

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

SURREBUTTAL TESTIMONY

OF

TERESA MILLION

FOR

QWEST CORPORATION

Disputed Issues: 4-5, 9-43, 9-44, 12-67 and 22-90

QWEST EXHIBIT 4SR

AUGUST 10, 2007

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I. IDENTIFICATION OF WITNESS

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

3 A. My name is Teresa K. Million. I am employed by Qwest Services Corporation, parent
4 company of Qwest Corporation (“Qwest”), as a Staff Director in the Public Policy
5 organization. In this position, I am responsible for directing the preparation of cost
6 studies and representing Qwest’s costs in a variety of regulatory proceedings. My
7 business address is 1801 California St., Room 4700, Denver, Colorado.

8

9 **Q. DID YOU FILE DIRECT AND REBUTTAL TESTIMONY IN THIS**
10 **PROCEEDING?**

11 A. Yes, I did.

12

13

II. PURPOSE OF TESTIMONY

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to respond to the cost issues raised in the rebuttal
16 testimony of Mr. Michael Starkey with respect to Issue Nos. 9-43 and 9-44, Conversions;
17 and Mr. Douglas Denney with respect to Issue Nos. 4-5, Design Changes; 12-67,
18 Expedites; and 22-90, Unapproved Rates.

19

20

III. RESPONSE TO MR. STARKEY

21 **ISSUE NOS. 9-43 and 9-44 – CONVERSIONS**

22 **Q. YOU CHOSE NOT TO PRESENT TESTIMONY ON THE CONVERSIONS ISSUES**
23 **IN PREVIOUS ROUNDS OF TESTIMONY, WHY HAVE YOU DECIDED TO**
24 **ADDRESS THIS ISSUE NOW?**

25 A. Qwest believed that the primary issue with respect to conversions had to do with the
26 appropriate charge for them, and that once the parties had settled on that issue Eschelon

1 would not continue to pursue changing Qwest's internal processes through this
2 arbitration. As is evident in Mr. Starkey's testimony, Eschelon intends to continue to
3 inappropriately dictate Qwest's internal processes via its Interconnection Agreement.
4 Therefore, I believe that it is necessary at this time to explain to the Commission why
5 Eschelon's concerns with Qwest's conversion processes are unfounded and why the
6 changes to those processes that they suggest would place an unfair burden on Qwest.

7
8 **Q. DOES QWEST AGREE WITH MR. STARKEY'S STATEMENT ON PAGE 118 OF**
9 **HIS REBUTTAL TESTIMONY THAT CONVERSIONS SHOULD NOT DISRUPT**
10 **ESCHELON'S CUSTOMERS?**

11 A. Yes. However, Mr. Starkey's testimony about the potential problems associated with
12 Qwest's process for converting UNEs to private lines is nothing more than an attempt by
13 Eschelon to create a problem where none exists. In fact, the process that Qwest has
14 established for converting UNE circuits to private lines is a mirror of the process that has
15 been in place since 2005 for converting private lines to UNE circuits. It is specifically
16 designed to ensure that the conversion is transparent to both the end-user customer and
17 the CLEC serving that customer, and that it does not result in placing the CLEC's end-
18 user customer out of service. The process does not involve a network change and, to
19 date, after more than *1400* conversions involving this type of circuit ID change, Qwest is
20 not aware of any complaints from CLECs claiming that a customer's service has been
21 disrupted by this conversion process. In order to ensure that the conversion process is
22 transparent to Eschelon and its customers' services, Qwest interjects a number of manual
23 activities into the process so that certain automated steps do not occur that could
24 otherwise result in disruption of those services. The purpose of many of the tasks
25 included in the conversion process is to avoid placing Eschelon's end-user customers at
26 risk. It would be inappropriate for a CLEC to complain to the commissions that Qwest

1 does not do enough to automate its systems, and then also complain when Qwest must
2 interrupt the automated systems that it *has* developed with manual activities in order to
3 accommodate new processes such as converting UNEs to private line circuits. Mr.
4 Starkey's discussion of alleged "risks" to Eschelon's customers resulting from Qwest's
5 process is merely a smokescreen, and proves exactly why Qwest undertakes those steps
6 and proposes a nonrecurring charge to recover the costs for them.

7
8 **Q. IS THE NONRECURRING CHARGE AT ISSUE IN THIS PROCEEDING?**

9 A. As I mentioned in my direct and rebuttal testimony, the issue of the nonrecurring charge
10 for conversions was agreed upon in the wire center docket (Docket No. 06-049-40) and
11 filed as part of the Settlement Agreement between Qwest and the Joint CLECs with the
12 Commission on June 27, 2007. However, I believe that it is important to clear up a
13 misconception in Mr. Denney's rebuttal testimony at pages 68 and 69 where he implies
14 that the nonrecurring rate agreed upon in the wire center docket will "ampl[y]
15 compensate" Qwest for the costs it will incur if Eschelon's suggested conversion process
16 is adopted. It will not. As Mr. Denney correctly states, the "rate is not intended as a
17 cost-based rate: it is negotiated."¹ And, as I describe below, regardless of whether Qwest
18 would have to undertake manually tracking the UNE circuits that are converted to private
19 lines, or develop a new method for tracking those circuits systematically, the rate agreed
20 upon by the parties does not begin to compensate Qwest for its costs, nor, as Mr. Denney
21 admits, was it intended to. The conversion process advocated by Qwest is already in
22 place and working successfully not only for conversions of private lines to UNEs, but
23 also for conversions of UNEs to private lines that have been processed for CLECs who,
24 unlike Eschelon, amended their ICAs to reflect the changes required by the *TRRO* long

¹ Denney Rebuttal, p. 69.

1 ago. For Eschelon, Qwest's method would simply require Eschelon to substitute one
2 circuit ID for another in its existing systems, as other CLECs have been able to do. In
3 contrast, the conversion process advocated by Eschelon would require Qwest to expend
4 significant resources to change its methods for tracking these circuits for purposes of
5 inventory, maintenance and repair, as well as for regulatory reporting purposes;
6 something it does today by circuit ID, not USOCs as implied by Eschelon. Thus, it
7 should be clear that the negotiated nonrecurring charge agreed to in the wire center
8 docket has no relationship to the cost of the changes that would be required of Qwest if
9 Eschelon's conversion process were adopted.

10
11 **Q. MR. STARKEY REFERS TO ESCHELON'S POSITION, IN FOOTNOTE 374 OF**
12 **HIS REBUTTAL TESTIMONY, THAT THE CIRCUIT ID SHOULD NOT BE**
13 **CHANGED DURING A CONVERSION. DO YOU AGREE WITH THAT**
14 **POSITION?**

15 A. No. The whole point of the conversion is that the product is changing from that of a
16 wholesale UNE product purchased only by CLECs through ICAs to a tariffed service
17 purchased by CLECs, other interconnecting companies and Qwest's retail customers
18 through commercial contracts. UNEs and special access or private line services are
19 clearly distinguishable from each other, not only by price and classification, but also by
20 the customers to whom they are available, and by the differing ordering, maintenance and
21 repair processes that attach to each of them. As I mentioned above, Qwest tracks
22 inventory, as well as provisioning, repair and maintenance attributes of these distinct
23 products through the use of circuit IDs. It would be grossly inefficient, expensive and
24 wasteful for Qwest to have to create another new product specifically for CLECs and to
25 establish yet another method of tracking this new product in its systems when it already
26 has an existing product, as well as the systems and methods to track it in place. Qwest

1 should not have to make changes to its myriad of operations support systems (“OSS”),
2 processes and tracking mechanisms, such as circuit IDs, in order to accommodate each
3 new regulatory nuance regarding how it offers its services to its customers and its
4 competitors. Qwest has already expended hundreds of millions of dollars to enhance and
5 modify its ordering, provisioning and inventory systems to be able to appropriately track
6 facilities it has been required to provide as UNEs. It should not now have to spend
7 millions more to modify its systems one more time in order to track these same facilities
8 yet another way, especially when there are existing alternative products that Qwest can
9 provide to CLECs. The costs associated with this type of system/process rework simply
10 do not make sense in a competitive environment. Imposing these costs would place an
11 unfair and legally impermissible burden on Qwest, especially when Qwest already has
12 systems and identifiers in place to track these existing private line services.

