

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

KAREN A. STEWART

FOR

QWEST CORPORATION

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

QWEST EXHIBIT 3SR

August 10, 2007

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I. Introduction

Q. PLEASE STATE YOUR NAME.

A. My name is Karen A. Stewart. I filed direct testimony in this proceeding on June 29, 2007 and rebuttal testimony on July 27, 2007.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. My surrebuttal testimony addresses the rebuttal testimony of Eschelon witnesses Douglas Denney and Michael Starkey relating to the following issues as they are numbered in Eschelon's petition for arbitration: Issue Nos. 4-5 (a, b, c), 9-31, 9-32, 9-33, 9-33a, 9-34, 9-35, 9-36, 9-39, 9-50, 9-51, 9-52, 9-53, 9-54, 9-54a, 9-55, 9-56, 9-56a, 9-58, 9-58 (a, b, c, d, e), 9-59, and 9-61,(a, b, c).

Q. DO YOU HAVE AN UPDATE CONCERNING ANY ISSUES THAT THE PARTIES HAVE RESOLVED?

A. Yes. The parties have settled Issue Nos. 9-39, 9-41 and 9-42 as part of a multi-state settlement approved by the Commission on July 31, 2007 in the "wire center docket," Docket No. 06-049-40.

II. Issues 4-5 (a, b, c) - Design Changes

Q. WHAT DISPUTES REMAIN BETWEEN THE PARTIES RELATING TO DESIGN CHANGES?

A. As I describe in my rebuttal testimony, two fundamental issues relating to design changes remain in dispute. First, Qwest and Eschelon continue to disagree over whether a charge for changes to connection facility assignments ("CFAs") should apply in the circumstance where a CFA is required while Qwest and Eschelon are performing a coordinated cut-over. This dispute is designated as Issue 4-5(a). Second, there is a fundamental disagreement between the parties concerning the rates that should apply to design changes involving unbundled loops and CFA changes that Eschelon requests. This issue is designated as Issue 4-5(c).

1 **Issue 4-5**

2 **Q. WHAT DISPUTE REMAINS WITH RESPECT TO ISSUE 4-5?**

3 A. This dispute originally involved two ICA sections, Sections 9.2.4.4.2 and 9.2.3.8.
4 Qwest has agreed to Eschelon's proposed language for both of these sections,
5 which should close Issue 4-5.

6 **Q. DOES MR. DENNEY SUGGEST THAT THERE ARE OTHER ISSUES**
7 **ENCOMPASSED BY ISSUE 4-5 THAT REMAIN OPEN?**

8 A. Yes. As I describe in my rebuttal testimony, Mr. Denney raises an issue
9 involving loop and CFA design change charges that is unrelated to the ICA being
10 arbitrated in this proceeding. According to Mr. Denney, Qwest has charged
11 Eschelon and other CLECs for loop and CFA design changes without having a
12 right to do so in existing ICAs or in Qwest's Utah Statement of Generally
13 Available Terms ("SGAT"). Based on this assertion, Mr. Denney argues that
14 Qwest should be required to credit Eschelon and other CLECs for the loop and
15 CFA charges it has previously assessed.

16 **Q. IS THE ISSUE THAT MR. DENNEY RAISES APPROPRIATE FOR**
17 **CONSIDERATION IN THIS ARBITRATION OF A PROSPECTIVE**
18 **INTERCONNECTION AGREEMENT?**

19 A. No. Mr. Denney's assertions are not only wrong on the merits; they also are not
20 properly raised in this arbitration. The purpose of this proceeding is to resolve the
21 parties' differences relating to the language for a *prospective* ICA that will be
22 ordered at the conclusion of the proceeding. It is not the purpose of this
23 proceeding for either party to request Commission action relating to concerns or
24 complaints arising from their existing ICA. No such issues are raised in
25 Eschelon's petition for arbitration or in Qwest's response to the petition. The issue
26 that Mr. Denney raises is unrelated to the terms and conditions for the prospective
27 ICA that is being arbitrated and therefore is not properly a part of this proceeding.

1 *Issue 4-5(a)*

2 **Q. ARE YOU ASSERTING, AS MR. DENNEY STATES AT PAGES 15-16 OF**
3 **HIS REBUTTAL TESTIMONY, THAT ESCHELON IS REFUSING TO**
4 **PERMIT ANY COST RECOVERY FOR CFA CHANGES?**

5 A. No. Mr. Denney mischaracterizes my testimony when he states that I have
6 incorrectly asserted that Eschelon is unwilling to pay anything for design changes
7 involving CFA changes. I recognize that Eschelon has proposed a rate of \$5.00
8 for CFA design changes, but my point is that this rate does not even come close to
9 compensating Qwest for the costs it incurs to perform these changes. Although I
10 have previously discussed the fact that Eschelon has not provided any information
11 or cost support showing how the \$5.00 rate was developed or whether the rate
12 bears any relationship to the costs that Qwest incurs to perform CFA changes, Mr.
13 Denney's rebuttal testimony does not respond to this criticism. Mr. Denney states
14 only that the actual design work needed for CFA changes "would take a matter of
15 seconds or minutes," apparently implying that Eschelon's proposed \$5.00 charge
16 is appropriate.¹ However, Mr. Denney never supports this incorrect assertion with
17 a description of the activities and costs that are required for a CFA change. The
18 fact remains that Eschelon has not in any way demonstrated that the rate it is
19 proposing is cost-based and would permit Qwest to be fully compensated for the
20 costs imposed by CFA changes.

21

¹ See Rebuttal Testimony of Douglas Denney ("Denney Rebuttal"), at p. 18. Also, at p. 19, Mr. Denney discusses the deposition of Mr. Jenson in the current Minnesota cost docket. Ms. Million, a cost witness in that docket, rebuts Mr. Denney's incorrect understanding of Mr. Jenson's testimony regarding the time necessary to complete a CFA design change.

1 **Q. IS THE INAPPROPRIATENESS OF ESCHELON'S PROPOSED RATE**
2 **FOR CFAS CHANGED IN ANY WAY BY THE FACT THAT THE RATE**
3 **WOULD BE INTERIM, AS MR. DENNEY EMPHASIZES AT PAGE 13**
4 **OF HIS REBUTTAL TESTIMONY?**

5 A. No. Mr. Denney suggests incorrectly that Qwest's concerns about Eschelon's
6 proposed rate are unfounded because the rate would be interim. The relevant
7 point about the proposed \$5.00 rate is not that it would be interim, but that it is
8 not cost-based and therefore would prevent Qwest from fully recovering its costs.
9 Any denial of complete cost recovery, even for a limited period, would be
10 unlawful and improper. In addition, while Mr. Denney describes the rate as
11 "interim," the rate likely would remain in effect for an indefinite period. There is
12 also no assurance that the rate would last only for a limited period, as Mr. Denney
13 suggests.

