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**BEFORE THE PUBLIC UTILITY COMMISSION OF UTAH**

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

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**SURREBUTTAL TESTIMONY**

**OF**

**BONNIE JOHNSON**

**ON BEHALF OF**

**ESCHELON TELECOM, INC.**

August 10, 2007

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1 **I. INTRODUCTION AND EXHIBITS**

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

3 A. My name is Bonnie Johnson and my business address is 730 2<sup>nd</sup> Avenue South,  
4 Suite 900, Minneapolis, Minnesota 55402.

5 **Q. ARE YOU THE SAME BONNIE J. JOHNSON WHO FILED DIRECT**  
6 **TESTIMONY ON JUNE 29, 2007 AND REBUTTAL TESTIMONY ON**  
7 **JULY 27, 2007 IN THIS PROCEEDING?**

8 A. Yes.

9 **Q. PLEASE IDENTIFY THE EXHIBITS TO YOUR TESTIMONY.**

10 A. As part of my testimony, I have included the following exhibits:

- 11 • Exhibit Eschelon 3SR.1: CMP/ICA: Qwest September 27, 2006 Level 1  
12 Notice; Excerpts of Qwest's September 27, 2006 proposed red lined  
13 changes to its Dispatch PCAT; Qwest December 1, 2006 Level 3 notice;  
14 Excerpts of Qwest's December 1, 2006 proposed red lined changes to its  
15 Dispatch PCAT; Qwest initiated CR PC030607-1 Detail; Qwest April 2,  
16 2007 Level 4 Notice; Excerpts of Qwest's April 2, 2007 proposed red  
17 lined changes to its Dispatch PCAT; Eschelon's comments and Qwest's  
18 response to Eschelon comments of the April 2, 2007 Multiple PCAT  
19 changes (including the Qwest Dispatch PCAT); Qwest May 2, 2007 Final

1 notice of May 17, 2007 implementation and Qwest response (above) to  
2 CLEC comments.

3 • Exhibit Eschelon 3SR.2: CMP/ICA: Eschelon initiated CR PC-030603-  
4 1; Screen shot of the External Documentation Requests Process & CLEC  
5 External Process Clarification Request on Qwest's web site; Excerpts  
6 from Qwest's External Documentation Request Process Guide (slides 1,  
7 13 and 14).

8 • Exhibit Eschelon 3SR.3: EXPEDITES: Documentation relating to  
9 additional CMP issues for which a CLEC(s) escalated, Qwest provided a  
10 binding response, and the CLEC took the issue to CMP Oversight for  
11 review (as well as the VCI escalation to which Ms. Albersheim refers<sup>1</sup>).

12 **Q. DID YOU PREPARE THESE EXHIBITS OR HAVE THEM PREPARED**  
13 **UNDER YOUR DIRECTION?**

14 A. The documents in Exhibit Eschelon 3SR.1, Exhibit Eschelon 3SR.2 and Exhibit  
15 Eschelon 3SR.3 were prepared by Qwest. I compiled the exhibits, and they  
16 contain true and correct copies of Qwest's documents.

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<sup>1</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, line 10.

1 **Q. MR. STARKEY REFERS IN HIS TESTIMONY TO YOUR TESTIMONY**  
2 **INCLUDING ITS EXHIBITS. HAVE YOU REVIEWED THAT**  
3 **TESTIMONY, AND IF SO, DID MR. STARKEY TAKE ANY**  
4 **STATEMENT OR EVENT OUT OF CONTEXT?**

5 A. I have reviewed that testimony and, no, Mr. Starkey did not take any statement or  
6 event out of context.

7 **Q. MR. DENNEY REFERS IN HIS TESTIMONY TO YOUR TESTIMONY**  
8 **INCLUDING ITS EXHIBITS. HAVE YOU REVIEWED THAT**  
9 **TESTIMONY, AND IF SO, DID MR. DENNEY TAKE ANY STATEMENT**  
10 **OR EVENT OUT OF CONTEXT?**

11 A. I have reviewed that testimony and, no, Mr. Denney did not take any statement or  
12 event out of context.

13 **Q. PLEASE DESCRIBE EXHIBIT ESCHELON 3SR.1 RELATED TO**  
14 **QWEST MAINTENANCE AND REPAIR/DISPATCH PCAT CHANGES.**

15 A. Exhibit Eschelon 3SR.1 contains several Qwest prepared documents, which I  
16 identify in my above list of exhibits. These documents all relate to an example  
17 Ms. Albersheim provides to support her testimony that “CLECs can prevent  
18 implementation of proposed changes even under the Level 0 and Level 1  
19 notifications.”<sup>2</sup> Ms. Albersheim’s example is the withdrawal of a Level 1 notice  
20 and associated documentation changes. Specifically, she points to a level 1 CMP

1 notice Qwest distributed to withdraw documentation regarding tagging at the  
2 demarc in Qwest's PCATs, because of CLEC concerns.<sup>3</sup> I personally was  
3 involved in that process and was present for all of the related ad hoc and CMP  
4 meetings. What Ms. Albersheim does not explain, is a core concern expressed by  
5 CLECs regarding the Qwest proposed changes related to a key sentence in  
6 Qwest's Dispatch PCAT. Qwest proposed to delete the sentence that reads:  
7 "When a Qwest technician is dispatched to a premise, the Qwest demarcation  
8 point will be tagged if a tag is not present."<sup>4</sup>

9 Although Ms. Albersheim testifies in her July 27, 2007 testimony that Qwest  
10 "withdrew the documentation changes,"<sup>5</sup> Exhibit Eschelon 3SR.1 shows that  
11 Qwest proposed to delete the same sentence in the September 27, 2006 level 1  
12 proposed change to the Dispatch PCAT<sup>6</sup> again in a December 1, 2006 level 3  
13 proposed change to the Dispatch PCAT,<sup>7</sup> and finally again in a April 2, 2007 level  
14 4 proposed change to the Dispatch PCAT.<sup>8</sup> I objected on behalf of Eschelon, but  
15 Qwest implemented the change (i.e., deleted this key sentence) over Eschelon's

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<sup>2</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 8, lines 12-14.

<sup>3</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 8, lines 15-20.

<sup>4</sup> Exhibit Eschelon 3SR.1, p. 3 & p. 6, & p. 13 (See first paragraph under the heading "Description" – showing redlined deletion of this sentence).

<sup>5</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 8, line 19.

<sup>6</sup> Exhibit Eschelon 3SR.1, p. 3.

<sup>7</sup> Exhibit Eschelon 3SR.1, p. 6.

<sup>8</sup> Exhibit Eschelon 3SR.1, p. 13.

1 objections.<sup>9</sup> As a result of Qwest’s implementation, the current Dispatch PCAT  
2 shows that the sentence “When a Qwest technician is dispatched to a premise, the  
3 Qwest demarcation point will be tagged if a tag is not present” no longer appears  
4 in Qwest’s Dispatch PCAT.<sup>10</sup> Ms. Albersheim, uses this as an example of how  
5 “CLECs can prevent implementation of the proposed changes even under the  
6 level 0 and level 1 notifications,”<sup>11</sup> but CLECs were unable to prevent  
7 implementation of Qwest’s objectionable change, which was a core issue of  
8 concern for CLECs. Although Ms. Albersheim refers to the designated level of  
9 the change,<sup>12</sup> changing the level of the change did nothing to prevent Qwest from  
10 implementing this change over our objection.

11 Mr. Starkey references Exhibit Eschelon 3SR.1 when responding to Ms.  
12 Albersheim’s claims regarding CMP.

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<sup>9</sup> Exhibit Eschelon 3SR.1, pp. 14-21.

