

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

SURREBUTTAL 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 2SR

August 10, 2007

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1

I. IDENTIFICATION OF WITNESS

2

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

3

4

A. My name is William R. Easton. My business address is 1600 7th Avenue, Seattle Washington. I am employed as Director – Wholesale Advocacy. I am testifying on behalf of Qwest Corporation (“Qwest”).

5

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8

Q. ARE YOU THE SAME WILLIAM EASTON WHO FILED DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?

9

10

A. Yes.

11

12

13

II. PURPOSE OF TESTIMONY

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15

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

16

A. The purpose of my testimony is to respond to the Eschelon rebuttal testimony of Mr. Denney. Specifically I reply to this testimony as it relates to the following disputed issues:

17

18

19

- Section 2 issues

20

- Section 5 issues

- 1 ▪ Section 7 issues
- 2 ▪ Section 22 issues
- 3
- 4

5 **III. SECTION 2 DISPUTED ISSUES**

6

7 **Issue No. 2-3 – Effective Date of Rate Changes**

8

9 **Q. ON PAGE 5, LINE 4-7 MR. DENNEY CITES A COLORADO**
10 **COMMISSION RULING IN THE QWEST AT&T ARBITRATION AND**
11 **IMPLIES THAT THE POSITION QWEST TOOK IN THAT**
12 **ARBITRATION IS INCONSISTENT WITH QWEST’S PROPOSED**
13 **LANGUAGE REGARDING THE EFFECTIVE DATE OF RATES IN THIS**
14 **CASE. DO YOU AGREE?**

15 A. No. The language requested by AT&T in the Colorado arbitration and opposed by
16 Qwest, required that interim rates be subject to true-up back to the date on which
17 the rate was first charged. This is in contrast to the Qwest language in this case
18 which states that rates shall be applied on a prospective basis from the effective date
19 of the legally binding Commission decision, unless otherwise ordered by the
20 Commission. The Qwest language respects the authority of the Commission to
21 determine the effective date of rates and, despite Mr. Denney’s claims, is entirely
22 consistent with the agreed upon language in section 22.4.1 and the agreed upon

1 language is section 22.4.1.1 which states that “such commission approved rates
2 shall be effective as of the date required by a legally binding order of the
3 Commission.”

4

5 **Q. ON PAGE 5, LINES 1-7, MR. DENNEY IMPLIES THAT QWEST IS**
6 **ATTEMPTING TO UNDERMINE ESCHELON’S ABILITY TO ARGUE IN**
7 **FAVOR OF A TRUE UP OF INTERIM RATES. IS THIS THE EFFECT OF**
8 **THE QWEST LANGUAGE?**

9 A. No. Eschelon is not precluded in any way from arguing its position regarding a true
10 up of rates. The Qwest language merely clarifies that, unless ordered otherwise by
11 the Commission, rates should be applied on a prospective basis.

12

13 **Q. ON PAGE 5, LINES 12-17 AND PAGE 6 LINES 1-7, MR. DENNEY**
14 **CRITICIZES YOUR TESTIMONY THAT THE QWEST LANGUAGE**
15 **AVOIDS AMBIGUITY WHEN NO TRUE-UP REQUIREMENT IS**
16 **SPECIFIED, NOTING THAT THE QWEST LANGUAGE DOES NOT**
17 **MENTION THE TERM ‘TRUE-UP.’ PLEASE COMMENT.**

18 A. It is not necessary for the Qwest language to specify the term “true-up.” The Qwest
19 language refers to rates being applied on a “prospective basis.” Clearly, if rates are
20 not applied prospectively, they are applied retrospectively which, by definition
21 implies a “true-up.”

22

1 **Q. ON PAGE 6, LINES 7-14 MR. DENNEY ARGUES THAT YOU ARE**
2 **INCORRECT WHEN YOU STATE THAT “UNDER THE QWEST**
3 **PROPOSAL, ONE LOOKS FIRST TO THE COMMISSION ORDER TO**
4 **DETERMINE WHEN A RATE APPLIES.” PLEASE COMMENT.**

5 A. I stand by my testimony: it is only if the Commission has not ruled otherwise that
6 the prospective application language comes into play. However, it does appear
7 from Mr. Denney’s explanation that he now understands the intent of the Qwest
8 language and no longer feels it leads to the potential for ambiguity he claimed
9 previously.