14 **Q. MR. DENNEY ASSERTS AT PAGES 19 AND 20 OF HIS REBUTTAL**
15 **TESTIMONY THAT QWEST ALREADY RECOVERS THE COSTS OF**
16 **CFA DESIGN CHANGES THROUGH THE UTAH CHARGE FOR**
17 **COORDINATED INSTALLATIONS. IS THIS ASSERTION CORRECT?**

18 A. No. It is important to remember that design changes involving CFAs are typically
19 the result of flawed or defective CFA assignments that CLECs provide to Qwest,
20 as I describe in my rebuttal testimony. Mr. Denney's claim that the existing Utah
21 rate for coordinated installations includes the costs of these changes necessarily
22 assumes that the coordinated installation rate was set with the assumption that
23 CLECs would provide defective CFAs and thereby impose last-minute design and
24 service order change costs upon Qwest. It would be very surprising if the
25 coordinated installation rate were to include this assumption, and I am not aware
26 of any information indicating that it does. While Mr. Denney asserts that certain
27 activities associated with the coordinated cutovers required for CFA changes are
28 already included in the coordinated installation rate, he fails to cite anything from
29 a cost study or a Commission rate order to support this assertion. As Ms. Million
30 discusses in her rebuttal testimony, the Utah rate for coordinated installations does

1 not include the additional cutover activities and costs that Qwest must perform
2 and incur when a CLEC like Eschelon provides defective CFAs. Moreover, Mr.
3 Denney fails to recognize that technician time is not included in the Qwest cost
4 study that generates the design change rate that Qwest is proposing. Accordingly,
5 the rate approved by the Utah Commission for design changes does not result in a
6 "double recovery" of the technician time and costs that are included in the Utah
7 rate for coordinated installations.

8 **Q. PLEASE RESPOND TO MR. DENNEY'S REPEATED CLAIM THAT CFA**
9 **CHANGES ARE MERELY "RECORDS CHANGES" AND THAT**
10 **ADOPTION OF QWEST'S PROPOSED DESIGN CHANGE RATE**
11 **WOULD RESULT IN AN OVER-RECOVERY.**

12 A. Mr. Denney's claim that CFA changes are merely "records changes" is incorrect.
13 Qwest must perform multiple steps involving substantially more than just a
14 "records change" when a CLEC requests a CFA change mid-stream in the
15 installation process. The new CFA must first be verified to be available (*i.e.*, not
16 reserved) and viable (*i.e.*, not defective). The circuit design and associated
17 records must also be updated. Several Qwest departments are involved to
18 accomplish the change properly. Moreover, testing personnel are needed to
19 coordinate this entire effort. The testing personnel coordinate with the Central
20 Office Technician to confirm the new CFA is viable. If viable, the testing
21 personnel provide the Service Delivery Coordinator with the CFA information to
22 supplement the order. The testing personnel may confirm with the CLEC testing
23 personnel that the circuit is operational. The Designer must then redesign the
24 circuit with the new CFA. Once the tester has coordinated these efforts, the tester
25 will have the Central Office Technician run a jumper from the tie pair to the new
26 CFA per the new design, (*i.e.*, the "lift and lay" portion of the effort). A CFA
27 change may be accomplished by utilizing a cable pair within the same 100 pair
28 block on a central office frame (a few inches). However, if there are no viable
29 termination locations within that block, a move to a different block may be

1 required (a few feet). In some cases, a move to an entirely different frame may be
2 required (a few hundred feet).

3 In these cases, the existing tie cable may not be usable. A different tie cable, then,
4 will have to be used and checked for cable length limitations, etc. Again,
5 however, the number of steps required to accomplish the physical relocation of
6 the circuit is not the issue. The engineering time that is required to properly
7 install a service for the end-user customer and the resulting coordination effort by
8 Qwest—which precede the physical relocation of the circuit—represent the
9 greater part of the CFA change effort.

10 In addition, Ms. Million explains in her rebuttal testimony (page 4) that the design
11 change rate Qwest is proposing is based on the average cost of performing a
12 design change for all types of products (*i.e.*, loops and transport) and includes
13 CFA changes. The nonrecurring cost study upon which the rate is based estimates
14 the amount of time, on average, that it will take to perform any given task in the
15 list of activities necessary to complete a design change and the probability that the
16 task will occur. The study and the resulting rate are therefore based on average
17 for all design changes, and application of the average rate to CFA changes does
18 not, contrary to Mr. Denney's claim, result in an over-recovery.

19 **Q. IS MR. DENNEY CORRECT IN ASSERTING AT PAGES 22 AND 23 OF**
20 **HIS REBUTTAL TESTIMONY THAT ISSUES RELATING TO**
21 **ESCHELON'S QUALITY CONTROL FOR CFAs ARE IRRELEVANT?**

22 **A.** No. Mr. Denney himself injected this issue into the proceeding by asserting in his
23 direct testimony that Eschelon sometimes requires multiple CFA changes and
24 therefore could be required to pay multiple CFA charges. In responding to this
25 assertion in my rebuttal testimony, my point was to demonstrate that the examples
26 Mr. Denney describes reveal that Eschelon may have a problem with CFA quality
27 control. This issue is relevant for determining the appropriate rate for design
28 changes only to the extent Eschelon is relying on the examples to support the low

1 CFA rate it is advocating. If Eschelon is having the level of difficulty with CFA
2 assignments suggested by Mr. Denney's testimony, the solution is not to set an
3 arbitrary rate for CFA changes that prevents Qwest from recovering costs.
4 Instead, the solution is for Eschelon to improve its quality control and to minimize
5 the number of CFA changes it requires.

6 *Issue 4-5(c)*

7 **Q. WITH RESPECT TO ESCHELON'S CLAIM THAT SEPARATE RATES**
8 **SHOULD BE SET FOR LOOPS, TRANSPORT, AND CFA DESIGN**
9 **CHANGES, IS MR. DENNEY CORRECT IN ASSERTING (PAGES 23 TO**
10 **25) OF HIS REBUTTAL TESTIMONY) THAT IT IS IRRELEVANT THAT**
11 **QWEST'S SINGLE RATE FOR DESIGN CHANGES IS LISTED IN THE**
12 **"MISCELLANEOUS CHARGES" SECTION OF EXHIBIT A OF THE**
13 **ICA?**

14 **A.** No. If the design change charge applied only to Unbundled Dedicated Interoffice
15 Transport ("UDIT") and not to unbundled loop and CFA design changes, as Mr.
16 Denney claims, the rate would appear in the section of Exhibit A that lists rates
17 specific to UDIT, (*i.e.*, Section 9.6). That section includes multiple rates that
18 apply only to UDIT. For example, the UDIT section of Exhibit A lists the
19 transport-specific rates for "DSO UDIT (Recurring Fixed and per Mile)." These
20 rates apply only to transport and not to other UNEs or services. By contrast, rates
21 listed in the "Miscellaneous Charges" section of Exhibit A, Section 9.20, may
22 apply in multiple circumstances and, in several instances, to more than one
23 network element or activity. For example, the service referred to as "Additional
24 Engineering – per Half Hour or fraction thereof" is not limited to a single
25 interconnection service or network element and could be used in several different
26 scenarios.

27 Mr. Denney's reading of Exhibit A illogically assumes that Qwest and Eschelon
28 included a transport-specific charge in a section of the ICA pricing exhibit that is

1 not specific to transport and that applies to multiple elements, services and
2 activities. The illogic of this reading is further demonstrated by the fact that, as
3 Ms. Million describes in her rebuttal testimony, the cost study upon which the
4 design change charge is based is not limited to transport and includes both
5 unbundled loops and CLEC-caused CFA changes.