<sup>10</sup> Exhibit Eschelon 3SR.1, p. 23.

<sup>11</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 8, lines 12-15.

<sup>12</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 8, line 18.

1 **II. SECTION 12 ISSUES: SUBJECT MATTERS 29, 31, 33, AND 43**

2 **A. SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**  
3 **ACKNOWLEDGEMENT OF MISTAKES**

4 *Issues Nos. 12-64, 12-64(a) and 12-64(b): ICA Section 12.1.4 and subparts*

5 **Q. MS. ALBERSHEIM TESTIFIES THAT CHANGES MADE AS A RESULT**  
6 **OF THE MINNESOTA PROCEEDING REGARDING**  
7 **“ACKNOWLEDGEMENT OF MISTAKES . . . ARE DOCUMENTED IN”**  
8 **QWEST’S “PROCESS AND PROCEDURES” AND THAT IT IS**  
9 **UNNECESSARY TO ADDRESS THEM IN THE ICA “BECAUSE THESE**  
10 **ISSUES HAVE BEEN ADDRESSED BY QWEST IN ITS PROCESSES**  
11 **AND PROCEDURES.”<sup>13</sup> HAS QWEST PROVIDED DOCUMENTED**  
12 **PROCESSES AND PROCEDURES REGARDING THESE CHANGES**  
13 **RELATED TO ACKNOWLEDGEMENT OF MISTAKES TO**  
14 **ESCHELON?**

15 **A.** No, and I have found no documentation on Qwest’s web site (specific to  
16 Minnesota or for other states) that documents the procedures ordered by the  
17 Minnesota commission specific to acknowledgement of mistakes in paragraphs  
18 (e), (f), (g), (h), (i), (j), (k), and/or (l) of its order.<sup>14</sup>

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<sup>13</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 32, lines 12-15.

<sup>14</sup> Exhibit Eschelon 1.4, pp. 4-5.



1 Qwest previously told Eschelon that Qwest's *policy* is that Qwest will *not* provide  
2 a written acknowledgement to be provided to the customer, even when the  
3 purpose of the acknowledgement is to correct Qwest mis-information provided to  
4 an Eschelon customer.<sup>15</sup> The Minnesota commission ordered procedures  
5 requiring a change in that policy because the commission required Qwest to  
6 provide written acknowledgments of mistakes in the manner and form described  
7 in its order.<sup>16</sup> Ms. Albersheim has said, regarding ICA language, that "Qwest  
8 determined that language would be necessary in Minnesota given the order that  
9 was issued there,"<sup>17</sup> but Qwest proposes deletion of all such language from the  
10 ICA in Utah. While Ms. Albersheim's rebuttal testimony may suggest that Qwest  
11 has implemented these procedures in Utah,<sup>18</sup> that is not the case. Despite any  
12 suggestion to the contrary in Ms. Albersheim's testimony on this point, this is not  
13 a situation in which the acknowledgment of mistakes procedures are in the PCAT  
14 and Qwest is asking that they not also be included in the ICA.<sup>19</sup> They are not in  
15 the PCAT and, to Eschelon's knowledge, the procedures ordered by the  
16 Minnesota commission specific to acknowledgement of mistakes in paragraphs  
17 (e), (f), (g), (h), (i), (j), (k), and/or (l) of its order<sup>20</sup> are not available in any state

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<sup>15</sup> Exhibit Eschelon 3R, Johnson Rebuttal, p. 4, footnote 8 (quoting email exchange).

<sup>16</sup> Exhibit Eschelon 1.4, pp. 4-5, paragraphs (e), (f), (g), (h), (i), (j), (k), and (l).

<sup>17</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 32, lines 15-16.

<sup>18</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 32, lines 12-13.

<sup>19</sup> This appears to be Qwest's argument regarding root cause analysis for which, as discussed below, there is some documentation in the PCAT.

<sup>20</sup> Exhibit Eschelon 1.4, pp. 4-5.

1 other than Minnesota. Language is needed in the ICA to obtain these terms in  
2 Utah.

3 **Q. MS. ALBERSHEIM SUGGESTS THAT ICA LANGUAGE IS**  
4 **UNNECESSARY BECAUSE “QWEST’S SERVICE MANAGERS WILL**  
5 **PROVIDE ROOT CAUSE ANALYSIS TO A CLEC UPON REQUEST, AS**  
6 **DOCUMENTED IN THE ACCOUNT MANAGEMENT PCAT,”<sup>21</sup>**  
7 **“QWEST HAS A PROCESS FOR ROOT CAUSE ANALYSIS OF REPAIR**  
8 **PROBLEMS”<sup>22</sup> AND, REGARDING THE EXAMPLES IN EXHIBIT**  
9 **ESCHELON 3.44, “THESE EXAMPLES DEMONSTRATE THAT QWEST**  
10 **HAS AN EFFECTIVE ROOT CAUSE ANALYSIS IN PLACE ALREADY**  
11 **FOR REPAIR, AND THAT ESCHELON HAS MADE USE OF THIS**  
12 **PROCESS.”<sup>23</sup> PLEASE RESPOND TO THIS TESTIMONY REGARDING**  
13 **ROOT CAUSE ANALYSIS.**

14 A. Language regarding root cause analysis is needed in the ICA so that Eschelon  
15 may plan its own procedures. ICA language is also needed to help ensure  
16 mistakes that Qwest makes while acting as Eschelon’s vendor will be analyzed so  
17 they may be avoided in the future. If they are not, Qwest may benefit when  
18 Eschelon’s customers become dissatisfied and change carriers because they do not

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<sup>21</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 33, line22 – p. 34 line 1.

<sup>22</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 35, line 6.

<sup>23</sup> Qwest Exhibit 1R, Albersheim Rebuttal, P. 36, lines 17-18.

1 realize it was a Qwest mistake or, as in the Minnesota 616 case, Qwest tells the  
2 customer incorrectly that it was an Eschelon mistake.

3 Qwest's proposal to rely on the PCAT does not meet these needs. First, Qwest  
4 may easily change the PCAT over CLEC objection.<sup>24</sup> As the maintenance and  
5 repair example discussed above with respect to Exhibit Eschelon 3SR.1 shows,  
6 Qwest may remove clear language that has been in the PCAT for a long period of  
7 time over CLEC objection. Qwest's PCAT change in the CRUNEC example,<sup>25</sup>  
8 which was also made over CLEC objection, disrupted Eschelon's orders and  
9 impacted its customers, but Ms. Albersheim claimed that the disruptive Level 3  
10 CRUNEC notice was "simply a clarification."<sup>26</sup> Second, in her rebuttal  
11 testimony, Ms. Albersheim again limits Qwest's obligation to perform root cause  
12 to repair situations.<sup>27</sup> As I discuss in my rebuttal testimony,<sup>28</sup> Qwest currently  
13 interprets its obligations more narrowly than they are described in Qwest's own  
14 posted documentation.

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<sup>24</sup> Exhibit Eschelon 3R, Johnson Rebuttal, p. 3 lines 8-9.

<sup>25</sup> Exhibit Eschelon 3.13 (CRUNEC chronology); Exhibit Eschelon 1, Starkey Direct, pp. 52-63.

<sup>26</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 21, line 11; discussed in Starkey Surrebuttal p. 8.

<sup>27</sup> See Qwest Exhibit 1R, Albersheim Rebuttal, p. 34 line 3, (describing Qwest's Account Manager responsibilities from its PCAT) "Handling maintenance and repair post mortems...."; Qwest Exhibit 1R, Albersheim Rebuttal, p. 35, line 6 "Qwest has a process for root cause analysis of repair problems."; Qwest Exhibit 1R, Albersheim Rebuttal, p. 36, lines 17-18 "...Qwest has an effective root cause analysis request process in place already for repair....".