10

11 **Q. ON PAGE 6, LINE 18 – PAGE 7, LINE 16 MR. DENNEY ARGUES THAT**
12 **THE AGREED UPON LANGUAGE IN THE ICA ALREADY**
13 **ACCURATELY ADDRESSES TRUE-UPS. DO YOU AGREE?**

14 A. No. In fact, Eschelon itself now appears to recognize that the previously agreed to
15 language in section 22.4.1.2 did not address situations where an order does not
16 specify a true-up requirement. As Mr. Denney discusses on page 6 and 7, Eschelon
17 has now proposed to add language at the end of section 22.4.1.2 clarifying that, in
18 such situations, rates will be applied on a prospective basis. In light of this, it is not
19 clear why Eschelon objects to the Qwest section 2.2 proposal.

20

1 **Issue No. 2-4 – Change of Law Provisions**

2

3 **Q. ON PAGE 4 MR. DENNEY DISCUSSES ESCHELON’S PROPOSAL TO**
4 **ADD LANGUAGE TO SECTION 2.2 STATING THAT, “EACH PARTY**
5 **HAS AN OBLIGATION TO ENSURE THAT THE AGREEMENT IS**
6 **AMENDED ACCORDINGLY.” IS THIS SENTENCE NECESSARY TO**
7 **ENSURE THAT THERE IS NO DELAY IN AMENDING AGREEMENTS?**

8 A. No. Qwest’s language removes any incentive for delay by providing that with
9 notice by either party within 30 days, the effective date of any resulting amendment
10 shall be the effective date of the change of law. This removes the ability of one
11 party or the other to drag out the negotiations of an amendment to establish a later
12 implementation date of the change of law.

13

14 **Q. MR. DENNEY ARGUES AT PAGE 9, LINES 6-14 THAT QWEST’S**
15 **CHANGE OF LAW LANGUAGE WOULD ALLOW QWEST “TO IGNORE**
16 **CHANGES IN LAW THAT QWEST DOES NOT LIKE, WHILE**
17 **EMBRACING CHANGES IN LAW THAT WORK TO QWEST’S**
18 **ADVANTAGE.” DO YOU AGREE?**

19 A. No. The Qwest language allows either party to give notice to make such change
20 effective on the effective date of the legally binding change. This process does not
21 allow either party to ignore changes that it does not like. Although Mr. Denney
22 argues that Eschelon is at a disadvantage because of Qwest’s greater regulatory
23 resources, as I noted in my rebuttal testimony, Eschelon is a sophisticated company

1 with a great deal of awareness of the regulatory environment. Clearly Eschelon's
2 participation in these arbitration proceedings has not demonstrated a lack of
3 regulatory sophistication or resources.

4
5 **Q. AT PAGE 11, LINES 3 – 11 MR. DENNEY ARGUES THAT ESCHELON'S**
6 **ALTERNATIVE PROPOSAL SIMPLY STATES THAT, IF A PARTY**
7 **WISHES AN IMPLEMENTATION DATE OF CHANGE OF LAW TO BE**
8 **SOMETHING DIFFERENT THAN THE EFFECTIVE DATE OF THE**
9 **ORDER, THE PARTY SHOULD OBTAIN A RULING FROM THE**
10 **COMMISSION TO THAT EFFECT. WHY IS QWEST OPPOSED TO THIS**
11 **ALTERNATIVE LANGUAGE?**

12 A. Mr. Denney stated in his direct testimony that one of the goals of the change of law
13 language is to provide the parties with clear guidance on when changes of law will
14 take effect. However, rather than providing a clear process for how the parties are
15 to proceed in cases of change of law as the Qwest language does, the new Eschelon
16 language allows for the issue to be resolved by the commission at some point in the
17 future. The language proposed by Qwest will reduce litigation by removing one
18 potential issue from dispute and will ensure that the parties have an incentive to
19 quickly resolve change of law issues that arise in the future.

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IV. SECTION 5 DISPUTED ISSUES

Q. MR. DENNY ALLEGES AT PAGE 37, LINE 4 – PAGE 38 LINE 11 THAT QWEST’S TESTIMONY IS NOT FOCUSED ON THE ACTUAL ISSUES SURROUNDING THIS DISPUTED ICA LANGUAGE. DO YOU AGREE?

A. In my view, it is Mr. Denny who is ignoring the larger picture surrounding these issues. Telecommunications is a highly competitive and quickly evolving market. Telecommunications providers, including CLECs, have failed financially in the past, and likely will fail in the future. In such situations, CLECs, like any business, are often desperate to keep their business alive and will therefore take any action in an effort to remain afloat. This interconnection agreement needs to anticipate such a scenario, and recognize that each week that Qwest is unable to protect itself against an Eschelon business failure results in an additional \$1 million of bills to Eschelon (across the region) that go unpaid.

Any creditor deserves to be in a position to protect itself against such losses. The measures that Qwest proposes are nothing new or draconian. Qwest has either implicitly or explicitly had these rights since its first interconnection agreement in Utah. Even with these rights, Qwest faces significant challenges in minimizing unpaid CLEC debts.