6 **Q. IS THERE ANY MERIT TO MR. DENNEY'S CLAIM THAT THE COST**
7 **STUDY USED TO SET THE DESIGN CHANGE CHARGE IS BASED**
8 **EXCLUSIVELY ON DESIGN CHANGE CHARGES FOR TRANSPORT?**

9 A. No. Ms. Million explains in both her rebuttal and surrebuttal testimony that the
10 cost study specifically includes costs and activities relating not just to transport-
11 related design changes, but also to costs and activities for loop and CFA design
12 changes.

13 **Q. MR. DENNEY ALSO IMPLIES AT PAGES 23 TO 25 OF HIS REBUTTAL**
14 **TESTIMONY THAT QWEST CANNOT ASSESS ANY OF THE**
15 **MISCELLANEOUS CHARGES IN EXHIBIT A UNLESS A PROVISION**
16 **IN THE BODY OF THE ICA OR SGAT SPECIFICALLY REFERS TO**
17 **AND AUTHORIZES THE CHARGE. IS THIS A CORRECT**
18 **INTERPRETATION OF THE ICA?**

19 A. No. Qwest's ability to charge the miscellaneous rates in Exhibit A is not
20 dependent upon a specific reference to the rate in the body of a specific section of
21 the ICA or SGAT. Exhibit A is a comprehensive listing of the elements and
22 services that are available under the ICA and the rates that apply to them. The
23 presence of an element or service in Exhibit A establishes an obligation on
24 Qwest's part to provide the element or service at the listed price, and an obligation
25 on Eschelon's part to pay the listed price. There are multiple examples of rates
26 listed in Exhibit A that are not specifically referred to in the body of the ICA, but
27 that nevertheless clearly apply to Qwest's and Eschelon's business relationship.
28 For example, "Additional Engineering – per Half Hour or fraction thereof" could

1 apply to different types of UNEs and services where Eschelon has an additional
2 need to complete an engineering job. This is available for use with different
3 UNEs and services, even though there is no language in the provisions of the ICA
4 addressing individual services and UNEs that refers to the "Additional
5 Engineering" rate element. If CLECs could only order the rate elements in
6 Exhibit A that are specifically referred to in each section of the ICA, the number
7 of elements and services that would be available to Eschelon under the ICA
8 would be significantly reduced. That result would not be in Eschelon's interest,
9 which Mr. Denney may not have realized when he presented this argument in his
10 testimony.

11 **Q. PLEASE RESPOND TO MR. DENNEY'S ASSERTION AT PAGES 33**
12 **AND 34 OF HIS REBUTTAL TESTIMONY THAT ESCHELON HAS NO**
13 **OBLIGATION TO SUBMIT A COST STUDY TO SUPPORT THE**
14 **DESIGN CHANGE RATES THAT IT IS PROPOSING.**

15 A. In claiming that CLECs have no obligation to submit cost studies in support of the
16 rates they are proposing, Mr. Denney ignores the Act's basic requirement – set
17 forth in Section 252(d)(1) – that rates must be based on the cost of providing an
18 interconnection service or UNE. Section 252(e) (2) prohibits state commissions
19 from approving ICAs that do not comply with this requirement. Without a cost
20 study or any other evidence to support Eschelon's proposed design change rates,
21 the Commission has no basis for determining whether Eschelon's rates meet the
22 Act's pricing requirement and, in turn, whether the ICA is lawful. Mr. Denney's
23 cavalier position that CLECs can demand rates without providing any cost
24 support for them has no support in the Act.

25 Mr. Denney does correctly point to statements from the FCC requiring ILECs to
26 submit proof of the costs they incur. However, he then inaccurately asserts that
27 Qwest did not meet that burden with respect to design changes.

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III. Issue 9-31 - Access to UNEs

Q. PLEASE PROVIDE A BRIEF SUMMARY OF THIS ISSUE.

A. This issue involves language in Section 9.1.2 of the ICA that defines the access that Qwest will provide Eschelon to the UNEs that Qwest makes available under Section 251(c)(3) of the Act. Consistent with applicable legal requirements, Qwest has agreed to ICA language obligating it to provide Eschelon with non-discriminatory access to UNEs at agreed service performance levels and to perform "those Routine Network Modifications that Qwest performs for its own End User Customers."

Q. HAS QWEST ATTEMPTED TO ADDRESS ESCHELON'S CONCERNS IN THIS SECTION?

A. Yes. Using Eschelon's language as a starting point and with Qwest's red-lined changes, Qwest proposed the following language:

Additional activities available for Access to Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through, e.g., design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) **at the applicable rate.**

Qwest has offered this language as a good faith effort to settle this dispute between the parties.

Q. WHAT IS QWEST'S CONCERN WITH THE WORDS "ACCESS TO" THAT APPEARS IN ESCHELON'S PROPOSED LANGUAGE?

A. Typically, when one refers to "access" to a UNE, it is in the context of the CLEC paying a recurring rate to be able to "use" the UNE. Qwest is concerned that Eschelon is attempting to redefine "access" to include not only moving and adding to a UNE, but also to include a long list of design changes -- "maintenance of service including trouble isolation," "additional dispatches," and "cancellation of orders." These activities are not included in the recurring rates for UNEs.

1 Qwest's concern about Eschelon's intention is increased by the fact that Eschelon
2 witness Mr. Starkey has testified in other proceedings that in Eschelon's view;
3 literally "thousands" of activities are included in the mandatory access to UNEs
4 that Qwest must provide. Although Eschelon cannot even identify these
5 thousands of activities, it claims nonetheless that all of them are either included in
6 existing UNE recurring rates or, in a small number of instances, must be provided
7 upon Eschelon's payment of a cost-based TELRIC rate. In other words, Eschelon
8 is claiming that all of these unidentified activities are part of "access" to a UNE
9 and that a tariffed, non-TELRIC rate cannot apply to any of these activities. The
10 obvious flaw in this contention is that Eschelon is categorizing activities as
11 relating to "access" and being TELRIC-based without knowing what they are.
12 That is precisely why Qwest has proposed the "at the applicable rate" language
13 that I quote above. Unlike Eschelon's language, Qwest's language recognizes the
14 *possibility* that some of the many activities encompassed by the terms "moving,
15 adding to, repairing and changing" may not be part of access to a UNE and may
16 not be governed by TELRIC rates.

17 Moreover, when viewing Eschelon's proposed definition of "access," including
18 the words "adding" and "moving," the logical response is to ask what these terms
19 mean. Does the proposal mean that when Eschelon orders access to one
20 unbundled loop, Qwest must add to it, (*e.g.*, install a second unbundled loop) at
21 no additional charge? What does moving mean? Does it mean that accessing a
22 UNE through payment of a monthly recurring rate somehow obligates Qwest to
23 move it at no additional charge? Does "moving" mean that Qwest must somehow
24 move the UNE only at the same location, or perhaps even across town? The point
25 is that this language is far-reaching and creates an unacceptable level of exposure
26 and financial risk for Qwest, which can only be protected against by obligating
27 Eschelon to pay for these activities "at applicable rates."

