity where a Commission order does not  
10 specify a true-up requirement. Qwest's clarifying language applies both to changes to  
11 previously approved rates as well as changes to prices not previously approved. However,  
12 this in no way precludes the Commission from treating the two types of rates differently.

13  
14 **Q. IN CONJUNCTION WITH ITS NEW RATE LANGUAGE FOR SECTION 2.2,**  
15 **HAS ESCHELON ALSO PROPOSED NEW RATE LANGUAGE FOR SECTION**  
16 **22.4.1.2?**

17 A. Yes. As a part of its proposal for issue no. 2-3, Eschelon proposes to add the following  
18 sentence into section 22.4.1.2:

19 Each party reserves its rights with respect to whether Interim Rates  
20 are subject to true-up. If, however, the Commission issues an  
21 order with respect to rates that is silent on the issue of a true-up,  
22 the rates shall be implemented and applied on a prospective basis  
23 from the effective date of the legally binding Commission decision  
24 as described in Section 2.2  
25

1 **Q. DOES QWEST ACCEPT THE NEW ESCHELON LANGUAGE?**

2 A. No. Although Qwest believes the addition of clarifying language to Section 22 is  
3 appropriate, Qwest believes the added language should read as follows:

4 Rates in Exhibit A include legally binding decisions of the  
5 Commission and shall be applied on a prospective basis from the  
6 effective date of the legally binding Commission decision, unless  
7 otherwise ordered by the Commission.  
8

9 The Qwest language removes any ambiguity. One looks first to the commission order to  
10 determine when a rate applies. If the commission order fails to address the issue, a rate  
11 change is applied prospectively.

12

13

14 **Issue No. 2-4**

15 **Q. PLEASE COMMENT ON MR. DENNEY'S TESTIMONY REGARDING THE**  
16 **CHANGE OF LAW LANGUAGE THAT IS AT DISPUTE IN ISSUE NO. 2-4.**

17 A. Although I disagree with Mr. Denney's characterizations of the Qwest proposed language,  
18 I do agree with Mr. Denney that the change of law language should: 1) provide the parties  
19 with clear guidance as to when a change of law will take effect; 2) not provide an  
20 opportunity for any party to delay the effect of a change in law; and 3) preserve the  
21 authority of the relevant regulatory body. The Qwest proposed language satisfies all three  
22 of Mr. Denney's requirements. It provides specificity as to when a change of law will take  
23 effect. It allows either party to give notice to make such change effective on the effective  
24 date of the legally binding change. Finally, it preserves the authority of the regulatory

1 body

2

3 **Q. ON PAGE 24 MR. DENNEY ARGUES THAT THE QWEST PROPOSAL**  
4 **CREATES AMBIGUITY BECAUSE IT DISTINGUISHES BETWEEN AN**  
5 **“EFFECTIVE DATE” AND AN “IMPLEMENTATION DATE.” WHAT IS THE**  
6 **DIFFERENCE BETWEEN THE TWO?**

7 A. An “effective date” is the date the order takes effect. An implementation date is the date on  
8 which the parties are obligated to act pursuant to the order. An example which illustrates  
9 the difference would be an FCC order which stated that six months from the effective date  
10 of the order an ILEC would no longer be required to offer a specific service at TELRIC  
11 rates. Since not all changes in law orders specify when the parties’ obligations are to  
12 change, the Qwest’s proposal provides guidance by specifying that should either party give  
13 notice within 30 days, the parties’ obligation under the interconnection agreement would  
14 change as of the effective date of the change of law order. Should neither party provide  
15 such notice, the parties’ obligations under the interconnection agreement would not change  
16 until an amendment went into effect

17

18 **Q. MR. DENNEY ALSO ARGUES THAT WHAT CONSTITUTES NOTICE IS**  
19 **UNCLEAR. DO YOU AGREE?**

20 A. No. The undisputed language in section 5.21 of the agreement specifically spells out what  
21 constitutes a notice and who is to receive it.

22

1 **Q. AT PAGE 25, LINES 4-16 MR. DENNEY STATES THAT QWEST'S PROPOSAL**  
2 **CREATES AN OPPORTUNITY FOR DELAY SINCE THE EFFECTIVE DATE OF**  
3 **A CHANGE IN LAW DEPENDS ON WHETHER ONE PARTY GIVES THE**  
4 **OTHER NOTICE. PLEASE COMMENT.**

5 A. Qwest's language removes any incentive for delay by providing that with notice by either  
6 party within 30 days, the effective date of any resulting amendment shall be the effective  
7 date of the change of law. This removes the ability of one party or the other to drag out the  
8 negotiations of an amendment to establish a later implementation date of the change of law.  
9 If neither party provides notice, the effective date of the change of law will be the  
10 amendment date. This avoids the situation of either party being able to approach the other  
11 party months or perhaps years after a change of law, request the agreement to be amended  
12 to comply with the change of law and then expect that it be made effective on the effective  
13 date of the change of law.

14  
15 Qwest believes that this process is both simple and fair, as each party has an equal  
16 opportunity to notify the other party of its intent with respect to changes in law. By  
17 establishing a fair and straightforward process, the Qwest language will eliminate future  
18 disputes over when an amendment should be made effective between the parties.

19

1 **Q. MR. DENNEY ARGUES THAT LIMITED RESOURCES MAY PREVENT**  
2 **ESCHELON FROM HAVING KNOWLEDGE OF REGULATORY**  
3 **PROCEEDINGS AND THUS IMPACT ITS ABILITY TO PROVIDE NOTICE. IS**  
4 **THIS REALLY A CONCERN?**

5 A. No. I would note that Eschelon is by all appearances a sophisticated company with a great  
6 deal of awareness of the regulatory environment. Regardless, in the age of the Internet,  
7 with each state utility commission having its own homepage, it is difficult to argue that any  
8 CLEC lacks easy access to relevant regulatory information.

9  
10 **Q. ON PAGE 25, LINE 20 – PAGE 26, LINE 1 MR. DENNEY CLAIMS THAT THE**  
11 **QWEST LANGUAGE WOULD ALLOW FOR AN EFFECTIVE DATE FOR A**  
12 **CHANGE OF LAW TO BE DIFFERENT THAN THE DATE ORDERED BY THE**  
13 **COMMISSION. IS MR. DENNEY’S INTERPRETATION CORRECT?**

14 A. No. Mr. Denney ignores the first sentence of Qwest’s change of law language, which  
15 begins:

16           When a regulatory body or court issues an order causing a change  
17           in law *and that order does not include a specific implementation*  
18           *date. . . .* [Emphasis added].