<sup>28</sup> Exhibit Eschelon 3R, Johnson Rebuttal, pp. 7-12.

1 Finally, Qwest is currently refusing to perform root cause analysis of jeopardies  
2 examples for Eschelon, as I also discuss in my rebuttal testimony.<sup>29</sup> This  
3 illustrates that the PCAT language is insufficient without ICA language. As  
4 indicated by Mr. Starkey, the FCC has said that there is no “web-posting  
5 exception” under the Act.<sup>30</sup>

6 **Q. SPECIFICALLY REGARDING SECTION 12.1.4.2.1, MS. ALBERSHEIM**  
7 **CLAIMS THAT ESCHELON’S PROPOSED LANGUAGE, WHICH USES**  
8 **THE WORD “SUFFICIENT” CREATES “AMBIGUITY.”<sup>31</sup> PLEASE**  
9 **RESPOND.**

10 A. In Minnesota, where most of the language of Section 12.1.4 was agreed upon, a  
11 few phrases remained open (and, ultimately, only one phrase was left open, as  
12 previously discussed). Ms. Albersheim continues to point out these phrases in  
13 Utah, although in Utah Qwest’s proposal is to delete all of Eschelon’s language.  
14 In this case, Ms. Albersheim refers to a requirement that the acknowledgement  
15 letter include “[t]he letter will include a recap of sufficient pertinent information  
16 to identify the issue.”<sup>32</sup> Qwest eventually agreed to this language, including the  
17 term “sufficient,” in Minnesota, after initially proposing to delete the word  
18 “sufficient” from this phrase. Without the word “sufficient,” Qwest could

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<sup>29</sup> Exhibit Eschelon 3R, Johnson Rebuttal, pp. 8-10.

<sup>30</sup> *Qwest Forfeiture Order* at ¶32, discussed in Exhibit Eschelon 1R, Starkey Rebuttal, pp. 67-68.

<sup>31</sup> Qwest Exhibit 1R, Albersheim Rebuttal p. 32, lines 21-23.

<sup>32</sup> Eschelon Proposed ICA language, Section 12.1.4.2.1.

1           arguably be allowed to withhold the necessary information without which the  
2           acknowledgement letter would not serve its intended purpose. Eschelon’s  
3           language offers more clarity. It reasonably requires not all information but simply  
4           information sufficient to identify the issue.

5   **Q. SPECIFICALLY REGARDING SECTION 12.1.4.2.5, MS. ALBERSHEIM**  
6   **ARGUES THAT ESCHELON’S PROPOSAL THAT THE**  
7   **ACKNOWLEDGEMENT LETTERS BE PROVIDED ON A NON**  
8   **CONFIDENTIAL BASIS COULD FORCE QWEST TO PUBLICLY**  
9   **REVEAL SENSITIVE AND PROTECTED INFORMATION SUCH AS**  
10   **CPNI.<sup>33</sup> PLEASE COMMENT.**

11   A. Qwest is required to provide this information in Minnesota on a non-confidential  
12   basis and yet Qwest has provided no support that it has been forced to publicly  
13   reveal sensitive and protected confidential information. The only basis Qwest  
14   provides for this claim is that “the phrase ‘will be provided on a non-confidential  
15   basis’ could give Eschelon the right to claim that Qwest must provide all data  
16   associated with a root cause analysis in its letter to the end-user customer.”<sup>34</sup>  
17   Qwest seems to arrive at this conclusion by ignoring the thing to be provided on a  
18   non-confidential basis. Eschelon’s proposed language in Section 12.1.4.2.5  
19   specifically states that “The *acknowledgment response* described in Section  
20   12.1.4.2.3 and provided by the Qwest Service Manager to CLEC” is what must be

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<sup>33</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 33, lines 9-10.

1 provided on a “non-confidential” basis. There is no mention of root cause  
2 analysis in either Sections 12.1.4.2.3 or 12.1.24.2.5. The first sentences of both  
3 Sections 12.1.4.1 and 12.1.4.2 refer to requests for “root cause analysis and/or  
4 acknowledgement” – identifying them as two separate things. There is no basis  
5 for this Qwest claim. It is based on a sentence fragment and, when the entire  
6 sentence is provided, the claim disappears.

7 **Q. AT PAGE 34 OF HER REBUTTAL TESTIMONY, MS. ALBERSHEIM**  
8 **NOTES THAT QWEST HAS TAKEN STEPS TO MINIMIZE ERRORS IN**  
9 **PROVISIONING AND THAT THE PIDS MEASURE HOW WELL**  
10 **QWEST PERFORMS IN TERMS OF PROCESSING LSRS. PLEASE**  
11 **RESPOND.**

12 A. My rebuttal testimony addresses this claim, and I won’t repeat those arguments  
13 here.<sup>35</sup> Ms. Albersheim refers to minimizing errors, not to eliminating them,  
14 which recognizes that some errors will continue to occur. When Qwest does  
15 make an error while acting as Eschelon’s vendor, Eschelon’s need for  
16 acknowledgement of the mistake and/or provide root cause analysis will not be  
17 any less in that particular case. In the Minnesota 616 case, for example, Qwest  
18 gained a more than \$460,000 per year customer as a result of a single Qwest error  
19 that Qwest’s representatives, when dealing with Eschelon’s customer, blamed on

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<sup>34</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 33, lines 8-9.

<sup>35</sup> Exhibit Eschelon 3R, Johnson Rebuttal, p. 14.

1 Eschelon.<sup>36</sup> If Qwest is not required by ICA language to acknowledge mistakes  
2 and/or provide root cause analyses, Eschelon may have no way to ensure Qwest  
3 will acknowledge mistakes and/or provide root cause analyses when  
4 circumstances call for either or both. Although Qwest took steps in Minnesota in  
5 response to the Minnesota 616 Order, that fact did not prevent the ALJs in the  
6 Minnesota arbitration from recommending rejection of Qwest’s proposal.<sup>37</sup>

7 **Q. AT PAGE 36 OF HER REBUTTAL, MS. ALBERSHEIM INDICATES**  
8 **THAT ESCHELON’S CONTRACT PROPOSAL PROVIDES ESCHELON**  
9 **“UNFETTERED LEEWAY” TO DEMAND A ROOT CAUSE ANALYSIS**  
10 **EVEN WHEN IT IS READILY APPARENT THAT A PROBLEM HAS**  
11 **NOT BEEN CAUSED BY QWEST. IS IT LIKELY THAT ESCHELON**  
12 **WOULD SEEK SUCH ANALYSES FOR NO REASON?**

13 A. No. Why would Eschelon spend its time and resources preparing requests for root  
14 cause analyses only to have Qwest point back to Eschelon’s error when Eschelon  
15 knows full well that the problem had not been caused by Qwest (i.e., it’s *readily*  
16 *apparent* that the problem is Eschelon’s)? I am frequently the person who  
17 researches and sends the root cause requests to Qwest, and I manage the log of  
18 this activity on behalf of Eschelon. We do not request root cause for no reason. It  
19 takes our resources to research and compile the information to be root caused.

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<sup>36</sup> Exhibit Eschelon 1.4, p.7. See Exhibit Eschelon 1, Starkey Direct pp. 67-76 (discussing the Minnesota 616 case).

<sup>37</sup> Exhibit Eschelon 2.25, MN Arbitrators’ Report ¶208.