1 **Q. IS QWEST'S CONCERN ABOUT THE FINANCIAL EXPOSURE**
2 **CREATED BY ESCHELON'S LANGUAGE MORE THAN**
3 **HYPOTHETICAL?**

4 A. Yes. Mr. Denney expressly testified in the Minnesota arbitration that the costs of
5 most of the activities encompassed by Eschelon's language are included in
6 monthly recurring rates. Eschelon's proposal could thus prevent Qwest from
7 recovering its costs and would effectively require it to provide services for free.
8 With that in mind, Qwest proposed the language I set forth above, which we
9 believe properly balances Eschelon's concern that the listed services are available
10 and Qwest's concern that it be properly compensated for providing the services.

11 **Q. AT PAGES 88 TO 90 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**
12 **DISCUSSES A QWEST CMP CHANGE INVOLVING A RESTRICTION**
13 **THAT QWEST PLACED ON THE NUMBER OF VERBAL CFA**
14 **CHANGES CLECs ARE PERMITTED TO SUBMIT ON DUES DATES.**
15 **DOES THIS "EXAMPLE" SUPPORT ESCHELON'S PROPOSAL**
16 **RELATING TO THE SCOPE OF THE ACCESS TO UNES THAT QWEST**
17 **SHOULD PROVIDE?**

18 A. No. As I discuss in my rebuttal testimony at pages 13 and 14, the "example" that
19 Mr. Starkey refers to is a September 2006 CMP notice regarding a process
20 clarification for CFA changes that did not deny access to any UNEs or UNE
21 activities. Rather, it was a reasonable clarification by Qwest regarding the
22 process for CFA changes on the due date. Qwest was attempting to address
23 concerns created by CLECs who were abusing the CFA change process.

24 **Q. HAS ESCHELON AGREED THAT QWEST'S PROPOSED LANGUAGE**
25 **COULD SETTLE THE ISSUE BETWEEN THE PARTIES?**

26 A. No. At pages 77 and 78 of his rebuttal testimony, Mr. Starkey repeats Eschelon's
27 claim that these activities should be cost based, while ignoring Qwest's concern
28 that Eschelon's language would require Qwest to provide services for free. Mr.
29 Starkey fails to show that Eschelon's language is not susceptible to an

1 interpretation that would require Qwest to provide services without compensation.
2 Nor does he show Eschelon's language would permit Qwest to charge TELRIC
3 rates for these activities separate and apart from the monthly recurring rate for
4 UNEs.

5 **IV. Issue Nos. 9-33 and 9-34 – Qwest Network Maintenance And Modernization**
6 **Activities**

7 *Issue 9-33*

8 **Q. HAS ESCHELON REVISED ITS ICA PROPOSALS RELATING TO**
9 **ISSUE 9-33?**

10 A. Yes. Eschelon has three different proposals relating to this issue, as set forth at
11 pages 162-163 of Mr. Starkey's direct testimony. Under Eschelon's first proposal,
12 Qwest would be prohibited from making network changes that "adversely affect
13 service to any End User Customers." Eschelon's second proposal includes this
14 same prohibition, but it allows for "a reasonably anticipated temporary service
15 interruption, if any, needed to perform the work." Eschelon's third proposal is as
16 follows: "If such changes result in the CLEC's End User Customer experiencing
17 unacceptable changes in the transmission of voice or data, Qwest will assist the
18 CLEC in determining the source and will take the necessary corrective action to
19 restore the transmission quality to an acceptable level if it was caused by the
20 network changes."

21 **Q. WHAT IS THE COMMON FLAW WITH EACH OF THESE**
22 **PROPOSALS?**

23 A. The common flaw is that each proposal contains broad, undefined terms that
24 would put Qwest at risk of violating the ICA whenever it makes modernization
25 and maintenance changes to its network. As I have described in my prior
26 testimony, Eschelon has not offered any definition of what it would mean to
27 "adversely affect" service to an End-User customer. Although I expressed
28 Qwest's concern about the vagueness of this term in both my direct and rebuttal

1 testimony, Eschelon still has not come forward with any definition of the term or
2 with any standard by which the parties would determine whether a change to the
3 network has a prohibited "adverse affect" on an End-User. Further, Eschelon's
4 new, third proposal is as vague as its first two proposals. Specifically, the third
5 proposal prohibits "unacceptable changes" in transmission, but, again, Eschelon
6 does not tie this term to any standard or metric. As a result, disputes involving
7 whether a change violates the ICA would hinge on subjective evaluations of
8 whether a change was "unacceptable." With that vagueness in the ICA, Qwest
9 would be left guessing about whether a network change is prohibited under the
10 ICA and would almost certainly have reduced incentive to perform network
11 maintenance and modernization. That result would not be in the interest of either
12 party and, more importantly, could result in Utah consumers not receiving the full
13 benefits of network maintenance and modernization.

14 **Q. DOES MR. STARKEY CITE ANY RELEVANT LEGAL AUTHORITY IN**
15 **SUPPORT OF ESCHELON'S "NO ADVERSE AFFECT" PROPOSAL?**

16 A. No. In support of this proposal, Mr. Starkey relies (page 110) on 47 CFR
17 § 51.319(a)(8), which is one of the FCC rules that defines the access to unbundled
18 loops that ILECs are required to provide. The portion of the rule that Mr. Starkey
19 relies upon provides that an ILEC "shall not engineer the transmission capabilities
20 of its network in a manner . . . that disrupts or degrades access to a local loop or
21 subloop" Mr. Starkey states that this provision has the same effect as
22 Eschelon's "no adverse affect" proposal, but this assertion ignores the fact that the
23 context and language of the FCC's rule is different from Eschelon's proposal.

24 First, the FCC rule specifically addresses the type of access an ILEC must provide
25 to a local loop, and is not intended to define the level of transmission quality that
26 an ILEC must ensure exists following network maintenance and modernization
27 activities. Second, the rule establishes a general obligation of an ILEC and, of
28 course, is not intended to serve as contract language. The rule therefore does not
29 have the level of specificity required for an ICA, as it is recognized that ILECs

1 and CLECs must agree upon or arbitrate the specific contract language that is
2 needed to implement FCC rules and orders. Third, when the FCC uses the terms
3 "disrupt" and "degrade," it does so in specific reference to the access an ILEC
4 must provide to a loop, and not in reference to the level of service to an end-user
5 customer.

6 Similarly, Rule 51.316(b), which Mr. Starkey also cites, does not relate to
7 network maintenance and modernization activities. Instead, it involves
8 conversions from wholesale services to UNEs. While that section uses the term
9 "adversely affecting," it does not purport to be a contractual provision and thus
10 does not attempt to define when a conversion would result in an "adverse effect."

11 **Q. CITING AGREED ICA LANGUAGE IN SECTION 9.1.9, MR. STARKEY**
12 **ASSERTS AT PAGE 117 OF HIS REBUTTAL TESTIMONY THAT YOU**
13 **HAVE INCORRECTLY REPRESENTED THAT ESCHELON'S**
14 **PROPOSAL WOULD IMPEDE QWEST'S ABILITY TO PERFORM**
15 **NETWORK MODERNIZATION AND MAINTENANCE. IS HE**
16 **ACCURATELY DESCRIBING YOUR POSITION?**

17 A. No. Section 9.1.9 does provide that Qwest can make necessary modifications and
18 changes to UNEs in its network. However, the problem is that Eschelon's
19 proposal dilutes this essential right by prohibiting changes that have an undefined
20 "adverse effect." My point is not that Qwest is without a right to make network
21 maintenance and modernization changes. Instead, my point is that faced with a
22 prohibition against changes that have an "adverse effect" and undefined
23 consequences for violating that prohibition, Qwest would have substantial risk
24 whenever it were to make a network change. The presence of that risk, which
25 would result from Eschelon's language, would inevitably reduce Qwest's incentive
26 to carry out network changes.