19  
20           The Qwest language regarding the effective date of the change in law applies only when an  
21           effective date is not specified.

22

1 **Q. ON PAGE 13 MR. DENNEY PROPOSES ALTERNATIVE LANGUAGE**  
2 **REGARDING EFFECTIVE DATES OF CHANGE OF LAW AMENDMENTS.**  
3 **DOES QWEST AGREE WITH THIS LANGUAGE?**

4 A, No. Eschelon is now proposing the following alternative language related to issue no. 2-4 -  
5 change of law:

6 Each Party reserves its rights with respect to the effective date of a  
7 legally binding modification or change of the Existing Rules and,  
8 if different, other dates for implementation or application of an  
9 order, if any. If a Party desires a particular deadline or time period  
10 for application or implementation of any aspect of a proposed  
11 order, the Party may request under the Commission's regularly  
12 established rules that the Commission establish a specific  
13 implementation date, stay the order, or provide other such relief as  
14 applicable. If, however, the Commission enters an order that is  
15 silent on the issue, the order shall be implemented and applied on a  
16 prospective basis from the date that the order is effective either by  
17 operation of law or as otherwise stated in the order (such as  
18 "effective immediately" or a specific date), unless subsequently  
19 otherwise ordered by the Commission or, if allowed by the order,  
20 agreed upon by the Parties.  
21

22 Qwest objects to this new language. Rather than providing a clear process for how the  
23 parties are to proceed in cases of change of law as the Qwest language does, the new  
24 Eschelon language appears only to preserve the parties' rights to resolve this issue at a  
25 future time.  
26

1 **Q. ON PAGES 26, LINE 11 –PAGE 27, LINE 19 MR. DENNEY CITES AN ARIZONA**  
2 **PROCEEDING AS SUPPORT FOR ITS POSITION THAT THE TERM**  
3 **"EFFECTIVE DATE" IS AMBIGUOUS. IS THE ARIZONA PROCEEDING**  
4 **CITED BY ESCHELON RELEVANT TO THIS LANGUAGE DISPUTE?**

5 A. No. The Arizona proceeding cited did not relate at all to the effective date of a cost docket  
6 order. It was agreed by all parties to that proceeding that the ordered rates would apply on  
7 June 12, 2002. Instead, the dispute in that proceeding related to when Qwest would have  
8 its systems modified to reflect the new prices. That question is not addressed by this  
9 contract language. This contract provision relates to the first question - namely the date  
10 that the new rates apply.

11

12

13

#### IV. SECTION 5 DISPUTED ISSUES

14

15 **Q. BEFORE ADDRESSING THE SPECIFIC POINTS RAISED BY MR. DENNEY,**  
16 **DO YOU HAVE A GENERAL COMMENT ON ESCHELON'S PAYMENT AND**  
17 **DEPOSIT TESTIMONY?**

18 A. Yes. Eschelon devotes over 40 pages to criticizing Qwest's proposed payment and deposit  
19 language, but devotes little space to explaining why Eschelon should not pay its bills on  
20 time. In fact, Eschelon has a history of late and slow payment with Qwest and, as will be

1 discussed later in my testimony, pays its bills [**BEGIN CONFIDENTIAL REDACTED**<sup>1</sup>  
2 days **END CONFIDENTIAL**] later than other CLECs. Although Eschelon claims that it  
3 believes Qwest should have the ability to protect its financial interests when there is a  
4 legitimate concern about future payment, Eschelon's past payment behavior and proposed  
5 billing language belie this claim. Mr. Denney speaks of "unilateral" action and  
6 "devastating" consequences related to Qwest's proposed remedies in cases of non-  
7 payment, but fails to acknowledge that the ability to prevent these consequences lies solely  
8 in Eschelon's hands. Eschelon need only pay its *undisputed* bills in a timely manner to  
9 avoid consequences such as the discontinuance of taking orders or becoming subject to  
10 deposit requirements. The payment and deposit language that Qwest is proposing is simply  
11 a reasonable business precaution designed to encourage timely payment and, when it does  
12 not occur, provide the ability for Qwest to limit its financial risk. Similar language is  
13 contained in Qwest's Utah SGAT and in the AT&T and Covad ICAs. Eschelon provides  
14 no compelling reason why it should not abide by the same payment and deposit terms as  
15 other carriers.  
16

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<sup>1</sup> Redacted information is provided in Confidential Qwest Exhibit 2R.1.

1 **Issue Nos. 5-6, 5-7 and 5-7(a)**

2 **Q. AT PAGE 60 MR. DENNEY ARGUES THAT DISCONTINUING THE**  
3 **PROCESSING OF ORDERS IS A VERY SERIOUS STEP THAT SHOULD ONLY**  
4 **BE USED AS A LAST RESORT. DO YOU AGREE?**

5 A. Yes, I agree with Mr. Denney that this is a serious step. Unfortunately, it is often the only  
6 step that will get a CLEC to pay undisputed bills. Nonetheless, Qwest's language reflects  
7 rights it has had under prior interconnection agreements and contains limitations designed  
8 to protect CLECs: (1) it excludes disputed amounts; (2) it provides that Qwest will not take  
9 this action until payments are more than 30 days past due; and (3) it requires that Qwest  
10 provide notice to Eschelon (and the Commission) at least 10 business days in advance.  
11 Again, it is important to note that the ability to avoid this serious step is solely within  
12 Eschelon's control.

13

14 **Q. ON PAGE 60, LINES 11-15 OF HIS TESTIMONY MR. DENNEY REFERS TO**  
15 **"UNJUSTIFIED DISCONNECTION OR DISRUPTION OF SERVICE ORDER**  
16 **PROCESSING." DOES QWEST'S PROPOSED LANGUAGE ALLOW IT TO**  
17 **DISCONNECT SERVICE OR DISCONTINUE SERVICE ORDER PROCESSING**  
18 **UNJUSTIFIABLY?**

19 A. No. Qwest will only disconnect service or discontinue order processing based on the fact  
20 that Eschelon has not paid for services that Qwest has previously provided under the terms  
21 of the contract. In light of this non-payment, Qwest is justified in limiting its exposure to  
22 potential future non payment.