1           Additionally, should Qwest ever feel as though it's being asked to perform root  
2           cause analyses when it is readily apparent that it is not at fault, it could work with  
3           Eschelon's business units or pursue dispute resolution under the closed language  
4           in Section 5 of the ICA. Qwest would prefer to maintain all the "discretion" - and  
5           "some protection" – "as to when it is proper for the company to undertake a root  
6           cause analysis" while denying Eschelon any and all discretion or protection.<sup>38</sup>  
7           The Commission should adopt Eschelon's proposed language with respect to  
8           acknowledgement of mistakes and root cause analyses.

9           **B. SUBJECT MATTER NO. 31. EXPEDITED ORDERS**

10           Issues Nos. 12-67 and 12-67(a)-(g)

11           **Q. DO YOU AND MR. DENNEY BOTH DISCUSS ASPECTS OF ISSUE 12-67**  
12           **REGARDING EXPEDITES?**

13           A. Yes. Mr. Denney addresses Issue 12-67 and subparts in his testimony. I address  
14           points here that relate to CMP events. I personally participated in CMP with  
15           respect to these expedite issues. I previously provided an expedite chronology  
16           and other exhibits relating to expedites with my direct testimony (Exhibit  
17           Eschelon 3.53 – Exhibit Eschelon 3.70).

18           **Q. MS. ALBERSHEIM STATES THAT, WITH REGARD TO THE**  
19           **EXPEDITES ISSUES, ESCHELON "DID NOT EVEN USE ONE OF THE**

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<sup>38</sup> See Qwest Exhibit 1R, Albersheim Rebuttal, p.36, lines 10-11.



1           **MOST POWERFUL MECHANISMS DETAILED IN THE CMP**  
2           **DOCUMENT FOR DISPUTING CHANGES PROPOSED IN THE CMP”**  
3           **BY SEEKING POSTPONEMENT.<sup>39</sup> PLEASE RESPOND.**

4    A.    Eschelon disagrees that postponement under the CMP Document is a powerful  
5           mechanism. Mr. Starkey described the reasons why postponement offers little  
6           protection to CLECs in his testimony.<sup>40</sup> Under the CMP document,  
7           postponement requests are only made by CLECs,<sup>41</sup> as Qwest is the company that  
8           determines whether or not product and process requests are implemented. There  
9           is no CLEC-permitted implementation of a change that Qwest would need to  
10          postpone.<sup>42</sup> Qwest determines whether postponement is granted in the first  
11          instance.<sup>43</sup> Ms. Albersheim seems to be saying that Eschelon should have  
12          attempted to cure Qwest’s unilateral implementation of its objectionable CMP  
13          expedites notice<sup>44</sup> by asking Qwest to determine that Qwest should not implement  
14          its notice. Qwest had already rejected the objections of Eschelon and other

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<sup>39</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 10, lines 12-14.

<sup>40</sup> Exhibit Eschelon 1R, Starkey Rebuttal, pp. 44-45.

<sup>41</sup> Qwest Exhibit 1.1, p. 45 (Section 5.5: “A CLEC may request that Qwest postpone the implementation of a Qwest-originated or CLEC-originated change in accordance with this section.”). This process is optional. See *id.* (“may”).

<sup>42</sup> Ms. Albersheim asserts that Mr. Starkey’s statement that there are no CLEC CMP notifications is “not entirely accurate” because there is an external documentation process. Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, lines 20-21. If there were CLEC CMP notifications, the postponement process would logically be mutual, so that Qwest could ask to postpone CLEC implementations. As I discuss below, Ms. Albersheim’s statement is incorrect because there are no CLEC CMP notifications.

<sup>43</sup> Qwest Exhibit 1.1, p. 47 (Section 5.5.3 “Qwest’s Determination of Postponement Request”).

<sup>44</sup> See Exhibit Eschelon 3.69 (Qwest notice annotated to highlight information showing it was a Qwest-initiated notice not associated with any change request by Covad or any other CLEC).

1 CLECs, however. Eschelon had a response from Qwest, and there was no reason  
2 or any requirement in the CMP Document to go back to Qwest again.

3 Ms. Albersheim refers in her testimony to an arbitrator regarding postponement.<sup>45</sup>

4 The CMP Document states: “This optional arbitration provides interim relief only  
5 and is limited to the question of whether Qwest must postpone implementation of  
6 the proposed change until the dispute or the postponement request is resolved  
7 under the Dispute Resolution process.”<sup>46</sup> Nothing in this provision avoids dispute  
8 resolution/litigation. The companies must still go through dispute resolution  
9 (which under the CMP Document may include proceedings before state  
10 commissions<sup>47</sup>) after the Optional Arbitration Process for Interim Postponement  
11 of Disputed Changes is completed. Ms. Albersheim points to no benefit in terms  
12 of time in taking this extra step. And, this step should have been unnecessary to  
13 attempt to prevent implementation of Qwest’s change, because the CMP  
14 Document states in the Scope section that, in cases of conflict between CMP and  
15 the ICA, the ICA controls.<sup>48</sup> Qwest had been providing expedites for unbundled  
16 loops under the ICA,<sup>49</sup> so Qwest should have continued to do so under this Scope

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<sup>45</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. /10, lines 17-19.

<sup>46</sup> Qwest Exhibit 1.1, pp.48-49 (Section 5.5.4 “Optional Arbitration Process for Interim Postponement of Disputed Changes while Dispute Resolution Proceeds”).

<sup>47</sup> Qwest Exhibit 1.1, p. 100 (Section 15.0 “Dispute Resolution”), see last sentence on page 100.

<sup>48</sup> Qwest Exhibit 1.1, p. 14 (Section 1.0 “Scope”).

<sup>49</sup> See, e.g., Exhibit Eschelon 3.68 (Examples of Expedite Requests Approved by Qwest for Unbundled Loop Orders); see also Arizona Complaint Docket, at Answer, May 12, 2006, p. 9, ¶ 14, lines 24-25 (“Qwest admits that it previously expedited orders for unbundled loops on an expedited basis for Eschelon. . .”); See also Qwest (Ms. Novak) Direct (July 13, 2006) (Arizona Complaint

1 provision despite its CMP notice. Ms. Albersheim argues that Eschelon should  
2 have used more of the optional processes under the CMP Document, but Qwest  
3 did not follow the Scope provision – which is not optional.

4 **Q. MS. ALBERSHEIM STATES THAT ESCHELON DID NOT “USE THE**  
5 **DISPUTE RESOLUTION PROCESS ESTABLISHED IN THE CMP**  
6 **DOCUMENT”<sup>50</sup> REGARDING EXPEDITES AND INSTEAD “OPTED TO**  
7 **FILE LITIGATION.”<sup>51</sup> DID ESCHELON RUSH TO LITIGATION**  
8 **WITHOUT ATTEMPTING TO RESOLVE EXPEDITE ISSUES IN CMP?**

9 A. No.<sup>52</sup> Eschelon took several steps to raise relevant issues in CMP regarding the  
10 Qwest-initiated notices as to expedited orders, including:

- 11 • Eschelon escalated Qwest’s Version 27 Expedite PCAT changes in CMP, by  
12 joining McLeod’s escalation.<sup>53</sup> Qwest later confirmed that “Eschelon did join  
13 the escalation,”<sup>54</sup> and it included Eschelon (along with several other CLECs)  
14 in Qwest’s response to this escalation.<sup>55</sup> Qwest provided a binding response  
15 in CMP to this escalation.<sup>56</sup> The CMP Document provides for escalations,  
16 and participation in other CLEC’s escalations<sup>57</sup> in Section 14.0.<sup>58</sup>

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Docket), p. 5, lines 5-12 & lines 21-22 (Qwest “uniformly followed the process in existence at the time for expediting orders for unbundled loops”).

<sup>50</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, lines 1-2.