13
14 **Q. IS THE CHANGING OF THE CIRCUIT ID MERELY A CONVENIENCE FOR**
15 **QWEST’S RECORD KEEPING?**

16 A. No. While proper record-keeping is the type of good business practice that Qwest strives
17 for, the FCC rules, as well as many state commissions’ rules, require that incumbent
18 telephone carriers accurately maintain records that track inventories of circuits. And,
19 while Qwest is required to maintain subsidiary records in sufficient detail to align
20 specific circuits with the billing, accounting, and jurisdictional reporting requirements
21 related to the services that these circuits support, CLECs such as Eschelon are not subject
22 to these same burdensome reporting requirements. Qwest accomplishes these reporting
23 requirements through the use of circuit IDs and other appropriate codes, depending on the
24 systems affected by the requirement. It is ironic, and certainly contradictory, that Mr.

1 Starkey uses “unnecessary work”² as a reason why Qwest should not be able to change
2 circuit IDs during the conversion process. Qwest is required to make such a change so
3 that it, like Eschelon, can maintain its records and systems and, in addition, accurately
4 report its products in accordance with its regulatory requirements. The process Eschelon
5 envisions would impose both unnecessary work and unfair costs on Qwest in order to be
6 able to track and maintain the circuits it provides to CLECs. This is not something that
7 Qwest can accomplish by simply adding another universal service order code (“USOC”)
8 and changing the price of the circuit Eschelon buys from Qwest, as Mr. Starkey suggests.
9

10 **Q. WHY CAN'T QWEST SIMPLY CHANGE THE USOC IT USES TO BILL THESE**
11 **CIRCUITS?**

12 A. Qwest *will* change the USOC it uses in order to bill these circuits as private lines,
13 because as a product that is separate and unique from UNEs, private lines carry separate
14 and unique USOCs. However, it is important to understand that there are necessary and
15 important distinctions between the purposes served by USOCs and those served by
16 circuit IDs in Qwest’s systems. USOCs are identifiers that are used in Qwest’s billing
17 systems, along with other identifiers such as class of service (“COS”), FIDs, RCIDs,
18 ZCIDs, CIC codes, PIC codes, etc., to ensure the proper billing of customers, including
19 CLECs. While these codes are placed on the customer’s billing records to identify the
20 various attributes of the customer’s account based on the products ordered, they *do not*
21 serve to identify the underlying network facilities for purposes of inventory, maintenance
22 or repair. Those attributes of Qwest’s network are carried in many other systems (*i.e.*,
23 TIRKS, WFA, SOAC, etc.) that have nothing to do with customer billing, and are
24 identified by circuit ID. The circuit ID is an alpha/numeric identifier whose sequence of

² Starkey Rebuttal, p. 118.

1 letters and numbers define the characteristics of a particular circuit and which indicates
2 attributes of the circuit, such as the LATA and jurisdiction, as well as the type of circuit,
3 service code and service modifiers. In addition, the circuit ID contains a serial number
4 for the circuit to ensure that no duplication occurs, and an identifier for the region in
5 which the circuit is physically located. The circuit ID follows Telcordia standards and
6 allows lower-level tracking for maintenance and reporting purposes. Thus, although a
7 USOC is used to bill customers the appropriate rate for a given product, circuit IDs
8 identify in a number of Qwest's systems, among other things, whether a circuit is a UNE
9 or a private line, what type of testing parameters apply, and which maintenance and
10 repair center is responsible for that circuit. If Qwest were not permitted to change circuit
11 IDs as a part of the conversion process, it would have no way of appropriately identifying
12 its underlying network facilities in its systems.

13
14 **Q. MR STARKEY CLAIMS, ON PAGES 123 AND 124 OF HIS REBUTTAL**
15 **TESTIMONY, THAT THE FCC EXPECTS CONVERSIONS TO BE SEAMLESS**
16 **AND EXPEDITIOUS FOR END USER CUSTOMERS. DOES QWEST'S**
17 **CONVERSION PROCESS ACCOMPLISH THOSE GOALS?**

18 A. Yes. As I've discussed above, Qwest has processed many hundreds of these types of
19 conversions without disruption to the CLECs' end user customers. Furthermore, Qwest
20 has agreed as part of the *TRRO* negotiations to a very low, non-compensatory rate of \$25
21 to process these conversions. Nevertheless, Mr. Starkey's discussion ignores the fact that
22 while the FCC expects these conversions to be "seamless," the FCC, and this
23 Commission, also expect Qwest to track, maintain, service and repair its circuits at a
24 level of detail not imposed on other carriers. For example, the FCC rules *require* that
25 telephone carriers accurately maintain records that track inventories of circuits.
26 Specifically, 47 C.F.R. 32.12(b) and (c) provides as follows:

1 (b) The company's financial records shall be kept with sufficient particularity to
2 show *fully* the facts pertaining to all entries in these accounts. The detail records
3 shall be filed in such manner as to be readily accessible for examination by
4 representatives of this Commission.

5 (c) The Commission shall require a company to maintain financial and other
6 subsidiary records in such a manner that specific information, of a type not
7 warranting disclosure as an account or subaccount, will be readily available.
8 When this occurs, or where the full information is not otherwise recorded in the
9 general books, the subsidiary records shall be maintained *sufficient detail to*
10 *facilitate the reporting of the required specific information*. The subsidiary
11 records, in which the full details are shown, shall be sufficiently referenced to
12 permit ready identification and examination by representatives of this
13 Commission [FCC]. (Emphasis added.)

14 Thus, Qwest is required to maintain subsidiary records in sufficient detail to align
15 specific circuits with the billing, accounting, and jurisdictional reporting requirements
16 related to the services that these circuits support. In other words, Qwest must be able to
17 distinguish for purposes of tracking and reporting its UNE products separately from its
18 other products, such as its tariffed private line services. As I mentioned above, Qwest
19 accomplishes this through the use of circuit IDs and other appropriate codes, depending
20 on the systems affected by the requirement. However, not only does changing the circuit
21 ID facilitate the proper reporting of these two products, as Qwest is required to do, but it
22 also ensures that the CLEC will receive support for testing, maintenance and repair from
23 the appropriate Qwest centers. UNEs and private line circuits are ordered, maintained
24 and repaired differently and out of different centers and systems because they are
25 different products and, thus, carry different circuit IDs. This does not mean, as Mr.
26 Starkey says, that Qwest is planning to physically move CLECs to different underlying
27 facilities in order to effectuate conversions, however, it does mean that UNE circuits and
28 private lines are separate and distinguishable products with legitimate requirements for
29 unique circuit IDs. Even Eschelon acknowledges in its "position" column in the Joint
30 Issues Matrix that the circuit ID is used "to identify the service for billing and repair

1 matters.” In order to sufficiently support its accounting, repair and maintenance for
2 UNEs versus its private line services, Qwest must have accurate circuit identifiers that
3 properly track circuits separately in systems such as TIRKS and WFA. In the long run,
4 Qwest is able to maintain, track and service all of its customers, including CLECs and
5 their end-user customers, better and more efficiently if it is able to identify accurately the
6 types of services and facilities it is providing to these respective categories of customers.
7

8 **Q. IS IT TRUE, AS MR. STARKEY STATES ON PAGE 128, THAT WHEN QWEST**
9 **ORIGINALLY CONVERTED CLECS’ PRIVATE LINE CIRCUITS TO UNES,**
10 **THEY WERE ALLOWED TO KEEP THEIR PRIVATE LINE CIRCUIT IDS?**

11 A. Yes. In addition, in other states Mr. Starkey has claimed that I have “been unable to
12 explain why the circuit ID must be changed in the current situation when no such change
13 was required in previous conversions.”³ However, as I explained in my testimony and
14 data request responses in those other states and in other proceedings where Eschelon has
15 participated (i.e., the *TRRO* wire center proceedings), this was done only because those
16 CLECs objected so strongly to Qwest’s efforts to convert those private line circuit IDs to
17 circuit IDs representing UNE products. Qwest attempted, initially, to accommodate their
18 desire to keep their private line circuit IDs, however, it only converted those circuits
19 without changing circuit IDs on a very limited basis for embedded circuits ordered before
20 April 2005. Contrary to Mr. Starkey’s assertions, circuit ID changes have been required
21 on *all* conversions of private lines to UNES that have been requested since April 2005.
22

23 The reason for discontinuing that practice in 2005 was that Qwest discovered, after
24 allowing the circuit IDs to remain unchanged initially, that it was experiencing

³ Oregon, Rebuttal Testimony of Michael Starkey, p.196.