1 Eschelon's proposals ignore this reality and instead seek to water down Qwest's
2 current ability to protect itself. Eschelon seeks to decrease Qwest's ability to
3 collect its bills by requiring Qwest to clear hurdles such as waiting for commission
4 review before discontinuing order processing (Issues 5-6) or demanding a deposit
5 (Issues 5-12, 5-13, 5-14). Eschelon seeks to water down its obligation to pay bills
6 by limiting its obligations to pay not to the amount of the bill, but rather an amount
7 that is close to the amount billed. (Issue 5-8). Even then, Eschelon seeks to water
8 down that obligation to re-define "repeatedly delinquent" in such a manner that it
9 would only be obligated to pay its bills on time four months a year to avoid
10 triggering a potential deposit requirement. (Issue 5-9).

11
12 Eschelon does not stop there. It proposes limiting Qwest's ability to seek
13 a deposit further by attempting to limit that right to its weakened
14 definition of "repeatedly delinquent" thereby eliminating all other
15 possibilities where a deposit request would be appropriate (Issue 5-13).
16 Even in that situation, Eschelon seeks to require Qwest to either seek
17 Commission approval or wait for a Commission decision to demand a
18 deposit. (Issue 5-11).

19
20 The cumulative effect of these proposals is to make it nearly impossible for Qwest
21 to take effective action to collect valid, undisputed bills owed by Eschelon. Such
22 protections for Eschelon impose significant financial risk on Qwest. Imposing such
23 a risk would only make sense if there were a very significant demonstration of

1 need. Ten years of history under the Telecommunications Act demonstrate that no
2 such need exists.

3

4 **Q. ON PAGE 37, LINES 9-23 MR. DENNEY TALKS ABOUT THE NEED FOR**
5 **COMMISSION OVERSIGHT AND QUOTES FROM AN AT&T FILING IN**
6 **NEBRASKA. PLEASE COMMENT.**

7 A. I am not familiar with the issues in the docket which gave rise to AT&T's filing. I
8 would only note that the most recent AT&T agreements contain the same billing
9 and deposit language that Eschelon is disputing here.

10

11

12 **Issue No. 5-6 – Discontinuing Order Processing for Non Payment**

13

14 **Q. ON PAGE 39, LINES 6-9 MR. DENNEY STATES THAT ISSUE 5-6**
15 **CONCERNS WHETHER “QWEST MAY UNILATERALLY**
16 **DISCONTINUE PROCESSING ESCHELON’S ORDERS... EVEN WHEN**
17 **THE BASIS FOR DOING SO IS DISPUTED.” DO YOU AGREE?**

18 A. Absolutely not. First, although Mr. Denney describes the actions of Qwest as
19 unilateral, any action that Qwest takes must first be triggered by Eschelon's failure
20 to pay its *undisputed* billing amounts. Second, as to the disputed basis, the
21 language in section 5.4.2 concerning discontinuation of order processing
22 specifically excludes disputed amounts. Mr. Denney has cited the recent billing
23 dispute between the parties as the basis for his concern about the proposed section

1 5.4.2 language and implies that the Qwest demand for payment included payment
2 of disputed amounts. As I noted in my rebuttal testimony, Qwest required a
3 payment based on the amount shown as past due on its books less a figure provided
4 by Eschelon itself for amounts in dispute. The amount demanded was clearly not
5 an amount that Eschelon disputed, as Qwest allowed Eschelon to exclude the
6 amount it believed to be in dispute. Contrary to Mr. Denney's assertions, the facts
7 do not show that Eschelon's concern about Issue 5-6 is real and warranted. The
8 facts show that if Eschelon pays its *undisputed* billing amounts, Qwest will not
9 discontinue processing orders.

10
11 **Q. MR. DENNEY STATES AT PAGE 41, LINES 7-9, "IF QWEST IS WRONG**
12 **AND THERE IS NO PAYMENT DUE, BUT IT DISCONTINUES**
13 **PROCESSING ORDERS OR DISCONNECTS CUSTOMERS ANYWAY,**
14 **ESCHELON'S ENTIRE BUSINESS IS DISRUPTED FOR NO REASON." IS**
15 **THERE ANY BASIS FOR HIS CONCERN?**

16 A. No. As I noted in my rebuttal testimony, discontinuing processing orders is not a
17 step Qwest takes lightly. It is for this reason that the language in this provision: (1)
18 excludes disputed amounts; (2) provides that Qwest will not take this action until
19 payments are more than 30 days past due; and (3) requires that Qwest provide
20 notice to Eschelon (and the Commission) at least 10 business days in advance. In
21 the large billing dispute Mr. Denney cites as a basis for his concern, Qwest was not
22 "wrong." In fact, as was just discussed, Qwest let Eschelon calculate the amount it
23 believed was undisputed and therefore rightfully due Qwest. The protections built

1 into the language and Qwest's past practices demonstrate that Eschelon's concerns
2 are overstated.