<sup>51</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, line 2.

<sup>52</sup> Exhibit Eschelon 2, Denney Direct, p. 165, lines 8-12.

<sup>53</sup> Exhibit Eschelon 3.54, p. 1, #2 (#39 PROS.09.12.05.F.03242. Expedites\_ Escalations\_V27); *See also*, Exhibit Eschelon 3.53Exhibit Eschelon 3.53, p. 12.

<sup>54</sup> Exhibit Eschelon 3.54, p. 1, #3; *See also*, Exhibit Eschelon 3.53Exhibit Eschelon 3.53, p. 12.

<sup>55</sup> Exhibit Eschelon 3.54, p. 2, #4.

<sup>56</sup> Exhibit Eschelon 3.54, p. 4, ##11-12.

<sup>57</sup> Exhibit Eschelon 3.10, p. 100 (second bullet point); *See also* Qwest Exhibit 1.1 (Albersheim).

<sup>58</sup> Exhibit Eschelon 3.10, (Johnson) and Qwest Exhibit 1.1 (Albersheim).

- 1           • Eschelon requested a CMP ad hoc meeting to discuss Qwest’s Version 30  
2 Expedite PCAT notice.<sup>59</sup> The CMP Document provides that a CLEC may  
3 request additional meetings in Section 3.0.<sup>60</sup> Eschelon participated in the call,  
4 and Qwest admits that “some CLECs expressed dissatisfaction on the ad-hoc  
5 call.”<sup>61</sup>
- 6           • Eschelon submitted comments<sup>62</sup> on Qwest’s Level 3 Version 30 Expedite  
7 PCAT notice.<sup>63</sup> The CMP Document provides that a CLEC may provide  
8 comments upon Level 3 notices in Section 5.4.4.<sup>64</sup> Eschelon’s 11/3/05 CMP  
9 comments are posted on the Qwest CMP web page.
- 10          • Eschelon escalated with Qwest under the dispute resolution provisions of the  
11 Qwest-Eschelon ICAs<sup>65</sup> and the CMP Document (§15.0).<sup>66</sup> Eschelon’s  
12 dispute resolution letter expressly identified Qwest’s Version 27 and Version  
13 30 Expedite PCAT CMP changes as subject to the dispute in the subject line:  
14 “Joint           McLeod-Eschelon           Escalation           #39           Re.  
15 **PROS.09.12.05.F.03242.Expedites\_Escalations\_V27 – Denied by Qwest**  
16 **11/4/05;**           Eschelon           11/3/05           objections           to  
17 PROS.10.19.05.F.03380.ExpeditesEscalationsV30.”<sup>67</sup>

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<sup>59</sup> PROS.10.19.05.F.03380. ExpeditesEscalations V30. See Exhibit Eschelon 3.54, p. 2, #5 and Exhibit Eschelon 3.53Exhibit Eschelon 3.53, p. 12.

<sup>60</sup> Exhibit Eschelon 3.10, (Johnson) & Qwest Exhibit 1.1 (Albersheim).

<sup>61</sup> Qwest (Martain) Direct (July 13, 2006), p. 27, lines 3-4, in *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 [“Arizona Complaint Docket”].

<sup>62</sup> Exhibit Eschelon 3.58, pp. 3-5.

<sup>63</sup> PROS.10.19.05.F.03380. ExpeditesEscalations V30. See Exhibit Eschelon 3.54, p. 3, #7 and Exhibit Eschelon 3.53Exhibit Eschelon 3.53, p. 13.

<sup>64</sup> Exhibit Eschelon 3.10, (Johnson) and Qwest Exhibit 1.1 (Albersheim).

<sup>65</sup> An Eschelon March 21, 2006, escalation and request for dispute resolution letter to Qwest stated that Eschelon reserved its right to submit the dispute to all of the state commissions pursuant to the dispute resolution provisions of the ICAs, and an attachment to that letter included relevant ICA provisions from each state. See Exhibit Eschelon 2.22, Denney.

<sup>66</sup> Exhibit Eschelon 3.10 (Johnson) and Qwest Exhibit 1.1 (Albersheim). Regarding CMP dispute resolution, see Exhibit Eschelon 1R, Starkey Rebuttal, pp. 48-56 and Exhibit Eschelon 3.11 and 3.12.

<sup>67</sup> Exhibit Eschelon 2.22, p. 8; see also Exhibit Eschelon 3.53 Exhibit Eschelon 3.53, p. 14 and Exhibit Eschelon 2.22.

- 1       • Eschelon proposed Section 12.2.1.2 (expedite language) in ICA  
2       negotiations.<sup>68</sup>
- 3       • Eschelon filed a complaint with the Arizona state commission.<sup>69</sup>

4       As this last bullet point shows, Eschelon filed a complaint with the Arizona  
5       commission to resolve the CMP and ICA dispute resolution for the issues  
6       addressed in the complaint after taking a number of steps in CMP. Ms.  
7       Albersheim attempts to make it appear as if Eschelon took little or no action in  
8       CMP before taking the dispute to the state commission (“file litigation”<sup>70</sup>), which  
9       the above bullet point items show is simply not the case.<sup>71</sup>

10       In any event, CMP Section 15.0 entitled “Dispute Resolution Process”  
11       specifically provides that a complaint may be brought “at any time.”<sup>72</sup> Eschelon’s  
12       complaint is consistent with the CMP Document.

13       **Q.     YOU REFER ABOVE TO ESCHELON’S COMPLAINT RELATING TO**  
14       **EXPEDITED ORDERS AS A CMP DISPUTE RESOLUTION, BUT MS.**

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<sup>68</sup> Qwest April 6, 2006, ICA draft. Section 15.0 of the CMP Document, (Exhibit Eschelon 3.10) states: “This process does not limit any party’s right to seek remedies in a regulatory or legal arena at any time.” Section 252 negotiation and arbitration is one such regulatory or legal arena. *See* Exhibit Eschelon 1, Starkey Direct, p. 51.

<sup>69</sup> Complaint, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (April 14, 2006) [“Arizona Complaint Docket”].

<sup>70</sup> Qwest Exhibit 1R, Albersheim Rebuttal, 11, lines 1-2.

<sup>71</sup> Although Ms. Albersheim criticizes Eschelon for using other procedures in the CMP Document, Qwest did not pursue them either, as the Staff in Arizona concluded it should have done. *See* Exhibit Eschelon 2, Denney Direct, pp. 165-166 (citing Arizona Staff Testimony).

<sup>72</sup> Exhibit Eschelon 3.10 (Johnson), Section 15.0; *See also*, Qwest Exhibit 1.1 (Albersheim).

1           **ALBERSHEIM TESTIFIES THAT ONLY ONE CLEC (NOT ESCHELON)**  
2           **HAS “EVER” USED THE DISPUTE RESOLUTION PROCESS IN CMP.<sup>73</sup>**  
3           **PLEASE EXPLAIN.**

4       A.     Qwest’s claim doesn’t make sense, both because Eschelon has used the CMP  
5           Dispute Resolution process (Section 15.0) and because VCI used other provisions  
6           of the CMP Document but not the Dispute Resolution process (Section 15.0).

7           In the case of Eschelon’s complaint in the Arizona Complaint Docket, Eschelon’s  
8           dispute resolution letter expressly identified Qwest’s Version 27 and Version 30  
9           Expedite PCAT CMP changes as subject to the dispute resolution.<sup>74</sup> Dispute  
10          Resolution under Section 15.0 of the CMP Document may include proceedings  
11          before state commissions, which may be brought at any time.<sup>75</sup> Eschelon’s  
12          Complaint is a CMP dispute resolution.<sup>76</sup>

13          The VCI matter that Qwest points to as the only CLEC use of the dispute  
14          resolution process “ever”<sup>77</sup> in CMP, was not handled under Section 15.0  
15          (“Dispute Resolution Process”) but rather Section 14.0 (“Escalation Process”) and

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<sup>73</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, lines 8-10.