27

1 *Issue 9-33(a)*

2 **Q. IS THIS ISSUE CLOSED?**

3 A. Yes. As I reported earlier, the parties have resolved this issue.

4 *Issue 9-34*

5 **Q. MR. STARKEY ASSERTS THAT SINCE ESCHELON IS ONLY**
6 **SEEKING DETAILED INFORMATION IN NOTICES WHEN QWEST'S**
7 **NETWORK CHANGES HAVE CUSTOMER-SPECIFIC EFFECTS, THE**
8 **NOTICE REQUIREMENT IS NARROWLY TAILORED AND IS NOT**
9 **BURDENSOME. IS THIS ASSERTION ACCURATE?**

10 A. No. Despite Mr. Starkey's testimony, Eschelon's proposed language relating to
11 notice requirements would appear to require Qwest to provide detailed notices
12 that include circuit IDs and customer addresses whenever an Eschelon end-user
13 might be affected. Thus, in the examples I provide in my testimony relating to
14 switch software upgrades and changes in dialing plans, it would appear that
15 detailed notice would be required because the changes would specifically affect
16 Eschelon end-users. If Eschelon's intent is to impose these detailed notice
17 requirements only in the narrow situations that Mr. Starkey describes, Eschelon
18 should modify its proposed ICA language to make that clear. For example, at
19 page 116 and 117 of his rebuttal testimony, Mr. Starkey states that "The changes
20 that Ms. Stewart points to (dialing plan changes and switch software upgrades)
21 are not specific to an End User Customer, so Qwest would not be required to
22 provide the circuit ID (and customer address) information." But that is not what
23 Eschelon's proposed ICA language says. Instead, the language states only that
24 Qwest will comply with these detailed notice requirements for changes "specific
25 to an End User Customer," without ever defining what this phrase means.

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V. Issue 9-53 – Access To UCCRE

Q. DOES THE ABSENCE OF ANY DEMAND FOR THE UCCRE PRODUCT GIVE RISE TO CONCERNS ABOUT THE LOGIC OF THE PRODUCT WITHDRAWAL PROCESS THAT ESCHELON IS PROPOSING THROUGH ITS ALTERNATIVE PROPOSAL NOS. 2, 3, AND 4 FOR THIS ISSUE?

A. Yes. Eschelon appears to be proposing a product withdrawal process specifically in response to Qwest's desire to cease offering the UCCRE products for which there is no demand at all in Utah, or in any other state in Qwest's region. It does not seem either logical or efficient to initiate a time-consuming, resource-intensive generic docket relating to product withdrawals in response to Qwest's attempt to cease offering products that no CLEC is ordering or has ever ordered. The fact that there is no demand at all for this product and no legal obligation to provide it, should provide a sufficient basis for Qwest to stop offering them. It should not be necessary to go through a time-consuming generic docket to reach this logical and seemingly inevitable outcome. As I explain in my rebuttal testimony, Qwest is attempting to grandfather the service for existing CLECs that have UCCRE in their interconnection agreement, and to not offer the service (for which there is not interest or demand) for new CLEC agreements.

Q. WHY DOES QWEST BELIEVE THAT THIS ARBITRATION BETWEEN TWO CARRIERS IS NOT THE APPROPRIATE FORUM FOR THE COMMISSION TO CONSIDER AND POTENTIALLY ADOPT A PROCESS THAT COULD AFFECT ALL UTAH LOCAL EXCHANGE CARRIERS?

A. Interconnection arbitrations involve disputes between an ILEC and a CLEC that relate to specific disagreements over the language to include in an ICA. As set forth in Section 252 of the Act, arbitrations must be preceded by at least 135 days of negotiations between an ILEC and a CLEC that focus on the language in an ICA. By imposing this negotiation requirement, the Act is designed to facilitate

1 voluntary agreements between ILECs and CLECs and to limit the number of
2 disputed issues that a state commission must decide. In this regard, Section
3 252(b)(4) limits the arbitration authority of state commissions to the open or
4 disputed issues that remain after at least 135 days of negotiations and that are set
5 forth in the petition for arbitration and any response to the petition: "The State
6 commission shall limit its consideration of any petition under paragraph (1) (and
7 any response thereto) to the issues set forth in the petition and in the response, if
8 any, filed under paragraph (3)." Section 252(b)(4)(A).

9 This requirement for state commissions to limit the exercise of their arbitration
10 authority to issues that were negotiated by an ILEC and a CLEC but left
11 unresolved or open means that interconnection arbitrations are not the proper
12 forum for commissions to implement broad changes in rules and processes that
13 apply to all local exchange carriers and that were not negotiated by the particular
14 ILEC and CLEC involved in the arbitration. Instead, commissions are permitted
15 only to consider disputed, negotiated issues relating to specific language to
16 include in ICAs. This requirement ensures that after at least 135 days of
17 negotiations, the issues that will be presented to state commissions in
18 interconnection arbitrations for resolution will generally be well-defined, and the
19 parties' positions relating to the issues will be thoroughly developed. Here, Qwest
20 and Eschelon did not negotiate Eschelon's broad proposal for adoption of a
21 generic product withdrawal process. Eschelon made this proposal only after the
22 Minnesota Department of Commerce presented a similar proposal in the
23 Minnesota arbitration. Thus, Eschelon's proposal is not properly part of this
24 arbitration proceeding and should be addressed, if at all, in a broader context that
25 allows other interested parties to provide input.

26

1 **Q. DOES ESCHELON PROVIDE ANY REBUTTAL TO YOUR TESTIMONY**
2 **THAT THERE IS NO DEMAND FOR UCCRE FROM ESCHELON OR**
3 **OTHER CLECS?**

4 A. No. Again, Mr. Denney addresses this issue largely by repeating arguments he set
5 forth in his direct testimony. I have already addressed those arguments in my
6 rebuttal testimony. Mr. Denney does not contest the fact that Eschelon and other
7 CLECs have not ordered, and do not intend to order, UCCRE. Once again, the
8 absence of any rebuttal from Mr. Denney relating to this fact undermines any
9 claim by Eschelon that it would be competitively impaired if Qwest were to not
10 provide access to UCCRE in the ICA.

11 **Q. HAS UCCRE EVER BEEN ORDERED BY ESCHELON OR ANY OTHER**
12 **CLEC?**

13 A. No. CLECs have not ordered UCCRE.

14 **Q. IS THERE ANY ALTERNATIVE AVAILABLE IN THE UNLIKELY**
15 **EVENT A CLEC DECIDES IN THE FUTURE THAT IT DESIRES THE**
16 **UCCRE FUNCTIONALITY?**

17 A. Yes, the same functionality is available as a tariffed service known as Command-
18 A-Link.

19 **VI. Issues 9-55 – Combination of Loops and Transport**

20 **Q. CAN YOU PROVIDE A VERY BRIEF OVERVIEW OF THIS ISSUE?**

21 A. The dispute covered by Issue 9-55 arises from Eschelon's attempt to define a
22 "Loop Transport Combination" as a generic "umbrella" EEL and then to sweep
23 unique products and commingled circuits with unique terms and conditions under
24 this umbrella.