1 significant difficulty in managing those circuits manually outside of its systems for
2 purposes of inventory, maintenance and repair. As I discussed above, circuit IDs are the
3 means Qwest uses in many of its systems to track the differing attributes of UNEs and
4 private lines. Further still, Qwest was incurring substantial expenses on the resources
5 necessary to track those circuits manually and individually outside of Qwest's systems.
6 This tracking is necessary, not only for regulatory reporting purposes as I mentioned
7 above, but also in order for Qwest to maintain its subsidiary records accurately so that
8 maintenance and repairs on those circuits can be handled out of the appropriate service
9 centers. Therefore, as of April 2005, that option is no longer available, and thus, any
10 circuit additions or changes made to circuits after that date are required to change circuit
11 IDs as well. Currently, there are fewer than 7% of all DS1 and DS3 UNEs that still have
12 private line circuit IDs. It would be an unfair burden on Qwest, whose regulatory
13 reporting requirements are much more stringent than those of CLECs', to require Qwest
14 to undertake manual tracking outside of its systems in order to provision and maintain
15 private lines (whose circuits would still be identified as UNEs) by the circuit ID after the
16 conversions take place. As I mentioned above, the alternative for Qwest is to spend
17 millions of dollars to modify its systems, yet again, so that it may track circuit IDs that
18 are intended to identify UNEs as private lines. This alternative is not only unfair to
19 Qwest; it places Qwest at a competitive disadvantage in a marketplace that both the FCC
20 and this Commission have deemed competitive.

21
22 **Q. IS MR. STARKEY CORRECT WHEN HE STATES, ON PAGE 119 OF HIS**
23 **REBUTTAL TESTIMONY, THAT QWEST'S CONVERSION OF UNES TO**
24 **PRIVATE LINE CIRCUITS SHOULD BE A BILLING CHANGE ONLY?**

25 A. No. In fact, the *TRRO* **mandated** that within twelve months from the effective date of
26 the order, CLECs "...must transition the affected DS1 or DS3 dedicated transport UNEs

1 to alternative facilities or arrangements.”⁴ Further, the FCC specifically identified that
2 those alternative arrangements would include “...self-provided facilities, alternative
3 facilities offered by other carriers, or special access services offered by the incumbent
4 LEC.”⁵ Clearly, the twelve-month transition period contemplated by the FCC has come
5 and gone. Thus, for wire centers that the FCC and now, this Commission, have deemed
6 to be “non-impaired,” Qwest is no longer required to provide access to DS1 or DS3 UNE
7 loops or inter-office transport, yet many CLECs, including Eschelon, remain on Qwest’s
8 facilities. As I pointed out in my direct testimony, this language in the *TRRO* means not
9 only that Qwest is no longer required to price these services at TELRIC rates, but that the
10 FCC recognized an ILEC’s existing special access (private line) services to be one of the
11 alternatives available to CLECs after transition.

12
13 UNEs are priced at TELRIC; therefore, in order for Qwest to be able to price these
14 alternative services at something other than a TELRIC rate, as the *TRRO* permits, it is
15 necessary for Qwest to convert UNEs to private line services. If Qwest were not allowed
16 to convert the UNE circuits to private line circuits, the FCC’s non-impairment findings in
17 the *TRRO* would essentially be rendered meaningless. Therefore, Mr. Starkey’s
18 suggestion that nothing more than a billing change is required for these conversions
19 ignores the fact that the FCC understood that UNEs would be converted to alternative
20 products; something that requires far more than just a price change.

⁴ *TRRO*, ¶ 143 (Emphasis added).

⁵ *Id.*, at ¶ 142.

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IV. RESPONSE TO MR. DENNEY

ISSUE NO. 4-5 – DESIGN CHANGES

Q. MR. DENNEY STATES, AT PAGE 12 OF HIS REBUTTAL TESTIMONY, THAT QWEST’S APPLICATION OF THE DESIGN CHANGE CHARGE APPROVED BY THIS COMMISSION TO LOOPS AND CFA CHANGES “CIRCUMVENT[S] THE COMMISSION’S REVIEW AND AUTHORITY OF THE RATES...” IS THIS TRUE?

A. No. As I pointed out in my rebuttal testimony, the design change charge of \$35.89 proposed by Qwest in Utah is the result of a compliance run of Qwest’s nonrecurring cost study (Study ID #6564) filed in June 2002, at the direction of the Commission, in Docket No. 00-049-105 (effective 7/10/02). Clearly the Commission and its staff reviewed that rate and had authority over it when it established the rate in the cost docket. As I have also testified, Qwest’s cost study (submitted with my rebuttal testimony as Qwest Exhibit 4R.1) was clearly intended to apply to all types of design changes, not just transport or UDIT, based on references in the Executive Summary filed with the study to end user premises and optional feature and functions. Therefore, Mr. Denney is just plain wrong to suggest that this Commission has not had the opportunity to review and exercise its authority over all of the costs underlying the rate proposed by Qwest in this arbitration.

Q. MR. DENNEY GOES ON TO SAY THAT QWEST’S PROPOSED APPLICATION OF THE DESIGN CHANGE RATE IS “OBJECTIONABLE” GIVEN THAT QWEST DID NOT CHARGE THIS RATE FOR LOOPS AND CFA CHANGES IN THE PAST. PLEASE COMMENT.

A. The fact that Qwest may not have charged a CLEC its proposed rate for certain types of design changes does not prove an absence of costs for those changes. Nor does that fact

1 mean that the costs for those design changes were not included in the cost study and the
2 resulting rate. Indeed, that is precisely why Qwest wants to ensure that, going forward,
3 Eschelon's ICA clearly reflects an intent to apply the design change charge in all design
4 change circumstances, as contemplated by the structure of the rate. Mr. Denney provides
5 the Commission no real reason to impose an interim rate except to say that Eschelon
6 doesn't like it that Qwest has now determined to charge the rate simply because Qwest
7 has not charged the rate in the past as it was entitled to do.

8
9 **Q. IS IT UNUSUAL FOR QWEST TO FOREGO CHARGING CLECS FOR RATES**
10 **THAT HAVE BEEN APPROVED BY THE COMMISSION IN A COST DOCKET?**

11 A. While it is not Qwest's usual practice to forego charging the CLECs for the work it
12 performs, especially if it has Commission-approved rates, it is not unprecedented. For
13 example, in Washington, as part of Part A of Docket No. UT-003013, Qwest was granted
14 approval to begin charging the CLECs for costs associated with providing access to
15 Operations Support Systems ("OSS"). However, Qwest did not immediately begin
16 billing CLECs because Qwest's billing systems required significant modifications to
17 permit assessing the approved charge. As with any company faced with limited
18 resources and budget constraints, Qwest must prioritize its system changes to meet the
19 most pressing needs of the business. As a result, Qwest was unable to implement the
20 billing changes necessary to bill for OSS charges in Washington until the first quarter of
21 2005, despite the fact that Part A of the docket concluded in 2001. In other instances,
22 Qwest has voluntarily suspended billing of Commission-approved UNE rates for various
23 reasons. The point is that past business decisions not to charge a particular rate for a
24 service Qwest provides do not forever preclude Qwest from charging the rate for that
25 service. The charge is still necessary for Qwest to recover its costs, and the decision to
26 forego cost recovery for some period of time does not forever waive Qwest's right of cost

1 recovery.