<sup>74</sup> Exhibit Eschelon 2.22, p. 8.

<sup>75</sup> Qwest Exhibit 1.1, p. 100 (Section 15.0 “Dispute Resolution”), see last sentence on page 100.

<sup>76</sup> Qwest Exhibit 1.1, p. 100 (Section 15.0 “Dispute Resolution”), see last sentence on page 100. See Mr. Starkey’s discussion of dispute resolution under the CMP Document, which includes a single CLEC complaint against Qwest with a state commission. Exhibit Eschelon 1R, Starkey Rebuttal, pp. 46-50.

<sup>77</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, line 8.

1 Section 18.0 (“Oversight Review Process”) of the CMP Document.<sup>78</sup> Although  
2 Qwest for some unidentified reason singles out the VCI matter, several other  
3 matters have also been handled through either Section 14.0 (“Escalation  
4 Process”)<sup>79</sup> or Section 18.0 (“Oversight Review Process”),<sup>80</sup> or both. For  
5 example, Exhibit Eschelon 3SR.3 and a review of Exhibit Eschelon 3.27 through  
6 Exhibit Eschelon 3.30 shows that other CLECs have used the same process as  
7 used by VCI (first using CMP 14.0 Escalation Process and then CMP 18.0  
8 Oversight Review process). Yet, Ms. Albersheim does not consider those CLEC  
9 escalations that were followed by a request for Oversight Review as dispute  
10 resolution. Data with respect to the number of dispute resolutions is meaningless  
11 if Qwest can simply choose not to count valid dispute resolutions or uses some  
12 criteria for counting dispute resolutions other than those in the CMP Document  
13 (Section 15.0) itself.

14 **Q. MS. ALBERSHEIM ASSERTS THAT MR. STARKEY’S CLAIM THAT**  
15 **THERE ARE NO CLEC CMP NOTIFICATIONS IS “NOT ENTIRELY**

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<sup>78</sup> As the name “Oversight” suggests, Section 18.0 indicates that it applies to issues raised with “using this CMP.” See Exhibit Eschelon 3.10 (Johnson) and Qwest Exhibit 1.1 (Albersheim). Section 18.0 of the CMP Document not only provides that it is “optional,” but also that: “It will not be used when one or more processes documented in this CMP are available to obtain the resolution the submitter desires.” *Id.*

<sup>79</sup> See Section 14.0 “Escalation Process” Exhibit Eschelon 3.10 (Johnson) and Qwest Exhibit 1.1 (Albersheim).

<sup>80</sup> Exhibit Eschelon 3.5 (Johnson) (List of CMP Oversight Committee Meeting Minutes Posted on the Qwest Wholesale Website).

1           **ACCURATE” BECAUSE THERE IS AN EXTERNAL**  
2           **DOCUMENTATION PROCESS.<sup>81</sup> DO YOU AGREE?**

3    A.    No. The CMP Document is very clear on this point. Only Qwest may implement  
4           changes by notification (Levels 1-3) in CMP.<sup>82</sup> All CLEC proposed *changes*  
5           (*i.e.*, not notices) are submitted as change requests (Level 4),<sup>83</sup> as Mr. Starkey  
6           indicates in his direct testimony.<sup>84</sup>

7           I requested the External Documentation Process at Qwest on Eschelon’s behalf.<sup>85</sup>  
8           Qwest’s attempt to portray the External Documentation process as a notification  
9           process through which CLECs may implement product and process changes by  
10          notice, like Qwest, does not accurately reflect the process implemented by Qwest.

11          CLECs are not allowed to use the external documentation process to make  
12          “changes to Qwest’s processes and procedures”<sup>86</sup> as Ms. Albersheim claims. In  
13          fact, Qwest’s own documentation shows that changes to process are “out of  
14          scope”<sup>87</sup> for the external documentation process. As Eschelon said in its change  
15          request when requesting this process, Eschelon requested this process because  
16          “although Qwest has existing internal processes, Qwest has not documented many

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<sup>81</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11 line 22 p. 12 line 2.

<sup>82</sup> Exhibit Eschelon 3.10 (Johnson), Section 5.4. These are described as “Qwest Originated” changes. *See id.*; *See also*, Qwest Exhibit 1.1 (Albersheim).

<sup>83</sup> Exhibit Eschelon 3.10, p. 25.

<sup>84</sup> Exhibit Eschelon 1, Starkey Direct, p. 43, lines 8-9.

<sup>85</sup> Exhibit Eschelon 3SR.2, p. 2 (Originator: Johnson, Bonnie).

<sup>86</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 11, lines 15-16.



1 of those processes for CLECs.”<sup>88</sup> Nonetheless, Qwest’s process is to require  
2 CLECs to find information in Qwest’s website, PCAT, or technical publications  
3 before they approach the Qwest service manager with requests for information.<sup>89</sup>  
4 In its change request, Eschelon pointed out that, “without adequate  
5 documentation, when the process breaks down, CLECs are forced to spend  
6 unnecessary time and resources debating with Qwest representatives about the  
7 process itself, when those challenges could be avoided by simply pointing to  
8 mutually accessible documentation that clearly states the process for all involved.  
9 Instead, unnecessary escalations waste CLEC and Qwest resources.”<sup>90</sup>

10 Qwest documents processes for itself.<sup>91</sup> Until recently, Qwest provided access to  
11 its methods and procedures (with confidential information redacted) to Eschelon  
12 and other CLECs, so they had access to those procedures to allow a  
13 nondiscriminatory opportunity to use those procedures and train their employees  
14 on them (as well as to confirm that the procedures were applied in a  
15 nondiscriminatory manner). Qwest had said that, in order “to comply with the  
16 Telecommunications act of 1996 Qwest developed a redaction process which

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<sup>87</sup> Exhibit Eschelon 3SR.2, p. 12.

<sup>88</sup> Exhibit Eschelon 3SR.2, p. 2.

<sup>89</sup> Exhibit Eschelon 3.51 (Johnson) (Qwest Service Center and Manager Roles in Relation to CMP) (6/6/02), p. 1 (first bullet point: “Requests for Information”).

<sup>90</sup> Exhibit Eschelon 3SR.2, p. 2.

<sup>91</sup> “Shon Higer-Qwest stated that Qwest does have a lot of procedures in place i.e. PCATs, business procedures, LSOG, and that they do get updated *like Retail’s do.*” (emphasis added), from [http://www.qwest.com/wholesale/cmp/archive/CR\\_SCR062105-01.htm](http://www.qwest.com/wholesale/cmp/archive/CR_SCR062105-01.htm); See also Exhibit Eschelon 3.59 (Johnson) (Qwest 6/27/01 email).

1 allows CLEC's access to the retail product methods and procedures contained in  
2 InfoBuddy that are available for Resale. That information is formatted into a  
3 WEB based application known as Resale Product Database ("RPD"). The  
4 redaction process removes only the proprietary information found in InfoBuddy  
5 that Qwest is not mandated via the Act to provide to CLEC's."<sup>92</sup> Recently,  
6 however, Qwest has "retired" RPD over Eschelon's objection, so that this  
7 information will no longer be available to CLECs.<sup>93</sup> Therefore, other clear and  
8 accessible documentation is even more important now than before.