3
4 **Q. ARE THERE ANY RECENT CASES YOU CAN POINT TO THAT**
5 **DEMONSTRATE QWEST'S CONCERN WITH THIS ISSUE?**

6 A. Yes. Minnesota is the only one of Qwest's states which requires commission
7 approval to disconnect service. Recent events in Minnesota have demonstrated the
8 problems with this Commission requirement. On May 19, 2006, CP Telecom filed
9 an application with the Commission to discontinue service to Minnesota Phone
10 Company for failure to make required payments. (*In the Matter of CP Telecom's*
11 *Petition to Discontinue Service to Minneosta Phone Company*, MPUC Docket No.
12 P6333,6198/M-06-719). On June 5, 2006, Minnesota Phone Company filed a letter
13 indicating that it had filed a Chapter 11 bankruptcy petition. On August 17th the
14 Commission dismissed the CP Telecom petition due to the bankruptcy proceeding.
15 In the meantime, Minnesota Telephone Company was allowed to continue running
16 up bills that will never be repaid.

17
18 Similarly, Eschelon's proposed language would prevent Qwest from protecting
19 itself from mounting unpaid debt and force it to continue to process orders pending
20 the outcome of a proceeding. This places Qwest at additional risk of providing
21 service to the CLEC without assurance of being compensated. Although Mr.
22 Denney argues that the Eschelon language protects Qwest from untimely payments,
23 provisions such as late payment fees provide no protection when a carrier is

1 ultimately unable to make payments.

2

3 **Q. DOES MR. DENNEY SPECIFY UNDER WHAT CIRCUMSTANCES IT**
4 **WOULD BE APPROPRIATE TO DISCONTINUE ORDER PROCESSING?**

5 A. No. Although on page 41 lines 15-19 of his testimony he states that he doesn't
6 disagree that Qwest should be allowed to stop processing orders "under appropriate
7 circumstances" he does not explain what these circumstances are and, instead,
8 infers that only the Commission can make such a determination. Mr. Denney fails
9 to explain why failure to pay *undisputed* amounts should not constitute an
10 appropriate circumstance.

11

12

13 **Issue No. 5-8 – Disconnecting Service for Non Payment**

14

15 **Q. DO YOU AGREE WITH MR. DENNEY'S CONCLUSION ON PAGE 46,**
16 **LINES 4-7 THAT IF IT IS NOT QWEST'S PRACTICE TO INVOKE**
17 **COLLECTIONS ACTIONS OVER A FEW DOLLARS, THEN QWEST**
18 **SHOULD HAVE NO PROBLEM INCLUDING THE TERM 'NON-DE**
19 **MINIMUS' IN THE ICA?**

20 A. No. As I stated in both my direct and rebuttal testimony, there is no reason to add a
21 term such as "non-de minimus" that is subject to interpretation. Eschelon presents
22 no evidence that Qwest has ever invoked collections or deposit requirements based
23 upon insignificant amounts and again offers no compelling reason to depart from

1 language that was agreed to by the CLECs and Qwest during the Section 271
2 workshops.

3

4 **Q. ON PAGE 46, LINES 14-19 MR. DENNEY ARGUES THAT QWEST HAS**
5 **THE INCENTIVE TO DISCONTINUE PROCESSING ESCHELON'S**
6 **ORDERS AND DISCONNECT ESCHELON'S CIRCUITS. PLEASE**
7 **COMMENT.**

8 A. Mr. Denney overreaches when he attempts to attribute an anti competitive motive to
9 Qwest's collections practices. The reality is that these are reasonable and prudent
10 business practices designed, not to put customers out of business, but to help insure
11 that Qwest gets compensated for the services it provides.

12

13

14 **Issue No. 5-9 – Definition of Repeatedly Delinquent**

15

16 **Q. HAS QWEST FAILED TO DEMONSTRATE THAT ITS STANDARD OF**
17 **THREE MONTHS WOULD PROVIDE A BETTER INCENTIVE FOR**
18 **TIMELY PAYMENT AS MR. DENNEY ARGUES AT PAGE 47, LINE 12 –**
19 **PAGE 48, LINE 7?**

20 A. No. It is certainly true that a more stringent standard provides greater incentive for
21 timely payment. Under the Qwest standard, a carrier would have to pay its bills on
22 time more than 75% of the time to avoid being considered "repeatedly delinquent."
23 Under the Eschelon standard, Eschelon could be late in its payments for two