1 **Q. IS QWEST'S PROPOSED ORDER DISCONTINUATION LANGUAGE**  
2 **CONSISTENT WITH ITS ICAS WITH OTHER CARRIERS?**

3 A. Yes. Similar language appears in the Utah SGAT and the approved agreements with  
4 AT&T and Covad.

5  
6 **Q. ON PAGES 64-65 MR. DENNEY DESCRIBES A RECENT INCIDENT WHERE**  
7 **QWEST THREATENED TO STOP PROCESSING ORDERS BECAUSE OF**  
8 **OVERDUE BALANCES. COULD YOU PLEASE DESCRIBE THE**  
9 **CIRCUMSTANCES THAT LEAD UP TO THIS SITUATION?**

10 A. To begin with, this is not a situation that developed over night. Eschelon has a long history  
11 with Qwest of ignoring payment due dates, paying less than it owes and misusing the  
12 dispute process to avoid timely payment. In fact, despite the 30-day payment requirement  
13 language in its ICAs, on average Eschelon takes over **[BEGIN CONFIDENTIAL**  
14 **REDACTED<sup>2</sup> days END CONFIDENTIAL]** to pay its monthly bills. This is **[BEGIN**  
15 **CONFIDENTIAL REDACTED<sup>3</sup> days END CONFIDENTIAL]** longer than other  
16 CLECs incurring similar monthly charges. In May 2006, Eschelon's undisputed past due  
17 amount was over three million dollars. Qwest determined Eschelon's undisputed past due  
18 balance as follows. First, Qwest determined that, as of May 24, 2006, Eschelon's past due  
19 balance, i.e., the total amount owing more than 30 days past due, stood at just over \$4M.  
20 Qwest then subtracted from that past due balance every single dollar that Eschelon claimed

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<sup>2</sup> Redacted information is provided in Confidential Qwest Exhibit 2R.1.

<sup>3</sup> ibid

1 to be in pending dispute status, approximately \$932,000, regardless of the fact that Qwest's  
2 records showed less than half that amount in pending dispute status. By this method,  
3 Qwest determined that, even when viewed in the light most favorable to Eschelon,  
4 Eschelon's *undisputed past due* balance (total past due less all amounts claimed to be in  
5 dispute) indisputably exceeded \$3.1M as of May 24, 2006. Based on this significant  
6 undisputed past due balance, Qwest notified Eschelon that, while Qwest was willing to  
7 further discuss the discrepancy concerning the amounts in dispute, it would not tolerate  
8 such a large past due balance and would therefore begin suspending service order activity if  
9 the undisputed past due amounts were not paid within a month. Qwest's demand was fully  
10 consistent with the parties' interconnection agreements and Qwest's tariffs since,  
11 incontrovertibly, by virtue of such a large *undisputed* past due balance, Eschelon was in  
12 default of its payment obligation under these agreements and tariffs.

13  
14 **Q. WHAT WAS THE END RESULT OF QWEST'S THREATENED ACTION?**

15 A. After much discussion between the parties regarding the amounts in dispute, whether  
16 checks that Eschelon sent to Qwest represented payment of past due balances or were for  
17 current amounts due, and whether Eschelon's payments were for Eschelon or affiliated  
18 companies, Eschelon ultimately paid the majority of undisputed past due balances by the  
19 deadline set by Qwest. Qwest therefore agreed to defer order suspension, while reserving  
20 all rights, even though Eschelon had not fully cured its default. Qwest continued to  
21 monitor payments and notified Eschelon on August 11, 2006 that it had yet to fully cure the  
22 default. Therefore, while the companies continue to work through a process to reconcile

1 the disputed amounts, Eschelon still carries a significant undisputed past due balance.

2

3 **Q. WHAT DID THIS COLLECTIONS DISPUTE DEMONSTRATE?**

4 A. This dispute is a clear demonstration that the payment and deposit language that Qwest  
5 proposes in this arbitration is necessary and provides effective incentives for the parties to  
6 work out their differences without having to involve the Commission in managing the  
7 companies' business to business relationship. The fact that Eschelon's underpayment had  
8 gone on for so long and was such a significant amount also demonstrates that threats of  
9 suspending service order activity are not something that Qwest takes lightly or undertakes  
10 for insignificant amounts.

11

12 **Q. ON PAGE 65, LINES 2-5 MR. DENNEY STATES THAT "ESCHELON PAID ALL**  
13 **AMOUNTS ALLEGED BY QWEST." IS THIS REALLY WHAT HAPPENED?**

14 A. No. As I described above, Qwest required a payment based on the amount shown as past  
15 due on its books less a figure provided by Eschelon itself for amounts in dispute. Qwest's  
16 August 11, 2006 letter to Eschelon, contained in Mr. Denney's Exhibit Eschelon 2.6,  
17 makes clear that, in determining the amount in default, Qwest was excluding the amount  
18 Eschelon claimed was in dispute. In fact, as noted above, Eschelon paid the majority of  
19 what Qwest was owed, but not all of what Qwest was owed. Eschelon still carries a  
20 significant past due balance with Qwest. Based on this, Eschelon cannot now argue that it  
21 paid Qwest any more than Qwest was owed.

22

1 **Q. ON PAGE 65, LINE 5 MR. DENNEY CLAIMS THAT ESCHELON PAID MORE**  
2 **THAN \$ 9 M TO QWEST. WAS ALL OF THE \$ 9 M RELATED TO**  
3 **UNDISPUTED PAST DUE AMOUNTS?**

4 A. No. Mr. Denney's \$ 9 M figure includes payment for ongoing services and also for  
5 amounts owed by companies affiliated with Eschelon that were not part of Qwest's  
6 calculation of Eschelon's undisputed past due amount. This confusion over what  
7 constituted payment for ongoing services versus what amounts were to be applied to past  
8 due balances for Eschelon accounts explains some of the correspondence in Eschelon 2.6  
9 regarding whether amounts had been paid or not.

10

11 **Q. ON PAGE 81, LINES 17-19 MR. DENNEY ARGUES THAT THE INFORMATION**  
12 **USED BY QWEST TO DETERMINE WHETHER TO DISCONNECT SERVICE**  
13 **OR DISCONTINUE PROCESSING ORDERS IS NOT ALWAYS ACCURATE AND**  
14 **IS EXTREMELY VAGUE. IS THIS TRUE?**

15 A. No. There are two figures relevant to determining undisputed past due amounts: total  
16 amounts billed and amounts disputed by the billed party. Qwest provides detailed  
17 information by Billing Account Number (BAN) for total amounts billed. With some minor  
18 exceptions, due to LATAs that overlap state boundaries, these BANs correspond to states.  
19 As to amounts in dispute, through the Change Management Process Qwest and the CLECs,  
20 including Eschelon, have developed a formal process to insure that disputes are formally  
21 identified and resolved. Mr. Denney's claims are simply unfounded.