25

1 **Q. DOES MR. STARKEY'S TESTIMONY CREATE ANY ADDITIONAL**
2 **CONCERNS FOR QWEST REGARDING ESCHELON'S PROPOSED USE**
3 **OF THIS TERM?**

4 A. Yes. On page 128 of his rebuttal testimony, Mr. Starkey states that the goal of
5 Eschelon's language is to provide expressly in the ICA that the UNE piece of a
6 loop-transport combination is governed by the ICA. This can be (and has been
7 through Qwest's language) addressed without using the confusing "Loop-
8 Transport Combination" umbrella term that masks the critical differences between
9 the three different Qwest products that are combinations of loops and transport.

10 Qwest's fundamental concern is that Eschelon's proposal to use the term "Loop-
11 Transport Combination" in the agreement is intertwined with its proposals in
12 Issue 9-58 (a, b, c, d, e) to treat commingled EELs as if the complete circuit is a
13 UNE. Because different pricing and provisioning obligations apply to
14 commingled EELs, on the one hand, and combinations of UNE loops and UNE
15 transport, on the other, there is a legal requirement not to treat commingled EELs
16 as though the entire circuit is a UNE. But Eschelon's proposal confuses these
17 distinctions and creates unnecessary and improper confusion. It is both clearer
18 and more consistent with governing law to list and treat individually in the ICA
19 each of Qwest's three distinct products that are combinations or commingled
20 arrangements of loops and transport. Qwest's language properly identifies the
21 individual terms and conditions for each EEL arrangement.

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

25 A. For the reasons I have identified here and in my direct and rebuttal testimony,
26 Qwest recommends the Commission adopt the Qwest position and that it reject
27 the Eschelon Loop-Transport Combination language.

1 Qwest has developed and implemented separate and distinct systems, procedures
2 and provisioning intervals for EELs, combinations of UNEs and tariffed private
3 line services and is under no legal requirement to implement costly modifications
4 to provide Eschelon's proposed "loop-transport combination" umbrella product. If
5 Eschelon's true concern is that UNEs be governed under the ICA and
6 Commission jurisdiction while non-UNE (*e.g.*, private line) circuits are governed
7 under the tariff, Qwest proposed ICA language addresses their concern.² Qwest
8 recommends the Commission adopt the Qwest proposed resolution and that it
9 reject the Eschelon Loop-Transport Combination language.

10 **VII. Issues 9-56 And 9-56a – Service Eligibility Criteria Audits**

11 **Q. DOES MR. DENNEY CITE ANY RULINGS FROM THE FCC THAT**
12 **SUPPORT ESCHELON'S DEMAND THAT QWEST BE PERMITTED TO**
13 **CONDUCT SERVICE ELIGIBILITY AUDITS ONLY UPON A**
14 **DEMONSTRATION OF A REASON OR "CAUSE" FOR SUCH AN**
15 **AUDIT?**

16 A. No. Mr. Denney's rebuttal testimony simply repeats the partial quote from the
17 FCC's *Supplemental Order Clarification* that Mr. Denney claims supports the
18 imposition of a good cause requirement before an ILEC can conduct a service
19 eligibility audit. However, as I discuss in my rebuttal testimony, the
20 *Supplemental Order Clarification* was superseded by the *TRO*, which does not
21 condition the right of an ILEC to conduct a service eligibility audit on a
22 demonstration of good cause. Moreover, Mr. Denney fails to discuss footnote
23 1898 from the *TRO* in which the FCC summarizes the audit rights it established in
24 the *Supplemental Order Clarification*. Nowhere in that summary does the FCC
25 suggest that it adopted a good cause requirement in the *Supplemental Order*
26 *Clarification*. Finally, I observed in my rebuttal testimony that it is curious that in
27 his direct testimony, Mr. Denney did not quote or describe in any detail the FCC's

² See Rebuttal Testimony of Karen A. Stewart at pp. 34 to 35.

1 rulings in the *TRO* relating to audit rights, since that is the FCC's latest
2 pronouncement on the issue. In his rebuttal testimony, Mr. Denney again fails to
3 discuss or even mention the service eligibility audit framework the FCC
4 established in the *TRO*.

5 **Q. AT PAGE 82 OF HIS REBUTTAL TESTIMONY, MR. DENNEY STATES**
6 **THAT WITHOUT A CAUSE REQUIREMENT, "OTHERWISE, THE**
7 **AUDIT PROCESS BECOMES A POTENTIAL TOOL FOR BULLYING**
8 **RATHER THAN A MEASURE FOR ASSURING COMPLIANCE." IS**
9 **THERE ANY VALIDITY TO THIS ASSERTION?**

10 A. No. As I describe in detail in my direct and rebuttal testimony, the audit
11 framework the FCC adopted ensures that ILECs will not abuse the audit process
12 by: (1) limiting audits to once per year, and (2) requiring an ILEC to pay a
13 CLEC's costs of responding to the audit if the auditor determines that the CLEC is
14 in compliance with the service eligibility criteria. Mr. Denney continues to refuse
15 to acknowledge these components of the *TRO*'s audit framework, which have
16 been incorporated into the ICA through agreed-upon language in Section
17 9.23.4.3.1.3.5.

18 **Q. DOES MR. DENNEY CITE ANY LANGUAGE FROM THE *TRO* TO**
19 **SUPPORT ESCHELON'S DEMAND THAT BEFORE CONDUCTING AN**
20 **AUDIT, QWEST MUST IDENTIFY THE SPECIFIC CIRCUITS ON A**
21 **HIGH-CAPACITY EEL THAT QWEST BELIEVES DO NOT MEET THE**
22 **SERVICE ELIGIBILITY CRITERIA?**

23 A. No. Mr. Denney fails to cite any rulings or language from the *TRO* that supports
24 this demand. In fact, there is no such requirement in the *TRO*, just as there is no
25 requirement for an ILEC to demonstrate good cause before conducting an audit.