1 months, pay the bill for the third month on time, and then be late again for the next
2 two months. In a twelve month period Eschelon could pay its bills on time only
3 four months out of twelve, or 33% of the time, and still not be considered
4 “repeatedly delinquent.” There can be no question that the Qwest proposal provides
5 a greater incentive for timely payment. Although Mr. Denney cites a hand full of
6 older interconnections agreement with different language, the majority of the Qwest
7 interconnection agreements use the definition that Qwest is proposing here, a
8 definition identical to the "repeatedly delinquent" definition that was reviewed and
9 agreed to in the Section 271 workshops by Qwest and participating CLECs. Given
10 that this is the definition agreed to during the 271 workshops, Mr. Denney’s claim
11 on page 50, lines1-6 that this language is somehow discriminatory rings hollow.
12 Ultimately, Eschelon can provide no legitimate argument to change this language
13 other than to give itself additional and unwarranted business advantage.

14

15 **Q ON PAGE 49, LINES 13-17 MR. DENNEY STATES THAT YOU ASSUME**
16 **THAN A DIFFERENCE BETWEEN SGAT LANGUAGE AND ICA**
17 **LANGUAGE SHOULD BE REJECTED. IS THAT YOUR POSITION?**

18 A. No. My position is that billing issues were discussed at length during the 271
19 process and, where possible, CLECs and Qwest reached consensus on the billing
20 language. Where consensus was not possible, an arbitrator examined the parties’
21 positions and recommended language. The result is language that balances the
22 needs of both the billing and billed parties. Eschelon has offered no compelling
23 reason why this language is no longer appropriate.

1 **Issue No. 5-11 – Deposit Requirements**

2

3 **Q. ON PAGE 51, LINES 3-6 MR. DENNEY ARGUES THAT PROVIDING**
4 **ESCHELON WITH AN OPPORTUNITY TO SEEK COMMISSION RELIEF**
5 **IN THE CASE OF A DEPOSIT REQUEST IS IMMINENTLY FAIR, SINCE**
6 **ESCHELON IS THE PARTY WHO IS AT RISK OF HAVING ITS ORDERS**
7 **REJECTED OR HAVING TO PAY A DEPOSIT. PLEASE COMMENT.**

8 A. As I pointed out in my rebuttal testimony, the purpose of the payment language in
9 an ICA is to balance the needs of both the billing and billed parties. Mr. Denney
10 focuses only on the impacts of deposit requirements on Eschelon and ignores the
11 importance of deposits for Qwest. While Eschelon may be the party who is at risk
12 of having to pay a deposit, Qwest is the party who is at risk of non-payment.

13

1 **Issue No, 5-12 – Commission Involvement in Setting Deposit Requirements**

2

3 **Q. IN ARGUING FOR COMMISSION INVOLVEMENT IN DEPOSIT**
4 **REQUIREMENTS, MR. DENNEY STATES ON PAGE 52, LINES 3-5 THAT,**
5 **“IT IS COMMONPLACE FOR STATE COMMISSIONS TO REVIEW AN**
6 **ILEC BUSINESS PRACTICES AS THEY RELATE TO THEIR CLEC**
7 **WHOLESALE CUSTOMERS.” IS IT A COMMON PRACTICE TO HAVE**
8 **STATE COMMISSIONS DETERMINE DEPOSITS?**

9 A. I am not aware of this being a standard practice, at least not in Qwest’s fourteen
10 state region. The more standard, and more reasonable practice, is to have
11 Commissions involved in approving a set of rules and then making sure the parties
12 abide by them. In this way, Commissions do not need to be involved in the day to
13 day business relationship between the parties. This is in fact what has been done
14 relative to Qwest’s proposed deposit requirements. As I noted previously, the
15 “repeatedly delinquent” requirement was developed and reviewed by Commissions
16 during the Section 271 workshops.

17

1 **Q. ON PAGE 52, LINE 18 – PAGE 53, LINE 2 MR. DENNEY ARGUES THAT**
2 **IF QWEST HAD TO INCUR ADDITIONAL DEBT WHILE THE**
3 **COMMISSION DECIDED WHETHER A DEPOSIT WAS APPROPRIATE,**
4 **IT WOULD JUST BE A MATTER OF QWEST RECEIVING PAYMENT**
5 **LATER. DO YOU AGREE?**

6 A. No. In the Minnesota Telephone case I cited earlier, the company entered
7 bankruptcy and was unable to pay all of its debts. It is not just a question of the
8 timing of payment as Mr. Denney argues, but is a question of providing protection
9 from the risk that a company will ultimately be unable to pay its bills.