9 The External Documentation process is a mechanism for CLECs to identify and  
10 request corrections or clarification in Qwest's documentation that Qwest should  
11 have corrected or clarified itself.<sup>94</sup> It shifts the burden to CLECs to clean up  
12 Qwest's documentation. This is accomplished through a request placed to Qwest  
13 and not a general notification by a CLEC. This is very different from Qwest's  
14 ability to implement product and process changes by notice after waiting an  
15 applicable time period and then going forward with the change. And, like many

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<sup>92</sup> Exhibit Eschelon 3.59 (Johnson) (6/27/01 Qwest Senior Service Manager email).

<sup>93</sup> Exhibit Eschelon 3.60 (Johnson) (RPD Retirement notice, effective 4/29/06, and Eschelon objection).

<sup>94</sup> Exhibit Eschelon 3.10 (Johnson), Section 3.3 and Section 2.4.4; *See also*, Qwest Exhibit 1.1 (Albersheim).

1 other changes in CMP, only Qwest has the ability to deny an External  
2 Documentation request.<sup>95</sup>

3 **Q. MS. ALBERSHEIM CLAIMS THAT QWEST’S PROPOSAL FOR**  
4 **EXPEDITED ORDERS “REFLECTS QWEST’S CURRENT**  
5 **PRACTICE,”<sup>96</sup> WHICH QWEST HAS SAID WAS DEVELOPED**  
6 **“THROUGH THE CMP.”<sup>97</sup> PLEASE RESPOND.**

7 A. CLECs did not request an “expedite process for design services, like unbundled  
8 loops”<sup>98</sup> to obtain “more certainty” than the emergency-based Expedites  
9 Requiring Approval process provided.<sup>99</sup> As discussed in the testimony of Mr.  
10 Denney,<sup>100</sup> CLECs had certainty with the long-standing emergency-based  
11 Expedites Requiring Approval process (which had been available for loops since  
12 at least 2000).<sup>101</sup> CLECs sought – not to eliminate one process in favor of the

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<sup>95</sup> Exhibit Eschelon 3SR.2, p. 13 “You will be notified within 14 business days whether your request is accepted or denied.” *See also* Qwest Exhibit 1R, Albersheim Rebuttal, p. 12, lines 1-2 (indicating that Qwest has denied almost one-third of Eschelon’s external documentation requests).

<sup>96</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 37, lines 8-9.

<sup>97</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 46, lines 19-20. *See also* Qwest Exhibit 1, Albersheim Direct, p. 51.

<sup>98</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 59, lines 7-11. While Covad, due to its business plan may order primarily “designed” products, Covad asked for an “Enhanced Expedite Process *for Provisioning*,” as the title of the Change Request reflects. Exhibit Eschelon 3.67, p. 1. Qwest was the company that said that it would accept the change request “*with the caveat* that it will be looked at and implemented on a product by product basis. *Qwest* will continue to look at all of the individual products to determine if *we* will implement those changes.” Exhibit Eschelon 3.67, p. 9.

<sup>99</sup> Qwest Exhibit 1, Albersheim Direct, p. 45, line 14.

<sup>100</sup> Exhibit Eschelon 2, Denney Direct, p. 163.

<sup>101</sup> Qwest (Ms. Novak) Direct (July 13, 2006) (Arizona Complaint Docket), p. 5, lines 5-12 & lines 21-22 (Qwest “uniformly followed the process in existence at the time for expediting orders for unbundled loops”); *see also* Answer (May 12, 2006) (Arizona Complaint Docket), Page 9, ¶ 14,

1 other (as suggested by Qwest) but – to use *both* processes to expedite orders,  
2 including for unbundled loops (which are, per Qwest, “designed” facilities). At  
3 the time Qwest introduced its *fee-added* non-emergency expedite process, it  
4 assured CLECs that the new fee-added process was *in addition* to the existing  
5 emergency-based expedite process. Qwest’s statements are directly quoted below:

- 6 • On May 12, 2004, Qwest told CLECs that: “If a CLEC chooses not to  
7 amend their Interconnection Agreement, the current expedite criteria and  
8 process will be used.”<sup>102</sup>
- 9 • On July 15, 2004, Qwest told CLECs that: “If a CLEC chooses not to sign  
10 the amendment and pay the approved rates, this will not impact resources.  
11 For Qwest’s Retail and Access customers, they are bound by the terms  
12 established in the tariffs (which have been or are in the process of being  
13 filed). Qwest did not want to shut the door for its Interconnect customers  
14 because of existing contractual obligations, so is offering those customers  
15 two options: 1) To be able to expedite without reason for a per-day  
16 improved rate, like the Retail and Access customer, or 2) Continue with  
17 the existing process that is in place. Qwest is providing the Interconnect  
18 customers an additional option. If the CLEC chooses option 2, and the  
19 expedite reason is for one of those listed in the PCAT, they are given the  
20 same opportunity at having the due date requested. This comment is  
21 accepted.”;<sup>103</sup> and
- 22 • On June 29, 2004, Qwest told CLECs that: “Qwest is modifying/changing  
23 the existing manual Expedite process to incorporate two processes. These  
24 are described as Pre-Approved and Expedites Requiring Approval.”<sup>104</sup>

25 Qwest’s apparent attempt to portray its Version 27 and 30 PCAT changes to  
26 remove unbundled loops from the expedite process as a CLEC-desired change is

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Lines 24-25 (“Qwest previously expedited orders for unbundled loops on an expedited basis for Eschelon”).

<sup>102</sup> Exhibit Eschelon 3.67, p. 11.

<sup>103</sup> Exhibit Eschelon 3.62, p. 9.

1 inconsistent with the documented facts.<sup>105</sup> Despite Qwest’s suggestions that these  
2 changes were associated with Covad’s change request,<sup>106</sup> Qwest specifically put  
3 “not applicable” on its Version 27 and 30 notices in the space Qwest itself  
4 provides for listing any “Associated CR Number.”<sup>107</sup> On notices for earlier  
5 Versions, issued before the Covad change request was completed, Qwest placed  
6 the Covad change request number in this category.<sup>108</sup> Therefore, CLECs knew  
7 that the earlier changes may be related to the Covad change request. Qwest had  
8 left the Covad change request open while it determined whether any other  
9 products would be added to the fee-added expedite process.<sup>109</sup> Once Qwest  
10 agreed to close/complete the Covad change request in July of 2005, CLECs had a  
11 reasonable expectation that there would be no additional changes to the products  
12 under each process. Versions 27 and 30 were Qwest-initiated changes,  
13 announced in October of 2005 by Level 3 Qwest notifications. They were *not*  
14 Level 4 change requests; they were not associated with the Covad change request;  
15 and they were opposed by Eschelon, as well as other CLECs.<sup>110</sup>

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<sup>104</sup> Exhibit Eschelon 3.53 (quoting June 29, 2004 announcement).

<sup>105</sup> CLECs known to Eschelon who objected to the Qwest-initiated CMP changes to Versions 27 and/or 30 of Qwest’s Expedites and Escalations Overview PCAT include Eschelon, McLeodUSA, PriorityOne, Integra, Velocity, AT&T, ELI, and VCL. *See* Exhibit Eschelon 3.54, pp. 1-2. For a summary of Eschelon’s actions in CMP, *see id.* and Mr. Denney’s discussion of Expedited Orders.

<sup>106</sup> *See, e.g.*, Qwest Exhibit 1, Albersheim Direct, p. 45 lines 14-15 (“hence, Covad’s change request”).

<sup>107</sup> Exhibit Eschelon 3.69 (Johnson).

<sup>108</sup> *id.*

<sup>109</sup> Exhibit Eschelon 3.67, p. 11.

<sup>110</sup> Exhibit Eschelon 3.54, pp. 1-2.