1 **VIII. Issues 9-58 (All a, b, c, d, e) Ordering, Billing, and Circuit ID for**
2 **Commingled Arrangements**

3 **Q. HAS QWEST BEEN ABLE TO IDENTIFY THE SPECIFIC COSTS**
4 **ASSOCIATED WITH ESCHELON'S REQUEST THAT PRIVATE LINE**
5 **ACCESS SERVICES BE PROVISIONED WITH AN LSR AND BILLED**
6 **WITHIN THE CRIS BILLING SYSTEM?**

7 A. It is not possible to identify the precise costs that would be required to make these
8 significant changes, as that determination would require significant work and cost
9 analysis. However, it is clear that the magnitude of these changes is such that
10 they would require extensive work and a large investment of costs, relating to
11 both analyzing the process changes required and then implementing them. In
12 many respects, the effects of implementing these changes within Qwest's
13 provisioning systems would be similar to those that would result from rate
14 ratcheting (*i.e.*, billing a single circuit at multiple rates, both UNE and private line
15 access). With ratcheting, a first step would have required that either the Qwest
16 Customer Records Information System ("CRIS") or the Integrated Access Billing
17 System ("IABS") would have been modified so that it performs cross-billing and
18 cross-association of products. In an affidavit submitted by Qwest in New Mexico
19 in 2002 in Utility Case No. 3495 regarding the potential of requiring Qwest to
20 ratchet rates, Qwest demonstrated that a switch in billing UNEs from Qwest's
21 CRIS system to its IABS system alone would require many thousands of hours in
22 coding and other work. This was in addition to the daunting challenge of the
23 necessary transfer of ordering UNEs on LSRs to ordering UNEs on ASRs, as
24 private line access is ordered today. While I realize that Eschelon is not
25 specifically requesting ratcheting at this time, the net effect of its demands is that
26 Qwest would allow Eschelon to order private line access circuits via an LSR and
27 to bill them in CRIS, which could result in very similar work efforts as would
28 have been required for the ratcheting proposal that I describe above.

1 **Q. PLEASE ADDRESS MR. DENNEY'S REBUTTAL TESTIMONY AT**
2 **PAGE 87 WHERE HE AGAIN STATES THAT ESCHELON ONLY**
3 **WANTS QWEST TO ALIGN "THE ORDERING, TRACKING AND**
4 **REPAIR, AND BILLING PROVISIONS OF A POINT-TO-POINT UNE**
5 **EEL AND A POINT-TO POINT COMMINGLED EEL," BUT THAT THIS**
6 **IS NOT A REQUEST TO HAVE QWEST MODIFY ITS SYSTEMS.**

7 A. Qwest does not understand Eschelon's position, unless Eschelon is saying that
8 Qwest does not need to modify its systems. The only way that Qwest could avoid
9 modifying its systems to meet the far-reaching changes that Eschelon is proposing
10 would be if Qwest performed each of the tasks I list above on a manual basis. If
11 that were the case, implementation of manual procedures would impose
12 significant time demands and costs on Qwest. In addition to the manually-
13 intensive day-to-day work that would be required, Qwest would have to invest
14 substantial amounts of time to train its personnel performing this work so that
15 they could respond to orders any degree of processing consistency. All of this
16 effort would be for just one CLEC in one state with a limited number of orders.

17 **Q. WHEN A CLEC REQUESTS A COMMINGLED ARRANGEMENT, DOES**
18 **QWEST BELIEVE IT WOULD MORE OFTEN BE WITH AN**
19 **INTRALATA ACCESS PRIVATE LINE OR WITH AN INTERSTATE**
20 **ACCESS PRIVATE LINE?**

21 A. Based on my experience with commingled arrangements, I believe most CLECs
22 would choose the maximum network flexibility of commingling with a private
23 line access circuit from the Qwest FCC tariffs, not a state tariff private line.

24

1 **Q. IS THE FACT THAT CLECS ARE LIKELY TO COMMINGLE WITH**
2 **PRIVATE LINE ACCESS CIRCUITS OBTAINED THROUGH FCC**
3 **TARIFFS RELEVANT TO WHETHER THE COMMISSION SHOULD**
4 **CONSIDER ESCHELON'S PROPOSAL HERE OR IN A SEPARATE,**
5 **GENERIC PROCEEDING?**

6 A. Yes. I am not an attorney, but I do not believe this Commission has jurisdiction
7 over FCC access private line tariffs. Since I am not an attorney, I certainly
8 acknowledge that this issue is better handled in briefs than through my testimony.

9 **IX. Issues 9-59 – Eschelon Alternate Commingled EEL Repair Language**

10 **Q. DOES MR. DENNEY ACKNOWLEDGE IN HIS REBUTTAL**
11 **TESTIMONY THAT QWEST'S PROPOSED REPAIR PROCESS FOR**
12 **COMMINGLED ARRANGEMENTS WOULD NOT RESULT IN A CLEC**
13 **PAYING FOR A TROUBLE ISOLATION CHARGE IF TROUBLE WERE**
14 **FOUND IN QWEST'S NETWORK?**

15 A. Yes, Mr. Denney makes that acknowledgement at page 92 of his rebuttal
16 testimony. However, even with this clarification, Eschelon is still concerned
17 about Qwest's repair language because the language recognizes the reality that
18 there may be times when a second repair ticket is required.

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

22 A. No. In response to the concerns that Eschelon expressed about the repair process
23 for commingled EELs, Qwest took the significant step of agreeing to modify its
24 process to eliminate, in most cases, the need for Eschelon to submit a second
25 trouble ticket. However, it is entirely unrealistic to assume that a second trouble
26 ticket would never be needed. For example, if Eschelon were to incorrectly
27 identify the trouble with a commingled EEL as being associated with the non-
28 UNE circuit of the arrangement, it would be unavoidable that a second trouble
29 ticket would have to be submitted that correctly identifies the trouble as being

1 associated with the UNE circuit. Nor does Eschelon dispute that there are
2 situations where a second repair ticket is required for some private line and UNE
3 combinations.

4 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION WITH**
5 **REGARD TO ISSUE 9-59?**

6 A. Issue 9-59 identifies an alternative proposal for addressing commingled EEL
7 repairs if Eschelon's demands that Qwest modify its ordering, installation, repair
8 and billing process for Commingled EELs in Issue 9-58 (a, b, c, d, e) are not
9 adopted by the Commission. Qwest's processes for handling UNEs and special
10 access services involve many employees, processing steps and service centers
11 over 14 states, and it would therefore be extremely difficult and costly for Qwest
12 to make a change to this process for a single CLEC in a single state.

13 I recommend that the Commission reject Eschelon's Issue Nos. 9-58 (a, b, c, d, e)
14 and its alternate proposal in Issue 9-59, and adopt Qwest's proposed repair process
15 for commingled EELs as outlined in my rebuttal testimony. The newly-proposed
16 Qwest repair process addresses Eschelon's repair concerns. It could be
17 implemented for Eschelon and all other CLECs cost-effectively and as a part of
18 Qwest's existing repair systems.

19 **X. Issue 9-61 (a, b, c) Loop-Mux Combination**

20 **Q. IF QWEST PROVIDES MULTIPLEXING PURSUANT TO UNE RATES,**
21 **TERMS, AND CONDITIONS FOR USE WITH UNE COMBINATIONS,**
22 **WHAT IS THE BASIS FOR THE DISPUTES ENCOMPASSED BY ISSUE**
23 **9-61 AND ITS SUBPARTS?**

24 A. The dispute concerns the rates, terms, and conditions that apply to multiplexing
25 when Qwest provides multiplexing commingled with a non-UNE – typically,
26 private line transport. Because multiplexing is a feature or function of transport,
27 but not of UNE loops, a commingled arrangement that involves tariffed transport
28 and a UNE loop requires that Eschelon and other CLECs obtain multiplexing

1 based on tariffed rates, terms, and conditions. This dispute arises because it
2 appears that Eschelon is insisting that in addition to obtaining multiplexing for
3 UNE combinations pursuant to UNE rates, terms, and conditions, it should be
4 permitted to obtain multiplexing pursuant to those same UNE rates, terms, and
5 conditions when it is used to commingle a UNE loop with non-UNE transport.