22

1 **Issue No. 5-8**

2 **Q. ON PAGE 61, LINES 16-19 MR. DENNEY CLAIMS THAT QWEST COULD**  
3 **DEMAND A DEPOSIT EVEN WHEN THERE IS NO LEGITIMATE CONCERN**  
4 **ABOUT ESCHELON'S ABILITY TO PAY. IS THERE ANY BASIS FOR SUCH A**  
5 **CONCERN?**

6 A. No. Qwest's deposit requirements are triggered by a history of delinquent payments or a  
7 credit review. Given that a company's credit standing and payment behavior is an  
8 indicator of its ability to pay future bills, the fact that a company has a change in its credit  
9 standing or a history of making delinquent payments raises a legitimate concern about that  
10 company's risk of non payment.

11

12 **Q. MR. DENNEY STATES ON PAGE 62, LINES 4-6 THAT ESCHELON "CANNOT**  
13 **HAVE ITS FINANCIAL RESOURCES TIED UP IN FRIVOLOUS DEPOSITS."**  
14 **PLEASE COMMENT.**

15 A. If Eschelon were to ever get in sufficient financial straits so as to force Qwest to demand a  
16 deposit, the deposit request would not be frivolous. Qwest's proposed contract terms are  
17 designed to provide a deposit as a possible form of protection in the event of such a  
18 situation. If Qwest were, as Mr. Denny suggests, to demand a deposit in a situation where  
19 Eschelon was not in real financial trouble or had not displayed a genuine recalcitrance to  
20 paying undisputed bills, there is no doubt that Eschelon would protect its interests through  
21 appropriate action before this Commission.

22

1 Mr. Denney argues that \$10 M is not real money to Qwest, but that is a considerable sum  
2 for any company, not to mention a company like Qwest that is operating in today's highly  
3 competitive telecommunications marketplace. Mr. Denney's argument also ignores the  
4 fact that Eschelon is not Qwest's only customer. The purpose of the payment language in  
5 an ICA is to balance the needs of both the billing and billed parties. Mr. Denney focuses  
6 only on the impacts of deposit requirements on Eschelon and ignores the necessity of  
7 deposits for Qwest. Finally, Mr. Denney again fails to acknowledge that Eschelon need  
8 only pay its bills on time to avoid deposit requirements.

9  
10 **Q. ON PAGE 62 LINES 12-13 MR. DENNEY IMPLIES THAT QWEST'S DEPOSIT**  
11 **REQUIREMENTS ARE SOMEHOW UNFAIR SINCE "QWEST WOULD NOT BE**  
12 **FACED WITH PAYING ANY DEPOSIT TO ESCHELON." DOES THIS**  
13 **ARGUMENT MAKE SENSE?**

14 **A.** No. As Mr. Denney himself acknowledges in his footnote on page 60 of his testimony,  
15 Eschelon is the party that purchases services from Qwest, not the other way around.  
16 Deposits are designed to limit the risk of non payment. Given that Qwest is not purchasing  
17 services from Eschelon, there is simply no reason for Qwest to pay a deposit to Eschelon.

18

1 **Q. ON PAGE 62, LINE 14 – PAGE 63, LINE 11 MR. DENNEY ATTEMPTS TO**  
2 **JUSTIFY THE NEED FOR COMMISSION INVOLVEMENT IN DEPOSIT**  
3 **REQUIREMENTS BY ARGUING THAT ESCHELON AND QWEST HAVE**  
4 **DISAGREEMENTS ABOUT BILLING INFORMATION AND THEREFORE**  
5 **REQUIRE AN INDEPENDENT ARBITRATOR. DO BILLING**  
6 **DISAGREEMENTS HAVE AN IMPACT ON DEPOSIT REQUIREMENTS?**

7 A. No. The repeatedly delinquent deposit language in section 5.4.5 specifically applies to  
8 undisputed amounts. Therefore, amounts that Eschelon disputes would not be subject to  
9 the requirements laid out in section 5.4.5.

10

11 **Q. ON PAGES 73-75, MR. DENNEY DETAILS WHAT HE DESCRIBES ARE THE**  
12 **REASONS ESCHELON AND QWEST OFTEN DISAGREE ABOUT THE**  
13 **AMOUNT OF ESCHELON'S UNDISPUTED AMOUNTS PAST DUE TO QWEST.**  
14 **HAVE YOU HAD AN OPPORTUNITY TO LOOK INTO ANY OF THE**  
15 **SITUATIONS THAT MR. DENNEY DESCRIBES?**

16 A. Yes. I investigated a number of the incidents Mr. Denney describes and found the  
17 circumstances to be very different than Mr. Denney has characterized them. Below I will  
18 briefly respond to a number of the claims made by Mr. Denney.

19

20 Qwest Takes It Upon Itself to Declare Disputes Resolved

21 Mr. Denney is incorrect when states that Qwest simply unilaterally declares disputes to be  
22 resolved. Through the Change Management Process, Qwest has developed a detailed

1 process to handle disputes. This process provides for a clear communications path between  
2 Qwest and the CLECs and provides for escalations should CLECs not agree with Qwest's  
3 proposed resolution. Although Mr. Denney argues at length on pages 77-79 that Eschelon  
4 should not have to follow this process, the use of a standard process would go a long way  
5 towards reducing misunderstandings between the parties.

6  
7 Mr. Denney is correct that the parties' current ICA has dispute resolution procedures.  
8 Although the interconnection agreement procedures differ from those developed during the  
9 Change Management Process, they do call for the parties to work jointly to resolve disputes  
10 and allow either party to invoke the dispute resolution process if a dispute has not been  
11 resolved in 120 days. Despite the joint responsibility for resolving disputes, Qwest billing  
12 personnel report that they often send a resolution letter to Eschelon yet hear nothing back.  
13 However, Eschelon continues to withhold payment.

14  
15 Qwest's Notices of Past Due Amounts Do Not Include Billing Account Number Detail

16 It is Qwest's practice to include a spreadsheet with billing account number detail with  
17 collections letters. Contrary to this practice I did find that one of the six Eschelon  
18 collection letters did not include this information. Again, communication between the  
19 parties would allow for a quick remedy of the situation.