2

3 **Q. ON PAGE 28 OF HIS REBUTTAL TESTIMONY, MR. DENNEY STATES THAT**
4 **THE COSTS ASSOCIATED WITH DESIGN CHANGES FOR LOOPS AND CFAS**
5 **ARE DISSIMILAR TO THOSE ASSOCIATED WITH UDIT DESIGN CHANGES.**
6 **DO YOU AGREE?**

7 A. No. Regardless of the reason for a design change – whether it is caused by a CLEC
8 request after an order has been initiated or by a CLEC providing an incorrect CFA on an
9 installation due date – Qwest must interrupt the order flow, correct the information in its
10 systems, and reinitiate the order process so that the order can be completed with the new
11 design or corrected information. These same activities take place regardless whether the
12 design change involves loops, CFAs or UDIT. Furthermore, as I explain below, the costs
13 of performing these activities are only slightly different for each of these products. The
14 biggest differences in the activities required for the design changes, as described by Mr.
15 Denney, are associated with work performed by Qwest’s central office technicians on the
16 installation due date. However, there is no central office technician time, or any other
17 type of technician time included in Qwest’s design change study. That is because
18 technician costs are captured in other nonrecurring cost studies. The only times and
19 activities included in the design change study are related to service order processing and
20 the manual efforts required to walk the order through to completion once the automated
21 process has been interrupted because of the need to perform a design change. Thus, there
22 is very little difference in cost among the various types of design changes.

23

1 **Q. MR. DENNEY STATES, ON PAGE 19 OF HIS REBUTTAL TESTIMONY, THAT**
2 **A FEW MINUTES OF A CENTRAL OFFICE TECHNICIAN'S TIME SHOULD**
3 **NOT AMOUNT TO A CHARGE OF \$35.89. IS THERE ANY RELATIONSHIP**
4 **BETWEEN THIS TECHNICIAN TIME AND THE APPROPRIATE RATE FOR**
5 **DESIGN CHANGES?**

6 A. No. As I explained previously, the fact is that the design change charge does not include
7 any cost for the central office technician's time required for a design change. Mr.
8 Denney's assertion results more in confusing the reader than in adding relevant
9 information to the discussion of the issue. The design change charge is a charge based on
10 Utah's approved cost to process changes to an existing order at the request of a customer
11 (such as Eschelon) associated with a design change, and to provide a new design,
12 including CFA changes, as well as to process updates to systems and databases pursuant
13 to that request. The design change cost study does *not* include central office technician
14 time. Thus, although on page 19 of his rebuttal testimony, Mr. Denney discusses Mr.
15 Jensen's deposition testimony regarding the central office work required for a CFA
16 change, that testimony has no relevance whatsoever with respect to the cost of a design
17 change charge.

18
19 And, contrary to Mr. Denney's assertions, those costs are not recovered in any of
20 Qwest's other installation charges and, thus, do not result in double recovery. This is so
21 because those costs are not triggered unless a CLEC asks Qwest to interrupt the flow of
22 an order to make a design change, or until an order cannot be completed on a due date
23 because the CFA information provided for the order is incorrect. As I discuss above,
24 regardless of the cause of the design change, Qwest must interrupt the order flow, correct
25 the information in its systems and reinitiate the order process so that the order can be
26 completed with the new design or corrected information. These steps occur whether or

1 not the initial order was placed as a basic installation or as a coordinated cut. And, again,
2 contrary to Mr. Denney's assertions on page 19 of his rebuttal testimony, the coordinated
3 installation that Eschelon pays for does not include costs for the activities included in the
4 design change charge. This is so because the cost for a coordinated installation, just like
5 a basic installation or any of the other types of installation, is based on the assumption
6 that the order will process through Qwest's systems once and through the groups
7 involved in provisioning once, from beginning to end without interruption. This is not to
8 say that there are no assumptions included in the installation costs to address manual
9 handling at various points in the process due to an order falling out of the systems;
10 however, those assumptions do not cover situations where the order must be reinitiated
11 and completed with a different design. Mr. Denney's suggestions that these costs are
12 recovered in some other charge that Eschelon pays are no different from his incorrect
13 suggestion that the design change charge covers the cost of a "few minutes of central
14 office technician's time."⁶

15
16 **Q. MR. DENNEY ARGUES, AT PAGE 25 OF HIS REBUTTAL TESTIMONY, THAT**
17 **THE DECISION OF THE MINNESOTA COMMISSION IN ITS UNE COST**
18 **DOCKET TO SET MISCELLANEOUS CHARGES AT ZERO IS PROOF THAT,**
19 **CONTRARY TO YOUR TESTIMONY, QWEST'S MISCELLANEOUS CHARGES**
20 **DO NOT APPLY IN A VARIETY OF CIRCUMSTANCES. PLEASE COMMENT.**

21 A. Mr. Denney's testimony on this point is confusing at best. He quotes several passages
22 from an August 2, 2002 ALJ Report in the Minnesota cost docket (Docket CI-01-1375)
23 related to that Commission's decision to set miscellaneous charges at zero, and then
24 jumps to the conclusion that these passages mean that miscellaneous charges do not

⁶ Denney Rebuttal, p. 19.

1 apply to a variety of circumstances. Yet, earlier in his testimony, Mr. Denney states that
2 the contract determines if and when such charges apply. Furthermore, Mr. Denney's
3 testimony ignores the fact that in almost all of Qwest's states, Qwest's miscellaneous
4 charges, including its design change charge, are Commission-approved charges. The fact
5 is that the Minnesota decision is irrelevant to the discussion of whether miscellaneous
6 charges apply in a variety of circumstances.

7
8 Mr. Denney continues his discussion about the application of miscellaneous charges by
9 pointing out that despite a Commission-approved rate for additional out-of-hours labor in
10 Washington, Qwest required a contract amendment before allowing out-of-hours
11 installations for EELs. He states that in that case, it was *clear* the rate applied to both
12 loop and EEL installations (a variety of products), but that Qwest demanded a contract
13 amendment. It seems by Mr. Denney's own testimony that the only thing that is *clear* is
14 that the parties do not always agree when or if a miscellaneous charge should apply in a
15 given circumstance. That Qwest sometimes believes it is necessary to clarify the
16 application of a rate in a contract amendment, and that other times Qwest believes, as in
17 the case of design changes, that the rate application is evident from the way the rate is
18 developed, is merely a function of Qwest's own belief about when amendments are
19 necessary and when they are not. It has nothing to do, however, with whether
20 miscellaneous charges apply in a variety of circumstances to a variety of products, which
21 they clearly do.

22

1 **Q. MR. DENNEY STATES, ON PAGE 32 OF HIS REBUTTAL TESTIMONY, THAT**
2 **BECAUSE QWEST'S COST STUDY FOLLOWED AN ACCESS SERVICE**
3 **REQUEST ("ASR") FLOW INSTEAD OF A LOCAL SERVICE REQUEST ("LSR")**
4 **FLOW, THE STUDY MUST BE TRANSPORT-SPECIFIC. IS THAT ACCURATE?**

5 A. No. While it is true that the study that forms the basis for the design change charge is
6 based on an ASR (access service request) flow, the reason is not that the study is specific
7 to transport. Rather, the reason the study follows an ASR flow is that the TELRIC design
8 change study was modeled based upon Qwest's existing TSLRIC design change study for
9 access services, including switched and special access. In other words, at the time that
10 Qwest was developing a TELRIC rate for design changes, it already had a TSLRIC study
11 for access services, and the relatively new UNE study was simply set up to mimic the
12 existing TSLRIC study. The fact is that access services follow an ASR flow, regardless
13 whether they involve private line loops or transport, and the design change charge that
14 Qwest had developed for its access services was not limited to transport-specific changes.
15 That is why the executive summary description of the design change charge discussed
16 above was developed; to ensure that it was clear that the charge would apply to a variety
17 of circumstances and a variety of products.

18
19 It is only in the case of UNEs that service order flows for ASRs are identified with
20 transport and LSRs are identified with loops. The use of an existing ASR order flow
21 provided a simplifying assumption in Qwest's TELRIC study for design change.
22 Contrary to Mr. Denney's assertions, as I discussed above, the use of either an ASR or
23 LSR order flow has only a minimal impact on the overall cost of design changes. For
24 example, Qwest's current TELRIC study for design change (filed in Minnesota in
25 December 2006) assumes a 100% LSR order flow, again as a simplifying assumption,
26 resulting in less than a 5 minute difference in time and less than a \$3 difference in cost

1 (related to order flow) between the two studies.