10

11 **Q. HAS QWEST BEEN REQUIRED TO WRITE OFF BAD DEBT FROM**
12 **CLECS THAT HAVE BEEN UNABLE TO PAY THEIR BILLS?**

13 A. Yes. Qwest has been forced to write off millions of dollars in bad CLEC debt.

14

15 **Issue No. 5-13 – Increasing Deposits Based on Credit Reviews**

16

17 **Q. HOW DO YOU RESPOND TO MR. DENNEY’S CLAIM AT PAGE 53, LINES 16 –**
18 **PAGE 54, LINE 7 THAT THE DEPOSIT LANGUAGE IN SECTION 5.4.7**
19 **LACKS STANDARD OR OBJECTIVITY?**

20 A. I would suggest that judgment is appropriate for many business issues and
21 relationships. I would also note that the CLEC always has the dispute option if it
22 feels Qwest is treating it unfairly in a request for a deposit. Eschelon offers no
23 evidence that this language, which was developed during the Section 271 process

1 and is in the contracts of the majority of carriers, has caused problems. In the
2 unlikely event that it does, Eschelon is fully capable of quickly seeking relief from
3 this commission.

4
5 Contrary to Mr. Denney's claims, this change in deposit requirement would not be
6 simply based on something Qwest has read in the newspaper. It is possible
7 however that Qwest could read something in the paper that would lead it to question
8 Eschelon's credit worthiness. Based on this information, Qwest could then perform
9 a credit review. Should the review determine that there were sufficient credit
10 concerns, the Qwest language would allow Qwest to request a deposit.

11
12 **Q. ON PAGE 55, LINES 1-3 MR. DENNEY ARGUES THAT IT IS**
13 **NECESSARY TO CLARIFY THE SECTION 5.4.7 LANGUAGE TO MAKE**
14 **IT CLEAR THAT THIS ONLY APPLIES TO INCREASING EXISTING**
15 **DEPOSITS, NOT TO SITUATIONS WHERE NO DEPOSIT HAD BEEN**
16 **REQUIRED PREVIOUSLY. DO YOU AGREE?**

17 A. Absolutely not. Eschelon's language undermines the purpose of the section which
18 is to allow deposit requirements to reflect a change in circumstances. A change in
19 circumstances may well warrant a deposit requirement despite the fact that a deposit
20 had not been required previously.

21

1 **Q. ON PAGE 56, LINES 10-12 MR. DENNEY ARGUES THAT PROVIDING**
2 **THIS TYPE OF CONTROL TO AN ILEC OVER A CLEC IS NOT**
3 **CUSTOMARY FROM A PUBLIC POLICY PERSPECTIVE. PLEASE**
4 **COMMENT.**

5 A. It is certainly customary in the states in the Qwest region. The language at dispute
6 here was developed and reviewed during the Section 271 process and was not
7 disputed in the AT&T or Covad arbitrations. However, it is not customary in this,
8 or in other states, to have commissions involved in setting deposit amounts as Mr.
9 Denney proposes.

10

11 **Q. ON PAGE 58, LINES 4-10 MR. DENNEY DISCUSSES CONCERNS ABOUT**
12 **QWEST ENGAGING IN “GAMESMANSHIP” RELATED TO QWEST**
13 **TIMING CREDIT REVIEWS TO ENSURE MAXIMUM DEPOSITS. DOES**
14 **MR. DENNEY OFFER ANY EVIDENCE FOR THIS CONCERN?**

15 A. No. As was just discussed, the Section 5.4.7 language is in the agreements of the
16 majority of CLECs. I am not aware of any of these carriers ever alleging that
17 Qwest has engaged in “gamesmanship” with this provision.

18

1 **Issue No. 5-16 – Providing Copies of Protective Agreements**

2

3 **Q. DO YOU AGREE WITH MR. DENNEY’S STATEMENT ON PAGE 59,**
4 **LINES 11-14 THAT PROVIDING COPIES OF SIGNED PROTECTIVE**
5 **AGREEMENTS IS A COMMON PRACTICE?**

6 A. No. The section 5.16.9.1 language was developed jointly by Qwest and CLECs
7 during the Section 271 workshops and does not contain a requirement for providing
8 CLECs copies of the signed protective agreements. I am not aware that any other
9 CLEC has requested that Qwest provide copies of the agreements on an on-going
10 basis as Eschelon is requesting here.