20  
21 Detail Does Not Match With Amounts in Letter

22 An examination of the e-mail string in Eschelon 2.7 shows that Qwest was more than  
23 willing to set up meetings to explain the spreadsheet and discuss Eschelon's concerns.

24

1       Payments Not Posted in a Timely Manner

2       Contrary to Mr. Denney's assertion, the issue described in Exhibit Eschelon 2.8 is not an  
3       example of payments not being posted in a timely manner. Mr. Denney's Eschelon 2.8 has  
4       to do with billing for out of region services, not local services purchased under the  
5       interconnection agreement. According to Qwest's records this payment was not received  
6       and posted by Qwest until October 24<sup>th</sup>, the day Ms. May's letter was sent out. It should be  
7       noted that the letter includes the following language to cover just this type of situation:

8  
9               If payment has been sent, please disregard this notice. If you feel you have  
10              received this notice in error, please contact me immediately so we can work with  
11              you to correct any discrepancies in our records.  
12

13       Finally, I would point out that although section 6.1 of the Wholesale Service Agreement  
14       that these services were purchased out of requires that "all invoiced amounts shall be paid  
15       via wire transfer," the Eschelon correspondence in Exhibit Eschelon 2.8 indicates that  
16       Eschelon paid by check thus delaying the posting of the payment.

17  
18       Qwest Includes Amounts Not Due in Its Past Due Amounts

19       The mail string in Eschelon 2.9 indicates that Qwest inadvertently cited a figure as "past  
20       due" instead of "due". When the matter was brought to Qwest's attention, Qwest  
21       acknowledged the error and apologized. It is exactly these types of exchanges between the  
22       parties that can reveal misunderstandings before they become a problem.

23  
24       Refund Amounts Are Applied to Past Due Balances

25       Qwest does not adjust accounts by issuing billing refunds to any carrier with a past due  
26       balance. Rather, in that situation, Qwest will apply any credits due and owing to past due

1 balances. From a business perspective, it only makes sense to address the past due  
2 balances before issuing any refunds.

3  
4 Black Hole for Disputes

5 Contrary to Mr. Denney's inference that disputes go into a "black hole" Qwest's e-mail in  
6 Eschelon 2.10 agreed to investigate the status of a past dispute and offered assurances that  
7 Qwest wanted to work with Eschelon to make sure that disputes did not fall into a black  
8 hole. The particular issue referred to in the e-mails had to do with a Colorado tax issue. In  
9 fact, prior to Mr. Markert's e-mail, Qwest's tax specialists met with Eschelon to explain  
10 why Qwest's tax treatment was correct. This was not a case of Qwest ignoring an Eschelon  
11 dispute.

12  
13 DSL Rate Adjustment

14 This adjustment had to do with the wholesale discount applied to DSL purchased under  
15 commercial agreement. Based on FCC DSL categorization in Dec. 2005, effective Jan 28,  
16 2006 all CLECs received an 18% DSL discount across the board. The discount amounts  
17 Eschelon received in previous months were correct.

18  
19 Misapplied Payments

20 According to Qwest billing center personnel, there have been cases where Qwest has  
21 received conflicting information from Eschelon regarding how payments are to be applied,  
22 with the remittance letter to the payment center saying one thing and Eschelon saying

1 something different to the Qwest collections department. This has led Eschelon to  
2 incorrectly claim payments have been misapplied.

3  
4 Qwest Left Hand Doesn't Know What Its Right Hand is Doing

5 As I just discussed, Qwest has had experiences with Eschelon where different groups are  
6 receiving conflicting information. In fact, it was to avoid just such situations that Qwest  
7 requested that copies of the remittance letter be sent to both the payment center and the  
8 collections group.

9  
10 **Q. IN A FOOTNOTE ON PAGE 75 MR. DENNEY DESCRIBES A SITUATION**  
11 **WHERE QWEST BILLS WERE SENT TO AN INCORRECT ADDRESS AND**  
12 **QWEST SUBSEQUENTLY THREATENED TO DISCONNECT SERVICE. ARE**  
13 **YOU AWARE OF THIS SITUATION?**

14 A. Yes. This situation is related to Eschelon's recent purchase of Mountain  
15 Telecommunications and One Eighty Communications. Although there was a delay on  
16 Qwest's part in updating its billing information, bills were sent to both companies and  
17 presumably were, or could have been forwarded, to the Eschelon billing department. The  
18 delay in updating the billing information in no way relieves Eschelon of its obligation to  
19 pay for the services Qwest provides. Ultimately Eschelon did pay the amounts it owed and  
20 service was not disconnected.

21

1 **Q. YOU DISCUSSED THE FACT THAT ESCHELON TAKES CONSIDERABLY**  
2 **LONGER THAN OTHER COMPANIES IN ITS PEER GROUP TO PAY ITS**  
3 **BILLS. ARE THE INCIDENTS CITED BY MR. DENNEY A POSSIBLE**  
4 **EXPLANATION FOR THIS?**

5 A. No. First, as I have just explained Mr. Denney has mischaracterized these incidents.  
6 Telecommunications billing is a complex process. For Eschelon alone, Qwest has 269  
7 accounts and 19 different due dates. Given this complexity, it is not surprising that there  
8 will be occasional misunderstandings and disputes between the parties. The e-mails and  
9 other correspondence Mr. Denney has attached to his testimony demonstrate to me that  
10 Qwest is very willing to work with Eschelon to minimize misunderstandings and resolve  
11 disputes.

12  
13 Second, the other carriers in Eschelon's peer group have similarly complex billing. It is the  
14 same Qwest personnel and processes that are used to bill these other carriers, yet they  
15 manage to pay their bills in half the time that it takes Eschelon.