2
3 **Q. IS IT NECESSARY TO DEVELOP SEPARATE CHARGES FOR THE VARIOUS**
4 **TYPES OF DESIGN CHANGES, AS MR. DENNEY SUGGESTS?**

5 A. No. As I pointed out in my rebuttal testimony, particularly in an increasingly competitive
6 marketplace, it would be inappropriate to micromanage Qwest's product offerings by
7 requiring Qwest to provide costs and processes to address every possible way of
8 provisioning all available products.

9
10 Eschelon has quietly taken advantage of the fact that, according to Mr. Denney, the
11 design change charge as it is applied to UDIT is lower than it would be if the costs were
12 calculated on a stand-alone basis. At the same time, by its own admission,⁷ Eschelon has
13 had the benefit of no charge for design changes to unbundled loops "for years." Now
14 that Qwest has determined to exercise its right to charge CLECs for all of the design
15 change types included in the calculation of its rate, Mr. Denney would have this
16 Commission believe that Qwest must accept interim rates for those design changes, and
17 then seek permanent rates from the Commission in a different proceeding.⁸ As I have
18 pointed out above, Qwest has proposed a rate for design changes – for which it has
19 already received approval from this Commission – that is an average of the costs for
20 performing design changes for all types of products, under all types of circumstances.
21

⁷ Denney Rebuttal, p. 12.

⁸ Denney Rebuttal, p. 14.

1 **ISSUE NO. 12-67 – EXPEDITES**

2 **Q. MR. DENNEY STATES, ON PAGE 101 OF HIS REBUTTAL TESTIMONY, THAT**
3 **YOU HAVE NOT EXPLAINED WHAT YOU MEAN BY THE PHRASE**
4 **“SUPERIOR SERVICE.” PLEASE COMMENT.**

5 A. As Mr. Denney points out in his testimony, the Eighth Circuit found that the Act does not
6 require Qwest to provide service that is superior *to what it provides itself* in connection
7 with providing service to its own retail customers. As I pointed out in my rebuttal
8 testimony, the fact that Qwest often provisions circuits for CLECs in shorter intervals
9 than it does for its own retail customers provides support for the argument that the further
10 provision of expedites constitutes a superior service. In other words, because the CLECs
11 are already able to obtain circuits from Qwest more quickly than Qwest’s own retail
12 customers, without any additional charge, while Qwest’s retail customers, including other
13 wholesale carriers, must pay an expedite fee to obtain the same intervals as CLECs, the
14 provision of expedites to CLECs constitutes superior service.

15
16 For example, the standard installation interval for a DS-1 for Qwest’s private line retail
17 customers is 9 days, while in many of Qwest’s states, including Utah, the installation
18 interval for CLECs for the exact same DS-1 circuit is only 5 days. In those states,
19 therefore, in order for a Qwest retail customer to obtain the same 5-day installation
20 interval as a CLEC, the retail customer must request an expedite at a charge of \$200 per
21 day advanced, or \$800 for the same service that a CLEC receives at no additional cost. If
22 a CLEC then requests an expedite to have a circuit installed in an even shorter period of
23 time (for example 3 days), at \$200 per day advanced, the CLEC would pay an additional
24 \$400 for the service, while Qwest’s retail customer would pay \$1200 to receive the same
25 service. This scenario clearly gives the CLEC a competitive advantage over Qwest when
26 provisioning DS-1 services for its end-user customers, and amounts to service that is

1 superior to what Qwest provides for its own retail customers.

2
3 Even in states where there is no difference in the interval between retail and wholesale,
4 an expedite gives one competitor an advantage over another competitor because of that
5 competitor's ability to go to the head of the line and have circuits provisioned more
6 quickly than they otherwise would be in the normal course of business. This service has
7 a value, above and beyond the cost of the service, that is recognized throughout the
8 industry, as evidenced by the rates charged by other ILECs and CLECs for expedites.
9 For example, in many of the AT&T states, the expedite charge for a DS-1 circuit is \$675,
10 less \$50 for each day the installation date is closer to the standard interval. In some of
11 the Verizon states, the expedite charge is a flat \$500 one-time fee regardless of the
12 number of days advanced. In other Verizon states, the rate varies depending on the
13 number of days advanced from \$647.85 to \$1,537.06. Similarly, there are CLECs whose
14 charges for expedites also range from \$250 to \$500. Thus, just as Qwest believes that
15 expedites constitute a superior service that should be valued above cost, so too do other
16 carriers in the industry, including CLECs.

17
18 **Q. ON PAGE 102 OF HIS REBUTTAL TESTIMONY, MR. DENNEY POINTS OUT**
19 **THAT QWEST PROVIDES "PREMIUM" MANAGED CUTS AND "PREMIUM"**
20 **LABOR WITHOUT CLAIMING THOSE ARE SUPERIOR. DO THOSE LABELS**
21 **HAVE ANY RELEVANCE TO THIS DISCUSSION?**

22 A. No. Mr. Denney has taken two rates out of Qwest's SGAT Exhibit A that are labeled
23 "premium," and argues that because Qwest has not claimed that they are superior
24 services, it must mean that Qwest's claim with respect to expedites is wrong. Mr.
25 Denney's argument is off base and irrelevant. The rates to which Mr. Denney refers are
26 described as "premium" because they are for work performed on holidays during

1 *premium* shifts. In other words, Qwest classifies its bargained-for labor into many
2 categories, including three categories that reflect 1) an employee's regular work hours
3 (*i.e.*, up to 40 hours per week), 2) his or her overtime hours for work over a 40-hour work
4 week, or in excess of the employee's scheduled tour for that particular day, and 3)
5 *premium* time worked on holidays or in excess of 49 hours in a week. These labor
6 classifications are merely used to determine the hourly rate for time worked and have
7 absolutely nothing to do with Qwest providing a premium or superior service. Bringing
8 these labels into the discussion of expedites only serves to confuse the expedite issue
9 instead of clarifying it with relevant facts.

10
11 **Q. IF QWEST DOES NOT CHARGE ITSELF TO EXPEDITE ORDERS, BUT ONLY**
12 **INCURS COST, IS CHARGING ESCHELON A NON-COST-BASED PRICE**
13 **DISCRIMINATORY?**

14 A. No. First, in order to accept such an argument, one would have to accept that Qwest has
15 a Section 251 obligation to provide CLECs with expedited orders. As I explained in my
16 rebuttal testimony, the only pricing authority for interconnection and UNEs that the Act
17 confers upon state commissions is that set forth in Section 252(c)(2), which directs states
18 to set prices in the exercise of their Section 252 arbitration authority for interconnection
19 services and UNEs that ILECs provide under Sections 251(c)(2) and (c)(3). Section
20 252(c)(2) provides specifically that, in exercising their arbitration authority, states shall
21 determine "the just and reasonable rate for the interconnection of facilities and equipment
22 for purposes of subsection [251(c)(2)] . . . [and] for network elements for purposes of
23 subsection [251(c)(3)]."⁹ As shown by this language, nothing in this section gives states
24 pricing authority over superior services that an ILEC is not required to provide, such as

⁹ 47 U.S.C. § 252(d)(1).

1 expedited orders; instead, the authority that Congress granted in that section is plainly
2 limited to elements and services that must be provided under Section 251(c). Nowhere in
3 Section 251 is there any requirement for ILECs to provide CLECs with superior service.
4 Nevertheless, as I have discussed above, Qwest already provisions such services to the
5 CLECs in shorter intervals than it provides for its own retail customers. To conclude that
6 Qwest must provision services in even shorter intervals, and at cost-based rates, would
7 place the CLEC's end-user customers in a superior position to Qwest's retail customers.