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

9 A. Yes. As described in my rebuttal testimony, the FCC confirmed in the *TRO* that
10 multiplexing used with commingled EELs is a tariffed access service and is not
11 governed by UNE terms and pricing. Mr. Starkey never addresses these
12 controlling statements by the FCC. To reiterate, in providing an example of a
13 tariffed "interstate access service" to which a CLEC may attach a UNE, the FCC
14 specifically referred to multiplexing: "Instead, commingling allows a competitive
15 LEC to connect or attach a UNE or UNE combination with an interstate access
16 service, *such as high-capacity multiplexing* or transport services." *TRO*, at
17 ¶ 583. (Emphasis added.) In the very next sentence, the FCC emphasized that
18 "*commingling will not enable a competitive LEC to obtain reduced or*
19 *discounted prices on tariffed special access services . . .*" (Emphasis added.)
20 This portion of the *TRO* directly refutes any claim by Eschelon that it is entitled to
21 multiplexing at UNE rates, terms, and conditions when it obtains multiplexing for
22 use with commingled arrangements.

23

1 **Q. AT PAGES 138 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**
2 **STATES THAT I HAVE INACCURATELY ASSERTED THAT**
3 **ESCHELON IS ATTEMPTING TO OBTAIN MULTIPLEXING AS A**
4 **"STAND ALONE UNE" AND THAT, ON THE CONTRARY, ESCHELON**
5 **IS ONLY SEEKING TO OBTAIN MULTIPLEXING AS A FEATURE,**
6 **FUNCTION, OR CAPABILITY OF THE UNBUNDLED LOOP. IS THERE**
7 **ANY MERIT OR MATERIALITY TO THIS CRITICISM?**

8 A. No. Despite this claim, Mr. Starkey has never explained why central office-based
9 multiplexing used to "mux up" multiple unbundled loops to a higher transport
10 facility is a feature and function of a single individual UNE loop. If central
11 office-based multiplexing used to mux up multiple loops to a higher bandwidth
12 transport facility is not a feature or function of an individual loop, then any
13 request to have Qwest provide central office-based multiplexing separate from
14 transport is clearly a request for stand-alone transport multiplexing.

15 **Q. AT PAGE 142 OF HIS REBUTTAL TESTIMONY, MR. STARKEY**
16 **REPEATS HIS FACTUAL ASSERTION THAT MULTIPLEXING IS A**
17 **"FEATURE, FUNCTION, OR CAPABILITY" OF THE UNE LOOP AND**
18 **ARGUES THAT I HAVE NOT PRESENTED TESTIMONY REBUTTING**
19 **THAT ASSERTION. HOW DO YOU RESPOND?**

20 A. First, the FCC's description of the multiplexing used with commingling as "an
21 interstate access service" should put to rest Mr. Starkey's claim that multiplexing
22 used with commingling is a feature, function, or capability of the UNE loop.
23 Second, this description from the FCC in the *TRO* is consistent with the statement
24 of the FCC's Wireline Competition Bureau in the Verizon-WorldCom Virginia
25 arbitration confirming that loop multiplexing is not a network element: "We thus
26 reject WorldCom's proposed contract language because it defines the 'Loop
27 Concentrator/Multiplexer' as a network element, which the Commission has

1 never done.”³ Third, in my rebuttal testimony, I do refute Mr. Starkey's claim that
2 multiplexing is a feature, function, or capability of the UNE loop. In sum, central
3 office based transport multiplexing is not required for a UNE loop facility to
4 function. If the functioning of a DS1 loop was dependent upon multiplexing,
5 there might be a factual argument that multiplexing is a feature or function of the
6 loop. But since a DS1 loop functions regardless of whether there is transport-
7 related multiplexing used with the loop, multiplexing cannot reasonably be
8 viewed as a "feature, function, or capability" of the loop. In addition, the
9 multiplexing function is provided through equipment that is physically separate
10 from and independent of UNE loops

11 **Q. IS MR. STARKEY CORRECT IN ASSERTING THAT THE FCC**
12 **WIRELINER COMPETITION BUREAU'S STATEMENT IN THE**
13 **VERIZON-WORLDCOM VIRGINIA ARBITRATION IS NOT ENTITLED**
14 **TO WEIGHT BECAUSE IT IS NOT A STATEMENT FROM THE FCC**
15 **ITSELF?**

16 A. No. That argument about the binding effect of the Verizon-WorldCom Virginia
17 order has been presented before, and courts have rejected it. In our post-hearing
18 briefs, Qwest will provide cites to decisions in which federal courts have rejected
19 the contention that the Verizon-WorldCom Virginia- order is not entitled to
20 weight because the Wireline Bureau purportedly does not speak for the FCC as a
21 whole. There also is no merit to Mr. Starkey's claim that the Verizon-WorldCom
22 Virginia order actually undermines Qwest's position because the Wireline Bureau
23 ruled that multiplexing is a feature, function, or capability of UNE transport. As I
24 discussed earlier, Qwest agrees that multiplexing is a feature, function, or
25 capability of UNE transport, and, accordingly, it makes multiplexing available on

³ *In the Matter of Petition of WorldCom, Inc., et al., for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia and for Arbitration*, CC Docket Nos. 00-218, 249, 251, 17 FCC Rcd. 27,039, at ¶ 494 (FCC Wireline Competition Bureau July 17, 2002).

1 UNE rates, terms, and conditions for UNE combinations comprised of UNE loops
2 and UNE transport.

3 However, the fact that multiplexing is a feature, function, or capability of UNE
4 transport does not make multiplexing a feature, function, or capability of the loop.
5 This is a leap that is completely unsubstantiated or even connected to the FCC's
6 statements regarding transport and transport-related multiplexing. Indeed, it is
7 significant that while finding that multiplexing is a feature of UNE transport, the
8 FCC expressly rejected the contention that it is a feature of the loop. If the
9 Wireline Bureau had intended that its finding about multiplexing being a feature
10 of UNE transport also means that multiplexing is a feature of the UNE loop, it
11 presumably would have said so, and certainly would not have expressly rejected
12 WorldCom's contention that loop multiplexing is a UNE.

13 **Q. IS IT IRRELEVANT, AS MR. STARKEY CLAIMS, THAT ESCHELON**
14 **AND OTHER CLECs ARE ABLE TO SELF-PROVISION**
15 **MULTIPLEXING?**

16 A. No. Mr. Starkey argues at pages 141 to 142 of his rebuttal testimony that the
17 ability of CLECs to self-provision multiplexing – and he does not contest the fact
18 that Eschelon has that ability – is only relevant to a "necessary and impair"
19 inquiry under Section 251(d) of the Act into whether ILECs are required to
20 provide network elements as UNEs under Section 251. However, there is at least
21 an implicit undertone to Eschelon's testimony on this issue suggesting that loop
22 multiplexing will not be available at reasonable rates, terms, and conditions if
23 Qwest is not required to provide multiplexing as a UNE. The fact that CLECs
24 self-provision multiplexing and that Eschelon has the ability to do the same
25 responds directly to any suggestion that loop multiplexing is realistically available
26 only through Qwest at UNE rates and terms.

27

1

XI. Conclusion

2

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

3

A. Yes.