16  
17 **Q. DO YOU HAVE ANY OTHER REASON TO BELIEVE THAT IT IS NOT THE**  
18 **QWEST BILLING PROCESS THAT EXPLAINS ESCHELON'S PAYMENT**  
19 **HISTORY?**

20 A. Yes. Further evidence that Eschelon is the party responsible for its slow payment behavior  
21 exists in the form of payment history of a company that Eschelon acquired in 2006: Oregon  
22 Telecom. Attached as Confidential Qwest Exhibit 2R.2 is a listing by month of past due

1 balances for Oregon Telecom. For the seven months prior to Eschelon assuming control,  
2 past due balances averaged [BEGIN CONFIDENTIAL REDACTED<sup>4</sup> END  
3 CONFIDENTIAL]. In the last seven months, past due balances have averaged [BEGIN  
4 CONFIDENTIAL REDACTED<sup>5</sup> END CONFIDENTIAL]. This dramatic change in  
5 payment behavior occurred despite the fact that the same Qwest billing processes and  
6 personnel were used both before and after the Eschelon acquisition.  
7

8 **Q. ON PAGE 88 THROUGH 90 MR. DENNEY DISCUSSES WHY HE BELIEVES**  
9 **THE WORDS “NON DE MINIMUS” ARE NECESSARY IN THE DEPOSIT**  
10 **LANGUAGE. WHY IS MR. DENNEY’S ARGUMENT FLAWED?**

11 A. Although Mr. Denney argues that there is a common understanding as to what constitutes a  
12 “non de minimus” amount, Mr. Denney’s assertion that \$ 10 M is real money to Eschelon,  
13 but not to Qwest, demonstrates that “de minimus” can have vastly different meanings  
14 depending on the context and the party involved. More importantly, Eschelon has  
15 presented no evidence that Qwest has ever invoked collections or deposit requirements  
16 based upon insignificant amounts. The billing dispute that I discussed previously is a clear  
17 example of the fact that Qwest does not undertake these types of actions for small amounts.  
18 Qwest’s proposed language has not resulted in problems that I am aware of for carriers  
19 operating under the Utah SGAT, or under the AT&T and Covad ICAs. Mr. Denney’s offer  
20 to substitute the words “non material” for non de minimus is, again, a solution to a problem

---

<sup>4</sup> Redacted information is provided in Confidential Qwest Exhibit 2R.1.

<sup>5</sup> ibid

1 that does not exist.

2

3

4 **Issue No. 5-9**

5 **Q. ON PAGES 91-92 MR. DENNEY ARGUES THAT THERE ARE A NUMBER OF**  
6 **COMPANIES WITH A DIFFERENT DEFINITION OF REPEATEDLY**  
7 **DELINQUENT THAN QWEST IS PROPOSING IN THIS ARBITRATION AND**  
8 **THAT QWEST IS THEREFORE HOLDING ESCHELON TO A DIFFERENT**  
9 **STANDARD THAN OTHER COMPANIES. PLEASE COMMENT.**

10 A. As I discussed above, this same 'repeatedly delinquent' language appears in Qwest's  
11 SGAT as well as the approved agreements for AT&T and Covad. In fact, the language was  
12 developed in the Section 271 workshops by Qwest and the participating CLECs. The  
13 agreements cited by Mr. Denney are either very old agreements or are wireless/paging  
14 agreements. For example, the ATI agreement in Washington was approved in 1998, the  
15 Pathnet agreement was signed in 1999 and the McLeodUSA agreement was signed in  
16 2000. Qwest's agreements with wireline carriers have contained the proposed 'repeatedly  
17 delinquent' language for several years. For wireless/paging carriers, Qwest has not  
18 experienced the same magnitude of non payment issues. Nonetheless, since early 2004  
19 Qwest is using the same deposit language being proposed here in all new contracts with  
20 wireless/paging carriers.

21

1 **Issue Nos. 5-11 and 5-12**

2 **Q. MR. DENNEY STATES ON PAGE 95, LINES 11-12, “THE KEY HERE IS THAT**  
3 **COMMISSION OVERSIGHT IS PRESERVED AND QWEST IS NOT ALLOWED**  
4 **TO UNILATERALLY DEMAND DEPOSITS.” IS THIS THE KEY?**

5 A. No. First, there is no need to insert the Commission into the parties’ business relationship  
6 in an attempt to prohibit Qwest from utilizing standard and reasonable business practices.  
7 Second, although Mr. Denney describes the actions of Qwest as unilateral, any action that  
8 Qwest takes must first be triggered by Eschelon’s failure to pay its *undisputed* billing  
9 amounts. There is no need for Qwest to invoke the deposit requirements if Eschelon pays  
10 undisputed amounts in a timely manner.

11

12

13 **Issue Nos. 5-13**

14 **Q. AT PAGE 96, LINES 14-15 MR. DENNEY ARGUES THAT QWEST SECTION**  
15 **5.4.7 LANGUAGE, WHICH ALLOWS FOR AN INCREASE IN A DEPOSIT**  
16 **BASED UPON A REVIEW OF A PARTY’S CREDIT STANDING, IS**  
17 **UNNECESSARY. WHY DOES QWEST BELIEVE THAT THIS LANGUAGE IS**  
18 **NECESSARY?**

19 A. Circumstances can change over the course of the parties’ business relationship. It only  
20 makes sense that deposit requirements be allowed to reflect those changes. Although Mr.  
21 Denney argues that the section 5.4.7 language nullifies the deposit language in 5.4.5, it is  
22 actually complementary to the language in section 5.4.5 and allows for deposit

1 requirements to be revised as a party's circumstances change. This same language is in the  
2 Utah SGAT and the approved AT&T and Covad agreements. I am not aware of other  
3 carriers objecting to this language or raising the issues that Eschelon raises here.

4

5 **Q. DO YOU AGREE WITH MR. DENNEY'S CONCERN EXPRESSED AT PAGE 99,**  
6 **LINES 9-14, THAT UNDER SECTION 5.4.7 THERE WOULD BE NO**  
7 **"TRIGGERING EVENT" THAT COULD BE USED TO SELECT THREE**  
8 **MONTHS FOR CALCULATING A DEPOSIT AMOUNT?**

9 A. No. The date of the credit review itself is the triggering event if Qwest determines that  
10 Eschelon's credit standing warrants the imposition of a deposit requirement.

11

12 **Q. IS MR. DENNEY CORRECT WHEN HE STATES ON PAGE 97 THAT IT IS**  
13 **QWEST'S POSITION THAT IT COULD READ SOMETHING IN THE PAPER**  
14 **AND SIMPLY INCREASE ESCHELON'S DEPOSIT?**

15 A. No. It is possible however that Qwest could read something in the paper that would lead it  
16 to question Eschelon's credit worthiness. Based on this information, Qwest could then  
17 perform a credit review. Should the review determine that there were sufficient credit  
18 concerns, the Qwest language would allow Qwest to request a deposit.