8
9 Furthermore, when the FCC initially tried to interpret the Section 251(c)(3) requirement
10 to provide nondiscriminatory access to UNEs as requiring ILECs to provide superior
11 service, the Eighth Circuit struck down the FCC's interpretation as violating the Act. It
12 is important to note that this particular portion of the Eighth Circuit's decision was never
13 disturbed by the United States Supreme Court.¹⁰ In fact, the Florida Commission
14 articulated this point clearly when it said:

15
16 It is clear there is no obligation imposed or implied in Rule 51.311(b) that an
17 incumbent render services to a CLEC superior in quality to those provided to a
18 retail customer requesting similar services. So long as *rates are identical* for all
19 requesting parties, CLEC and retail alike, parity exists in the provisioning
20 structure for service expedites, and there is no conflict with Rule 51.311(b). We
21 reiterate that current regulations do not compel an ILEC to provide CLECs with
22 access superior in quality to that supplied to its own retail customers.¹¹

23
24 Thus, because this Commission's authority to apply TELRIC pricing is limited to Section
25 251 services and elements under the Act, and the service of expediting orders is a

¹⁰ See e.g., *Iowa Utilities Board v. AT&T*, 120 F.3d 753, 812-813 (8th Cir. 1997), *aff'd in part and rev'd in part*, 525 U.S. 366, 397 (1999).

¹¹ *In re Joint Petition by NewSouth et al.*, 2005 Fla. PUC LEXIS 634 *150, Order No. PSC-05-0975-FOF-TP (Fla. PSC Oct. 11, 2005). (Emphasis added.)

1 superior service not required by Section 251, it would not be appropriate for the
2 Commission to determine a TELRIC-based price for the Expedited Order charge.

3
4 Second, to interpret Qwest's charging of a non-cost-based price as discriminatory, one
5 would have to conclude that Qwest is obligated in all cases to charge CLECs only its own
6 costs. If that were the case, the FCC would have established a costing methodology for
7 UNEs based on Qwest's actual cost for its embedded network. It did not. Instead, the
8 FCC established a methodology (TELRIC) that requires Qwest to determine the average
9 cost of various network elements based on a hypothetical, forward-looking network. If
10 Qwest's actual costs based on its embedded network were the appropriate standard under
11 the FCC's rules, Qwest would be charging CLECs much higher rates for many
12 unbundled network elements that it instead provides at forward-looking TELRIC rates,
13 which are well below the costs that Qwest actually incurs. Nevertheless, as I have
14 explained above, TELRIC is not the appropriate pricing method to apply in the case of
15 expedites. Alternatively, to accept Mr. Denney's discrimination argument, one would
16 have to assume that Qwest is obligated to charge CLECs only amounts it imputes to itself
17 for services it provides to the CLECs. Again, this is not a proper interpretation of the
18 FCC's nondiscrimination requirement.

19
20 McLeod tried to prevail on similar arguments in its DC Power Complaint cases in several
21 of Qwest's states, however, as the Washington Commission found in its proceeding:

22
23 "[w]e have long held that a utility may charge different rates for the same
24 service if it is reasonable to do so. In this case, Qwest does not "collocate"
25 equipment, hence its imputed rates for DC power may reasonably differ from
26 the rates it charges CLECs under negotiated interconnection agreements.
27 Moreover, Qwest provided evidence that it does not assign power costs to itself
28 solely on a measured basis, but rather that it takes into account the total costs for
29 power plant which do not vary with usage. The fact that Qwest does not impute

1 to itself the same costs for DC power that it charges McLeod does not of itself
2 constitute improper discrimination.”¹²

3 The fact is that regardless of Qwest’s own costs to provide expedites for its retail
4 customers, Qwest has determined a rate based on the value of an expedite that it has
5 already established for purposes of charging its own customers. By charging that same
6 amount to Eschelon, an amount that Eschelon can pass along to *its* retail customers,
7 Eschelon’s end-user customers are placed in a better position than Qwest’s end-user
8 customers when an expedite is requested because of their already shortened installation
9 interval.

10
11 **Q. IS ESCHELON’S PROPOSED CHARGE OF \$100 PER EXPEDITE A COST-**
12 **BASED CHARGE?**

13 A. No. The \$100 per expedite fee proposed by Eschelon is a flat, per order charge. As Mr.
14 Denney admits on page 104 of his rebuttal testimony, it is not based on any analysis of
15 Qwest’s costs to perform an expedite and is, in fact, below both the minimum floor
16 established in Qwest’s TSLRIC study and below the cost calculated in Qwest’s
17 Minnesota TELRIC study for the activities necessary to complete an expedite. Nor is
18 Eschelon’s proposed expedite fee based on any analysis of the value associated with
19 Eschelon’s ability to leapfrog ahead of its competitors’ orders that are already in queue.

20
21 **Q. BEGINNING ON PAGE 106 OF HIS REBUTTAL TESTIMONY, MR. DENNEY**
22 **ARGUES THAT QWEST’S EXPEDITE COSTS SHOULD NOT BE CALCULATED**
23 **ON A “PER DAY” BASIS. WHY DID QWEST CALCULATE ITS MINNESOTA**
24 **EXPEDITE COSTS ON A PER DAY BASIS?**

25 A. Despite Qwest’s argument in the Minnesota Eschelon arbitration that expedites constitute

¹² Washington Final Order, p. 7, ¶ 24.

1 a superior service and, thus, are not subject to TELRIC pricing, the Minnesota
2 Commission ordered Qwest to file a TELRIC-based cost study in the on-going cost
3 docket (MPUC Docket No. P421/AM-06-713/OAH Docket No. 3-2500-17511-2) in that
4 state. Qwest did not have an existing TELRIC-based cost study for expedites because,
5 for the reasons discussed above, Qwest does not believe that cost-based pricing is
6 appropriate for expedites. Therefore, in developing a TELRIC-based study for expedites
7 Qwest determined to calculate costs in the same manner as its TSLRIC-based study that
8 underlies the retail rate, which is charged on a per day basis. Although, Mr. Denney is
9 correct, that costs are developed on a “per expedite request” basis and then divided by the
10 average number of days expedited to calculate the expedite cost on a “per day” basis, he
11 is wrong to suggest, on page 107, that activities occur only once during the request.
12 Many of the activities associated with expedites include tracking the request outside of
13 the normal order flow to ensure that it is installed within the expedited timeframe, which
14 requires checking on the order at several stages of the process and on multiple days
15 during the installation. Mr. Denney is also wrong to suggest, at page 111, that “an
16 expedite involves the same familiar service provisioning installation process Qwest
17 already uses, only it occurs earlier....” Nor are the costs of an expedite duplicative of the
18 separate, nonrecurring installation charge paid by Eschelon. Because the automated flow
19 of information for many of Qwest’s provisioning processes keys off of the standard
20 intervals for installations, expedites require much more manual intervention to ensure
21 that critical dates are met. The installation process represented by standard intervals has
22 a degree of flow-through associated with it that allows for systematic provisioning of the
23 request from one step to the next. In the case of expedites, many of these process must
24 be monitored or interrupted so that the order can be manually walked through the steps.
25 These manual activities are reflected in Qwest’s TELRIC study and are activities that
26 take place *in addition to* the normal processing steps.

1 **Q. MR. DENNEY TAKES ISSUE, AT PAGE 110 OF HIS REBUTTAL TESTIMONY,**
2 **WITH QWEST’S INCLUSION OF COSTS FOR DENIED EXPEDITES IN ITS**
3 **TELRIC STUDY. PLEASE COMMENT.**

4 A. First, Mr. Denney wrongly assumes that because Qwest offers a fee-based product called
5 “Pre-approved Expedites” that it is guaranteeing CLECs the ability to have an order
6 expedited. This is not the case. As Ms. Albersheim explains in her testimony, there are
7 no circumstances in which Qwest promises to grant an expedite unless or until it has
8 determined that there are sufficient resources to ensure that it can do so without delaying
9 due dates or orders of other CLECs or end user customers. The reference to “pre-
10 approval” simply means that the CLEC may submit a request for an expedite without
11 having to obtain permission from Qwest first, it does not mean that Qwest will
12 automatically adjust its work schedule to perform the expedite. Furthermore, the value-
13 based fee that Qwest proposes to charge has nothing to do with covering the cost of the
14 additional resources necessary to accommodate the expedite. As I explained above, the
15 TSLRIC and TELRIC studies that Qwest has conducted relating to expedites develop
16 costs for processing the expedite request and walking the order through the provisioning
17 process manually in order to ensure that the expedited timeframes for installation are met.
18 There is no way to account for additional resources that could be required if Qwest
19 granted every expedite that was requested in a nonrecurring study that calculates the cost
20 for specific tasks and work activities associated with the request.