11

12 **Q. MR. DENNEY ARGUES THAT ESCHELON IS NOT OFFERED**
13 **PROTECTION UNDER THE AUDIT CLAUSES OF SECTION 18.1. DO**
14 **YOU AGREE?**

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

20

1 **Q. ON PAGES 59 AND 60 MR. DENNEY ARGUES THAT NON DISCLOSURE**
2 **AGREEMENTS ARE NOT COVERED BY SECTION 18.1 AND CITES AN**
3 **ANSWER YOU GAVE DURING YOUR CROSS EXAMINATION IN**
4 **COLORADO. HAS MR. DENNEY ACCURATELY PORTRAYED YOUR**
5 **TESTIMONY ON THIS ISSUE?**

6 A. No. Mr. Denney cites only one answer I provided and does not discuss the fact that
7 I stated that:

8 ...going back to 18.3.1, it says that “Either party may request an audit of
9 the other party’s compliance with this agreement, measures and
10 requirements applicable to limitations on the distribution, maintenance and
11 use of proprietary or other protected information that the requesting party
12 has provided to the other.” And to me, that specifically gets at
13 information such as the forecasting information we’re talking about here.
14

15 To address Eschelon’s concern that the definition of “Audit” could be read to
16 exclude non disclosure agreements, I also testified that it would make sense from
17 Qwest’s perspective to not capitalize the word audit in section 18.3.1 so as to
18 remove any confusion as to whether the definition of “Audit” in section 18.1.1
19 would preclude non disclosure agreements from being covered under the section
20 18.3.1 language.
21

1 **Q. ON PAGE 59, LINES 13-14 MR. DENNEY STATES THAT IN THE**
2 **MINNESOTA ARBITRATION PROCEEDING YOU DESCRIBED THE**
3 **ADMINISTRATIVE BURDEN THAT THIS WOULD PUT ON QWEST AS**
4 **BEING A CASE OF SIMPLY PUTTING A COPY OF THE SIGNED**
5 **AGREEMENT IN THE MAIL. PLEASE COMMENT.**

6 A. Mr. Denney ignored my full answer that the burden would be created by the fact
7 that job churn and the potential for others to opt into this agreement is what creates
8 an administrative burden. It does create a burden, if every time someone changed
9 jobs, Qwest were required to mail off a copy of the protective agreement to
10 Eschelon and anyone else who opts into this agreement. The biggest burden is
11 tracking this unique requirement and ensuring compliance. Such a requirement
12 only makes sense if there is a corresponding benefit, which does not exist.

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15 **V. SECTION 7 DISPUTED TRANSIT RECORD ISSUES**

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17
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Issue No. 7-18 and 7-19 – Provision of Transit Records for Bill Verification

19 **Q. IS MR. DENNEY CORRECT WHEN HE STATES ON PAGE 63, LINES 16-**
20 **17 THAT WITHOUT QWEST'S CALL RECORD DATA, THERE IS NO**
21 **WAY TO VERIFY QWEST'S BILLING?**

22 A. No. As I noted in my direct testimony, Eschelon has two sources of information
23 that allows it to validate transit billing. First, Qwest's monthly transit bills provide

1 detail of transiting minutes by end office and provide the company code of the
2 terminating carrier. Through a comparison with the recordings from its own switch,
3 Eschelon can validate that Qwest transited these calls to the terminating carrier. In
4 addition, presumably the terminating carrier is billing Eschelon for termination.
5 Eschelon can therefore compare the details of the termination bill with the details of
6 the Qwest transit bill to determine if there are inconsistencies.

7
8 **Q. IN A FOOTNOTE ON PAGE 64 MR. DENNEY ARGUES THAT QWEST IS**
9 **REQUIRED TO PROVIDE THE INFORMATION ESCHELON IS**
10 **SEEKING UNDER THE PROVISIONS OF SECTION 21.8.4.3 OF THE**
11 **INTERCONNECTION AGREEMENT. DO YOU AGREE?**

12 A. No. Section 21.8.4.3 of the agreement reads as follows:

13
14 **21.8.4.3 Investigation and Resolution of Dispute.** Both CLEC and
15 Qwest agree to expedite the investigation of any disputed amounts,
16 promptly provide all documentation regarding the amount disputed that is
17 reasonably requested by the other Party, and work in good faith in an
18 effort to resolve the dispute through informal means prior to initiating any
19 other rights or remedies. In addition, where a dispute is based on
20 summary records, the billing Party shall determine by WTN all the cases
21 where discrepancies identified on a summary basis exist. If the Parties
22 have not resolved the dispute within thirty (30) Days of receipt of the
23 notice of dispute, the billing Party will provide the disputing Party with a
24 written status update. If at any point the billing Party concludes that it will
25 deny the dispute, the billing Party will provide to the disputing Party a
26 written statement of the denial and the reasons and rationale for the denial.
27 Qwest personnel involved in billing and disputes shall have access to all
28 Billing data that Qwest provides to CLEC, in the format provided to
29 CLEC (such as BillMate®), to facilitate communication about Billing
30 matters. In the event of a Billing dispute, the Parties will endeavor to
31 resolve the dispute within sixty (60) Days of written notice of the dispute.
32

1 As the section heading indicates, this section has to do with dispute investigation
2 and resolution, not the ongoing provisioning of records which Eschelon is seeking
3 in this issue. Not only does Eschelon already have the information available to
4 verify the Qwest billing, as I noted in my rebuttal testimony, Qwest has offered to
5 work with Eschelon to provide some sample checking of selected end offices.