19

20 **Q. HAS ESCHELON NOW PROPOSED ALTERNATE LANGUAGE FOR SECTION**  
21 **5.4.7?**

22 A. Yes. Eschelon is now proposing to modify the Qwest language as indicated below:

1           **5.4.7 If a Party has received a deposit pursuant to Section**  
2           **5.4.5 but the amount of the deposit is less than the maximum**  
3           **deposit amount permitted by Section 5.4.5, the Billing Party**  
4           may review the other Party's credit standing and increase the  
5           amount of deposit required, **if approved by the Commission**, but  
6           in no event will the maximum amount exceed the amount stated in  
7           Section 5.4.5. **Section 5.4 is not intended to change the scope of**  
8           **any regulatory agency's or bankruptcy court's authority with**  
9           **regard to Qwest or CLECs.**

10

11 **Q. IS QWEST OPPOSED TO THE PROPOSED CHANGES?**

12 A. Yes. In addition to objecting to Eschelon's attempt to involve the Commission in normal  
13 business processes, Qwest objects to the clause inserted at the beginning of the section.  
14 This language is designed to prevent Qwest from asking for a deposit if a deposit has not  
15 previously been requested. This undermines the purpose of section 5.4.7, which is to allow  
16 deposit requirements to reflect a change in circumstances. A change in circumstances may  
17 well warrant a deposit requirement despite the fact that a deposit has not been required  
18 previously. Eschelon's language would prohibit this reasonable business practice and  
19 should be rejected.

20

21 **Q. PLEASE SUMMARIZE QWEST'S PAYMENT AND DEPOSIT CONCERNS.**

22 A. Over the past several years, Qwest has found itself in the position of being left stranded  
23 with large receivables when CLECs filed Chapter 7 bankruptcy and exited the local  
24 exchange market. These recent experiences highlight the need for Qwest to have more, not  
25 less, payment and credit protections. The payment and deposit language proposed by  
26 Eschelon, especially considering the ability of other CLECs to opt-in to this agreement,  
27 would unreasonably increase Qwest's financial exposure.

28

29 Qwest's proposed language strikes a balance between the needs of both parties, as reflected  
30 by the fact that these same provisions were agreed to by the CLECs during the Section 271

1 workshops. In its testimony on payment and deposit issues, Eschelon ignores this balance  
2 and instead focuses only on purported disadvantages to Eschelon. Eschelon devotes a great  
3 deal of its testimony to criticizing Qwest's proposed language, but it offers no explanation  
4 for why it should not pay its *undisputed* bills in a timely manner. In the end, Eschelon  
5 offers no compelling reason why the payment and deposit language that was agreed to by  
6 all parties during the Section 271 workshops, should now be modified.

7  
8  
9 **Issue No. 5-16**

10 **Q. IN DISCUSSING THE NON DISCLOSURE AGREEMENT ISSUE ON PAGE 103,**  
11 **LINES 4-12 MR. DENNEY ARGUES THAT IF QWEST DOES NOT PROVIDE**  
12 **ESCHELON WITH COPIES OF THE NON-DISCLOSURE AGREEMENTS,**  
13 **ESCHELON WILL HAVE INSUFFICIENT INFORMATION TO OBJECT IF**  
14 **SENSITIVE INFORMATION IS PROVIDED TO A QWEST EMPLOYEE NOT**  
15 **AUTHORIZED BY THE ICA TO RECEIVE IT. IS THIS A VALID CONCERN?**

16 A. No. First, the Qwest language mandates very strict procedures for the handling of CLEC  
17 forecasted information. Second, in addition to the stringent requirements set forth in  
18 section 5.16.9.1, under section 18, Eschelon has further protection and recourse if it  
19 believes that Qwest has misused confidential information. Section 18.3.1 of the ICA  
20 provides that "either party can request an audit of the other party's compliance with the  
21 Agreement's measures and requirements applicable to limitations on distribution,  
22 maintenance, and use of proprietary or other protected information that the requesting party

1 has provided the other.”

2

3 **Q. ON PAGE 104, LINES 5-24 MR. DENNEY ARGUES THAT ESCHELON IS NOT**  
4 **OFFERED PROTECTION UNDER THE AUDIT CLAUSES OF SECTION 18.3.1.**  
5 **DO YOU AGREE?**

6 A. No. Like the section 5.16.9.1 language, the audit language was developed jointly by the  
7 CLECs and Qwest during the Section 271 workshops. Mr. Denney fails to demonstrate  
8 that these agreed to provisions do not provide adequate protection for Eschelon. The audit  
9 provisions, in conjunction with the stringent requirements set forth in section 5.16.9.1,  
10 provide Eschelon with ample protection.

11

12

13

14

15

## V. SECTION 7 DISPUTED TRANSIT RECORD ISSUES

16

### Issue No. 7-18 and 7-19

17 **Q. MR. DENNEY ARGUES ON PAGE 108, LINES 5-12 THAT QWEST MUST HAVE**  
18 **THE CALL DETAIL INFORMATION IN ORDER TO PRODUCE ITS SUMMARY**  
19 **BILLS AND IMPLIES THAT IT SHOULD NOT BE A PROBLEM FOR QWEST**  
20 **TO PRODUCE THE INFORMATION. PLEASE COMMENT.**

21

22 A. As a part of its pre-bill processing Qwest does summarize the transit call detail information.

1        However, Qwest does not create the records that Eschelon is proposing be provided. As I  
2        discussed in my direct testimony, the Qwest Category 11 transit record product was  
3        designed to create records for terminating carriers, not originating carriers. If the  
4        terminating party does not request the transit records, Qwest does not create them. Qwest  
5        cannot, without significant expense, provide Category 11 records associated with transit  
6        traffic originated by Eschelon. Because this expense would be incurred to meet the needs  
7        of a single carrier and because, as was explained in my direct testimony, Eschelon has other  
8        means of validating its transit bills, Eschelon's proposed language should be rejected.

9  
10    **Q. MR. DENNEY NOTES THAT THE ESCHELON LANGUAGE ONLY ALLOWS**  
11    **FOR RECORDS TO BE REQUESTED ONCE EVERY SIX MONTHS. GIVEN**  
12    **THIS LIMITATION, WHY IS THIS A PROBLEM FOR QWEST?**

13    A. As was just discussed, Qwest does not have the capability of mechanically producing these  
14    records today. As a result, Qwest personnel must request data pulls for each of the end  
15    offices in the sample, an extremely time consuming process. This is especially true given  
16    that the Eschelon language would allow the sample to consist of data for every end office  
17    in the state.