21
22 Second, Qwest’s reason for including in its TELRIC study some cost for the time that it
23 spends performing the same activities for denied expedite requests as it does for those
24 that are approved and completed is that the Minnesota Commission acknowledged the
25 additional costs to Qwest for expedites in its order in the Eschelon arbitration. In that
26 order the Commission agreed that “the cost Qwest bears to expedite an order may vary

1 depending on the number of expedite requests Qwest receives, and the number of
2 requests Qwest receives may vary with the cost [to the CLEC] to expedite an order.”¹³ In
3 other words, the Minnesota Commission was acknowledging that if it set an expedite
4 charge that was low, the CLECs would be likely to submit more requests for expedites,
5 leaving Qwest with the choice to either increase its resources to accommodate those
6 additional requests, or increase the number of requests that are denied. Because, as I
7 mentioned above, there is no way in a TELRIC study to account for the cost to Qwest to
8 add more resources to its work force, Qwest has added an assumption in its study that
9 recognizes that at cost-based rates it will be forced to deny more expedite requests.
10 Today Qwest denies more than 13% of the expedite requests that it receives. As the
11 number of requests and, thus, the number of denials increases, the cost to Qwest to
12 process requests that it will ultimately not be able to accommodate also increases. It is
13 important to understand that Qwest performs most of the same steps to process a request
14 that is ultimately denied as it does for expedites that are completed. The difference is
15 that Qwest does not charge CLECs for expedite requests that must be denied. Therefore,
16 unless Qwest includes costs for those denied requests in its expedite charge, there is no
17 way for Qwest to recover the additional costs it will face to process an onslaught of
18 expedite requests, many of which will ultimately be denied, whose low price does not
19 reflect the value being received by the CLEC.

20
21 **Q. HOW IS A VALUE-BASED CHARGE FOR AN EXPEDITE DETERMINED?**

22 A. As I explained in my rebuttal testimony, Qwest’s proposed expedite charge is not based
23 on cost, although Qwest certainly does incur costs to process a request for an expedited

¹³ *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. §252(b)*, Docket No. P5340, 421/IC-06-768, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigations and Referring Issue to Contested Case Proceeding, (rel. March 30, 2007), p. 18.

1 order. For these orders, Qwest must invest time and resources to work the order into an
2 existing provisioning schedule, coordinate activities among the several Qwest
3 departments that are involved in the installation process, and communicate with the
4 customer regarding the status of the order. However, the value of an expedited order is
5 the intangible benefit of a superior service provided to the customer by Qwest (*i.e.*, the
6 ability to go to the head of the line and leapfrog over the other customers whose orders
7 are already in queue). As I've explained previously, if Qwest did not charge its
8 customers for the value they receive in going to the head of the line, those customers
9 would receive an unfair advantage over other customers. Therefore, by making expedites
10 available to all of its customers for a fee, every customer has the same ability as every
11 other customer to decide for itself how important it is to obtain expedited orders.
12 Obviously, *it would be impossible for Qwest to expedite every order*; thus, Qwest sets a
13 price for obtaining superior service that guarantees that only those customers for whom
14 the priority to expedite an order is very high will request the service. If the price for
15 expedites is set too low there would be no disincentive for CLECs not to place every
16 order as an expedited request in order to try to circumvent the standard installation
17 intervals that have been set and gain competitive advantage at Qwest's expense.

18
19 **Q. HAVE YOU PROVIDED AN EXAMPLE BASED ON COMMON EXPERIENCE**
20 **THAT COULD HELP EXPLAIN THIS CONCEPT?**

21 A. Yes. In my rebuttal testimony, I explained that the price that concert-goers pay for
22 tickets provides a good analogy to the situation presented in the case of expedites.
23 Concert-goers pay a higher premium for seats that are up front and closer to the stage
24 than they do for seats that are in the back and farther away from the stage. And while it
25 does not cost any more to produce a show for the people in the front row than it does to
26 produce a show for the people in the last row, it is not unusual for the people in the front

1 row to pay a ticket price that is two or three or more times higher than the price for back-
2 row tickets. But just like expedites not everyone who goes to the concert can sit in the
3 front row – obviously, it would be a physical impossibility to accommodate a front row
4 seat for everyone. Therefore, some concert-goers are willing to pay the higher price is
5 because they perceive enough value in being close to the stage to make it worth paying
6 the premium fee. Other concert-goers are willing to sit farther away to pay a lower price.

7
8 The same is true of expedite charges; some customers, including CLECs, are willing to
9 pay a premium in order to receive what they perceive to be the superior service of
10 shortening their installation interval and moving to the head of the line. Other CLECs are
11 satisfied to accept the standard installation interval and forego paying the additional fee.
12 Each CLEC makes the choice to pay or not pay the fee on the basis of the perceived
13 value to their business to expedite orders. However, this decision making process only
14 works if the fee charged reflects the value being received. Otherwise, if the fee is only
15 nominally higher than the standard price, many more CLECs are likely to request
16 expedited service and, as in the case of concert-goers, not all will be able to be
17 accommodated. This is no different than the decision process that Qwest's retail and
18 other wholesale customers go through when they determine whether or not to pay the
19 \$200 per day fee to expedite their installation orders.

20
21 **ISSUE NO. 22-90(a) – (e) – UNAPPROVED RATES**

22 **Q. ON PAGE 134 OF HIS REBUTTAL TESTIMONY, MR. DENNEY CLAIMS THAT**
23 **QWEST'S PROPOSED RATES VIOLATE PRIOR COMMISSION ORDERS.**
24 **PLEASE COMMENT.**

25 A. As I discussed in my rebuttal testimony, while Mr. Denney claims that Qwest provided
26 cost studies with inputs that were inconsistent with prior Commission decisions, he

1 ignores the fact that circumstances may have changed in the years since the Commission
2 last addressed costs. Furthermore, as I also pointed out in my rebuttal testimony, when it
3 suits Eschelon's purposes, Mr. Denney ignores Qwest's rates that are consistent with
4 prior Commission decisions. In the case of -48 Volt Power Cables, the assumptions
5 about cable size, power boards and placement of equipment within a central office should
6 be consistent because they do not change from one iteration of costs to another.
7 Nevertheless, as I explained previously, when Qwest calculates costs for new elements
8 subsequent to a Commission decision in a cost docket, it is not obligated to rigidly follow
9 the inputs ordered in that docket. The inputs ordered in a specific docket may be specific
10 to the rate elements that were at issue in that case and do not, necessarily or by
11 Commission mandate, carry forward to each future cost study that Qwest might prepare.
12 The reason for this is simply that the passage of time, refinement of studies and the
13 incorporation of new and updated information in studies often result in costs for new
14 elements that do not warrant the changes in inputs decided for previously-submitted
15 elements. In addition, because the passage of time often provides Qwest with more
16 experience in performing a particular task, new elements may be developed that are
17 better suited to CLECs' needs and that better reflect the cost to Qwest provide services to
18 the CLECs. It would be unfair and have a chilling effect on Qwest's efforts to work with
19 the CLECs to simply reduce its costs in a rote manner without giving any thought to
20 changes in circumstances that occur over time.