6

7 **Q. AT PAGE 64, LINES 1-6 MR. DENNEY ARGUES THAT ESCHELON**
8 **SHOULD NOT HAVE TO PAY IN ORDER TO RECEIVE THE DETAILS**
9 **BEHIND QWEST'S BILLS. PLEASE COMMENT.**

10 A. Qwest's billing does provide the details necessary to verify the billing. In my
11 rebuttal testimony I provided a sample of a Qwest transit bill which provides detail
12 of transiting minutes by end office and provides the company code of the
13 terminating carrier. As I noted above, this information coupled with Eschelon's
14 own information will allow for the necessary bill verification.

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VI. SECTION 22 DISPUTED ISSUES

Issue No. 22-88 – Rate Reciprocity

Q. ON PAGE 128, LINES 15 PAGE 129 LINE 1 MR. DENNEY STATES THAT YOU ARE WRONG WHEN YOU STATE THAT EXHIBIT A NEED NOT REFER TO CHARGES FROM ESCHELON TO QWEST SINCE THEY ARE SPELLED OUT IN THE ICA. PLEASE COMMENT.

Q. My point is that there is no need to make all of the rates in Exhibit A reciprocal. To the extent there are charges from Eschelon to Qwest, these charges are specifically identified in the ICA. Mr. Denney makes my point when he cites the language from section 8.2.3.10:

8.2.3 General Terms--Caged and Cageless Physical Collocation
8.2.3.10 ...If, pursuant to the random audit, Qwest does not demonstrate non-compliance, *Qwest shall pay CLEC using the rates in Exhibit A for Additional Labor Other, for CLEC time spent, if any, as a result of Qwest’s audit...*

This section of ICA makes it very clear what rates are to apply. Mr. Denney’s claim that this provision is “clearly insufficient” to determine what rate Eschelon would charge Qwest is puzzling.

1 **Issue No. 22-88(a) – Reference to CLEC Access Tariff**

2

3 **Q. WOULD QWEST’S PROPOSED LANGUAGE REGARDING ACCESS**
4 **RATES LEAD TO THE MISTAKEN CONCLUSION THAT A CLEC MUST**
5 **CHARGE ACCESS RATES OUT OF QWEST’S TARIFF RATHER THAN**
6 **THE CLEC’S OWN ACCESS TARIFFS AS MR. DENNEY ARGUES ON**
7 **PAGE 130, LINE S 1-3?**

8 A. No. In his direct testimony, Mr. Denney cited the language from the ICA
9 concerning tariff access rates which reads as follow:

10 7.2.2.3.3.1 Notwithstanding any other provision of this
11 Agreement, in the case of Exchange Access (IntraLATA Toll)
12 traffic where Qwest is the designated IntraLATA Toll provider, or
13 where Qwest has agreed to be a presubscribed IntraLATA Toll
14 provider for other LEC end user toll Customers, *Qwest will be*
15 *responsible to CLEC for payment of CLEC Tariff access rates* for
16 traffic terminating to CLEC’s network. Qwest will also be
17 responsible for traffic originating from CLEC's network for a
18 CLEC End User Customer utilizing an intraLATA Toll-free
19 service where Qwest is the provider of the intraLATA Toll-free
20 service. (Emphasis added).

21

22 Given this clear language in the ICA that CLEC tariff access rates apply, it is hard
23 to believe that the reference to the Qwest tariffs on the Exhibit A will lead to a
24 mistaken conclusion.

25

1 **Issue No. 22-90 – Unapproved Rates**

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3 **Q. ON PAGE 136 MR. DENNEY NOTES THAT QWEST IS TAKING A**
4 **DIFFERENT APPROACH TO UNAPPROVED RATES IN UTAH THAN IT**
5 **HAS IN OTHER STATES. PLEASE COMMENT.**

6 A. In other states, in an effort to resolve rate issues, Qwest agreed to Eschelon's
7 proposed procedure despite concerns about the necessity of the procedure. In
8 response, Eschelon did not close the issue but changed its position regarding the
9 language in the agreement. It then pressed forward with litigating rate issues and
10 reserved the right to argue that those rates should change in a later cost docket. The
11 combination of positions taken by Eschelon left neither a benefit to Qwest nor
12 efficiencies to this commission. Accordingly, we have decided to take a different
13 approach in Utah and avoid the creation of a unique procedure for dealing with
14 rates.

15 **VII. CONCLUSION**

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

17 A. Yes.