18  
19    **Q. HAS QWEST BEEN WILLING TO WORK WITH ESCHELON REGARDING ITS**  
20    **TRANSIT VALIDATION ISSUES?**

21    A. Yes. Qwest billing personnel have had a number of discussions with Eschelon to explain  
22    how billing validation can be accomplished. In addition, Qwest has offered to work with

1 Eschelon and has provided several call by call reports to help them validate bills.  
2  
3

4 **VI. SECTION 22 DISPUTED ISSUES**  
5

6 **Issue No. 22-88 , 22-88(a) and 22-89**

7 **Q. MR. DENNEY ARGUES AT PAGE 199, LINES 18-19 THAT, “ESCHELON NEEDS**  
8 **THE SAME CERTAINTY AND CLARITY REGARDING THE RATES THAT**  
9 **ESCHELON CHARGES QWEST AS QWEST DESIRES REGARDING THE**  
10 **RATES QWEST CHARGES ESCHELON.” DOES QWEST’S PROPOSED**  
11 **LANGUAGE PROVIDE THIS CERTAINTY?**

12 **A.** Yes. Mr. Denney himself cites 3 pages of language that specifies when the CLEC may  
13 charge rates from Exhibit A and when CLEC tariff rates apply. This agreed upon language  
14 makes it very clear in what situations CLECs may charge Qwest and what rates apply.  
15 Given the clarity of this language, no credence should be given to Mr. Denney’s claims that  
16 Qwest’s language creates ambiguity or a false impression that Eschelon cannot charge for  
17 services pursuant to the ICA. The reality is that all of the elements on the Exhibit A relate  
18 to services that Qwest provides Eschelon. Only a small subset relate to services for which  
19 Eschelon may charge Qwest. As Mr. Denney notes in his footnote on p. 60, Eschelon is  
20 almost always the purchaser of services under the ICA. For the small number of cases  
21 where Eschelon may charge Qwest, the language in the ICA, as demonstrated by Mr.  
22 Denney’s cited language, provides the necessary clarity.

1 **Issue No. 22-88(a)**

2 **Q. DOES QWEST'S PROPOSED IDENTIFICATION OF THE QWEST UTAH**  
3 **ACCESS SERVICES TARIFF CAUSE CONFUSION AS MR. DENNEY CLAIMS?**

4 A. No. Again, Mr. Denney himself cites agreed upon language from the ICA that makes it  
5 clear when CLEC tariff rates apply. What is unclear is how the specification of the Qwest  
6 tariff in the Exhibit A would cause any confusion. It has not caused confusion for other  
7 carriers such as AT&T that have the same specification in their Exhibit A.

8

9

10 **Issue No. 22-89**

11 **Q. ON PAGES 209 AND 210 MR. DENNEY DISCUSSES ESCHELON'S PROPOSED**  
12 **LANGUAGE IN ISSUE NO. 22-89. PLEASE SUMMARIZE QWEST'S POSITION.**

13 A. As I noted in my direct testimony, given that commission rules and federal law govern a  
14 parties' right to initiate a cost proceeding, there is no need to address it in a contract. In  
15 addition, there is a danger that, by including rights such as this one, it could create a risk  
16 that other rights not listed are excluded.

17

1 **Issue No. 22-90**

2 **Q. IN HIS DISCUSSION OF ISSUE 22-90 MR. DENNEY STATES THAT QWEST**  
3 **HAS AGREED TO A PORTION OF ESCHELON'S PROPOSED LANGUAGE**  
4 **ESTABLISHING A FILING PROCESS FOR UNAPPROVED RATES. IS THIS**  
5 **QWEST'S POSITION?**

6 A. No. Qwest has not agreed to Eschelon's proposed process in Utah. This process is not one  
7 that this Commission has deemed to be necessary in the past, and Eschelon offers no  
8 compelling reason why it is necessary now.

9

10 **Q. IS THIS ARBITRATION THE APPROPRIATE PLACE TO MAKE SUCH A**  
11 **DETERMINATION?**

12 A. No. A cost docket is the most appropriate place to determine rates, not an arbitration  
13 between only two parties. Issues explored in a cost docket proceeding are complex and  
14 involve analysis of cost models, cost studies and the inputs and assumptions that go into  
15 them. In addition, a cost docket provides for the intervention of all interested parties.

16

17 **Q. WHAT RATES DOES QWEST PROPOSE BE USED IN THE INTERIM UNTIL A**  
18 **COST DOCKET IS COMPLETED?**

19 A. As is discussed in the testimony of Ms. Million, the Qwest rates are the appropriate rates to  
20 be used in the interim. Qwest proposed rates are based on detailed cost studies which are  
21 updated from time to time as products evolve and as cost studies are updated to accurately  
22 reflect costs. Qwest offers these same rates to all CLECs and these rates are updated as

1 time goes by. It would be unfair for Eschelon to receive different interim rates than those  
2 offered to other CLECs.

3

4 **Q. ON PAGE 213, LINES 12-16 MR. DENNEY EXPRESSES CONCERN THAT**  
5 **QWEST WILL NOT PROCESS ORDERS FOR A NEW PRODUCT UNLESS**  
6 **CLECS SIGN AN AMENDMENT CONTAINING THE UNAPPROVED RATE.**  
7 **PLEASE COMMENT.**

8 A. Mr. Denney's concern is misplaced. It only makes sense that an amendment containing the  
9 terms and conditions under which a product is offered is entered into by the parties. In fact,  
10 Qwest has a legal obligation to require an amendment and to file such amendment with the  
11 Commission.

12

13 **Q. ON PAGE 220, LINE 21 – PAGE 221, LINE 9 MR. DENNEY ARGUES THAT**  
14 **ESCHELON NEEDS A MECHANISM THAT ALLOWS IT TO REVIEW**  
15 **QWEST'S COST STUDIES IN ORDER TO MAKE A DECISION ON WHETHER**  
16 **TO INTERVENE IN A COST PROCEEDING. DO YOU AGREE?**

17 A. No. Although Mr. Denney cites "the money and resources required for intervention,"  
18 realistically it would take little of either to initially intervene in a cost docket to get on the  
19 list for all filings. In fact, the resources required to file for intervention are far and away  
20 exceeded by the resources required to review the cost studies.

21

1

**VII. CONCLUSION**

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

3 **A. Yes.**