21
22 In my rebuttal testimony I provided an example whereby the Commission determined in
23 a prior cost docket that a particular time estimate for a particular function in a
24 nonrecurring cost study should be reduced by 30%. I pointed out that in a subsequent
25 study, where Qwest has revisited its prior time estimates with its subject matter experts
26 and, based on current practices and their application in a new element, the subject matter

1 experts revise the prior estimate, it would be unreasonable to presume that Qwest should
2 simply reduce that estimate by 30% without first being given the opportunity to present
3 the new study and new evidence to the Commission. The mere passage of time between
4 a Commission decision in one docket and the presentation of new costs and elements in
5 another docket, not to mention other factors (such as the changing competitive
6 environment), provides a sufficient reason for taking a fresh look at cost study inputs,
7 rather than simply automatically applying previous decisions to new information. This is
8 the main reason that Qwest believes that the appropriate place to review detailed inputs in
9 cost studies and determine permanent rates is in a cost proceeding, instead of this
10 arbitration.

11
12 **Q. DOES MR. DENNEY PROVIDE THE COMMISSION WITH ANY EVIDENCE**
13 **THAT QWEST RATES ARE “ABOVE COST” AS HE CLAIMS ON PAGE 135 OF**
14 **HIS REBUTTAL TESTIMONY?**

15 A. No. As I explained in my rebuttal testimony, Mr. Denney uses several approaches to
16 determine the rates he is proposing on Eschelon’s behalf. He adjusts Qwest’s rates to
17 reflect prior Commission decisions without examining what may have changed in the
18 interim, and ignores prior Commission decisions in other cases. Sometimes he merely
19 halved Qwest’s proposed rate. He does not justify his “pick and choose” approach to
20 proposing interim rates, nor does he present any real evidence in his discussion of
21 unapproved rates that explains what about Qwest’s rates makes them above cost, other
22 than an apparent presumption that because Qwest proposed them they must be too high.
23 In Oregon, Mr. Denney used *nine* different approaches to determine Eschelon’s proposed
24 rates for that proceeding. Close examination of Eschelon’s proposal shows that in reality,
25 even in this proceeding it is simply a mishmash of the lowest possible rates that Eschelon
26 has hand-picked from multiple sources. And while Mr. Denney may be correct, that

1 generally the CLECs would prefer to pay less, or even nothing at all, than what Qwest
2 proposes for their access to UNEs, neither Congress nor the FCC intended the ILECs to
3 be saddled with non-compensatory rates when they determined that rates for UNEs
4 should be cost-based.

5
6 **Q. MR. DENNEY POINTS AGAIN IN HIS REBUTTAL TESTIMONY ON PAGE 137**
7 **TO THE QWEST'S CHARGE FOR DESIGN CHANGES AS JUSTIFICATION**
8 **FOR ESCHELON'S PROPOSED LANGUAGE FOR UNAPPROVED RATES.**
9 **DOES THE DESIGN CHANGE CHARGE HAVE ANYTHING TO DO WITH**
10 **UNAPPROVED RATES?**

11 A. No. As I pointed out in my rebuttal testimony, Qwest had a Commission approved rate
12 based on a cost study that was presented as part of Docket No. 00-049-105. That study
13 quite clearly calculated a rate for design changes that was intended to apply in a variety
14 of circumstance to a variety of Qwest products including loops. Furthermore, Qwest has
15 not only already substantiated the rate and obtained approval from the Utah Commission,
16 it has also obtained approval from many other state commissions to charge that rate.
17 Second, the fact that Qwest chose not to bill the CLECs for design changes for loops
18 pursuant to that approved rate, as it was entitled to do, was simply a benefit that Eschelon
19 and the other CLECs quietly took advantage of. Qwest received no compensation from
20 the CLECs during that time for the design work it was performing on their behalf at no
21 charge. Therefore, using the design change charge as an example of why Eschelon's
22 unapproved rate language is necessary is simply another attempt by Eschelon to avoid
23 paying Qwest for work that imposes costs upon Qwest.

24

1 **Q. MR. DENNEY STATES, ON PAGE 138 OF HIS REBUTTAL TESTIMONY, THAT**
2 **HE DISAGREES WITH SEVERAL STATEMENTS FROM YOUR DIRECT**
3 **TESTIMONY THAT INTRODUCE THE DISPUTED ISSUE INVOLVING**
4 **UNAPPROVED RATES. PLEASE COMMENT.**

5 A. Mr. Denney takes issue with my statement that many commissions made TELRIC
6 decisions in their initial cost dockets on the basis that they believed it was their public
7 duty to “jump start” competition. He says that my claim leaves the impression that in
8 early cases, some commissions low-balled TELRIC rates. He goes on to say that he has
9 been involved in many cost dockets where commissions set TELRIC rates, and they were
10 not policy driven. I too have been extensively involved in cost dockets in many of
11 Qwest’s states, and my experience leads me to a different conclusion.

12

13 The reason that I put quotation marks around the phrase “jump start” in my testimony is
14 that I was involved in a cost docket in Arizona in which then-Commissioner Marc Spitzer
15 used those exact words in his opening statement to describe what he viewed as the
16 Commission’s role in setting Qwest’s TELRIC rates. Furthermore, Qwest’s TELRIC
17 rates often vary widely from one state to another, and I can only conclude that these
18 variations are explained, in part, by the fact that some state commissions appear to have
19 been influenced by something other than pure economic theory and cost analysis.

20

21 For example, Qwest’s nonrecurring rates for the basic installation of an unbundled analog
22 loop in its states range from a low of \$2.38 (\$4.33, including disconnect) in Minnesota, to
23 a high of \$104.73 in Wyoming. These differences simply cannot be explained by
24 differences in either geography or density between these two states, especially because
25 nonrecurring rates are not driven by such differences. The processes for provisioning
26 loops in Qwest’s 14-state region are identical and are processed in regional centers. For

1 example, the Qwest CLEC Coordination Center in Omaha, Nebraska is a center that
2 houses the employees who test circuits as part of the provisioning process for all CLECs
3 in all 14 states. The cost to Qwest for the work performed by these employees is the
4 same whether they are testing a circuit in Minnesota or Wyoming. Furthermore, the
5 methods, practices and procedures under which the technicians in each of these states
6 operate are identical. Nevertheless, the Commissions in Minnesota and Wyoming
7 reached very different results in determining the costs and setting the TELRIC rates for
8 basic installations. My contention is that such disparate results are driven by factors
9 other than pure economic costing principles.

10
11 **Q. ON PAGE 140 OF HIS REBUTTAL TESTIMONY, MR. DENNEY TAKES ISSUE**
12 **WITH YOUR CHARACTERIZATION OF HIS STATEMENTS REGARDING**
13 **HOW COMMISSIONS HAVE APPROACHED QWEST'S COSTS IN**
14 **SUBSEQUENT COST DOCKETS. PLEASE COMMENT.**

15 A. I find Mr. Denney's comment and response to it to be contradictory, to say the least. My
16 original testimony was that contrary to what Eschelon has implied about rates determined
17 by the commission always being lower than Qwest's proposals, there have been instances
18 more recently where they have adopted rates that are higher than the rates initially set in
19 earlier cost proceedings. Mr. Denney claims that Eschelon has made no such inference,
20 and then goes on to give several examples of states where commissions have revisited
21 Qwest's loop rates and lowered them. The interesting thing about Mr. Denney's
22 examples is that they all come from reductions that he points out happened in the 2002 –
23 2003 timeframe. Those timeframes seem to me to constitute earlier cost proceedings and
24 none of those states have revisited loop rates in recent years. Mr. Denney fails to discuss
25 the states of Wyoming and New Mexico both of which have recently addressed Qwest's
26 loop rates. In the case of Wyoming (Docket No. 70000-TA-04-1023 effective 1/6/06),

1 Qwest's rates were adopted without adjustment and resulted in an increase in Qwest's
2 loop rates. In the recently decided New Mexico docket (Case No. 05-00340-UT effective
3 6/7/07), while the statewide average loop rate remained the same because of the effect of
4 reorganizing the zones for purposes of deaveraging, the fact is that the individual zone
5 rates all went up. The point is, my statement was made to highlight the fact that Mr.
6 Denney would like this Commission to believe that Qwest's rates never amount to more
7 than a "wish list" on Qwest's part. However, there are real examples in recent
8 proceedings where Qwest's proposed rates have not only been adopted by commissions,
9 they have resulted in rates that are higher than the rates initially set in earlier cost
10 proceedings, just as I said.

11

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

13 A. Yes, it does.