1 **Q. QWEST THEN CLAIMS THAT QWEST DEVELOPED ITS CURRENT**  
2 **EXPEDITE PROCEDURES BECAUSE OF ABUSE OF THE**  
3 **EMERGENCY CONDITIONS SUCH AS GAMING THE SYSTEM AND**  
4 **SUBMITTING SPURIOUS EMERGENCY EXPEDITE REQUESTS.<sup>111</sup> IS**  
5 **THAT WHAT QWEST SAID AT THE TIME?**

6 A. No. Qwest now claims that, after the July 2004 implementation of the fee-added  
7 expedites reflected in PCAT Version 11, Qwest “was seeing cases” of abuse.<sup>112</sup>  
8 Ms. Albersheim testifies that “CLECs were gaming the system and submitting  
9 spurious emergency expedite requests.”<sup>113</sup> Qwest provided no detail or  
10 documentation in support of this claim in testimony. In the Arizona Complaint  
11 Docket, Qwest witness Ms. Martain claimed generally that CLECs tried to  
12 escalate expedite requests when they did not have an expedite amendment and the  
13 situation did not qualify for an expedite under the emergency-based expedites  
14 requiring approval process.<sup>114</sup> Qwest may have included Eschelon in that  
15 example because Qwest claimed that Eschelon needed an expedite amendment,

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<sup>111</sup> Qwest Exhibit 1R, Albersheim Rebuttal, pp. 46-47.

<sup>112</sup> Qwest (Ms. Martain – CMP Process Manager) Direct (July 13, 2006) (Arizona Complaint Docket), p. 24, lines 15-18.

<sup>113</sup> Qwest Exhibit 1R, Albersheim Rebuttal, pp. 46-47.

<sup>114</sup> Qwest (Ms. Martain – CMP Process Manager) Direct (July 13, 2006) (Arizona Complaint Docket), p. 24, line 31 – p. 25, line 3 (“CLECs trying to escalate expedite requests when they did not have an expedite amendment”).

1 but Eschelon’s position is that it *does* qualify for an expedite under its existing  
2 ICA (and Arizona Staff testified in that case<sup>115</sup> that Staff agreed).

3 Qwest makes the decision of whether to accept or deny an expedite request. If the  
4 conditions were not met in any examples, presumably Qwest would have denied  
5 the expedite requests because the conditions had not been met. After all, there is  
6 a list of conditions and Qwest requires the CLEC to provide support that it meets  
7 the conditions. If there had been a widespread problem of gaming the system  
8 with CLECs requesting emergency expedites under circumstances that did not  
9 meet the emergency conditions, it seems that Qwest would have identified that  
10 problem when announcing the changes that it now says are designed to address  
11 the problem. When Qwest announced its Versions 27 and 30 PCAT changes,  
12 however, Qwest made no mention of so-called abuse, gaming the system, or  
13 spurious requests. In its announcement of its Version 30 change – which removed  
14 expedite capability for unbundled loops from emergency-based expedites – Qwest  
15 cited a legal reason (“parity”) as the reason for this Qwest-initiated change.<sup>116</sup>

16 **C. SUBJECT MATTER NO. 33. JEOPARDIES**

17 **Issues Nos. 12-71, 12-72, and 12-73: ICA Section 12.2.7.2.4.4 and subparts**

18 **Q. MS. ALBERSHEIM CLAIMS THAT YOU HAVE PREVIOUSLY**

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<sup>115</sup> Exhibit Eschelon 2.19, pp. 1-2 (Executive Summary from Staff Testimony).

<sup>116</sup> Exhibit Eschelon 3.64, p. 1.

1           **TESTIFIED IN OTHER STATES THAT ESCHELON’S PROPOSED**  
2           **LANGUAGE REFLECTS QWEST’S CURRENT PRACTICE, “WHICH**  
3           **WAS DEVELOPED IN CMP.”<sup>117</sup> IS THAT WHAT YOUR TESTIMONY**  
4           **SAYS?**

5       A.     No, not with respect to CMP. Qwest has admitted that all of Eschelon’s proposed  
6           language for Issues 12-71, 12-72, and 12-73 reflects Qwest’s current practice, but  
7           denies that is the case for one phrase (at least the day before).<sup>118</sup> Regarding the  
8           latter phrase, I said Qwest “confirmed its existing documented process in  
9           CMP,”<sup>119</sup> not that Qwest developed it in CMP. I added: “Qwest documented its  
10          commitment and the process on the web site” and quoted directly from Qwest  
11          CMP minutes posted on Qwest’s web site.<sup>120</sup> I further explained:

12                       In the particular PCAT version referenced by Qwest in support of its  
13                       position,<sup>121</sup> Qwest documented in its PCAT some *changes* that were

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<sup>117</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 50, lines 16-20. Ms. Albersheim claims that this testimony was made “in other states” but provides no citations to any testimony. *See id.* lines 16-22. In Oregon, when providing the same testimony, Ms. Albersheim cited page 70 of my Oregon testimony. The testimony appears in my direct Utah testimony at page 75.

<sup>118</sup> Exhibit Eschelon 1.5, p. 6, Minnesota Tr., Vol. I, p. 37, lines 16-23 (Ms. Albersheim) (“Q Other than that phrase, at least a day before, is Eschelon's proposal consistent with Qwest's practice? A Current practice, yes, except for that sentence. Q So you agree with me that Qwest's current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes.”). *See also* Albersheim Direct, p. 57, lines 11-12 (referring to Eschelon’s ICA proposal as “incorporating the current PCAT process for Jeopardy Notices into its contract”). *See* Exhibit Eschelon 3R, Johnson Rebuttal, p. 16, line 15 – p. 17, line 7.

<sup>119</sup> Exhibit Eschelon 3, Johnson Direct, p. 75, line 4; *see also* my Oregon direct testimony, p. 70, line 4 (same).

<sup>120</sup> Exhibit Eschelon 3, Johnson Direct, p. 75, lines 4-18; *see also* my Oregon direct testimony, p. 70, lines 4-18 (same).

<sup>121</sup> Exhibit Eschelon 1.6, p. 47 (AZ Transcript, in which Mr. Topp of Qwest references the announcement and associated redlined PCAT for Version 42 of the Provisioning and Installation Overview PCAT). It appears that Qwest is suggesting that, because this particular PCAT update



1 developed in CMP to its jeopardies process.<sup>122</sup> Qwest took the position in  
2 CMP, however, that providing an FOC at least the day before the due date  
3 was already part of its *current* internally documented process. In other  
4 words, as an *existing* process, it did not need to be documented through a  
5 PCAT *change*. Specifically, Qwest said at the time: “This example is  
6 non-compliance to a *documented process*. Yes an FOC should have been  
7 sent prior to the Due Date.”<sup>123</sup> Qwest was referring to an internally  
8 documented process, as it is not documented in the PCAT. Additional  
9 documentation is not needed to demonstrate Qwest’s commitment in this  
10 case, because Qwest documented its commitment in written and posted  
11 CMP materials.<sup>124</sup>

12 It appears Ms. Albersheim incorrectly suggests that Eschelon testified that all  
13 aspects of the entire jeopardy notification process were developed in CMP,<sup>125</sup>  
14 because Qwest is now trying to create the impression that all changes developed  
15 in CMP are reflected in PCAT updates.<sup>126</sup> That is not the case.<sup>127</sup> In any event,  
16 as described above, this is not a change that was developed in CMP; Qwest

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does not include a redlined change inserting a designated time frame of the day before, there was no change in CMP to that effect. *See id.*

<sup>122</sup> Exhibit Eschelon 1.6, Arizona arbitration Tr., Vol. 2, [Hrg. Exhs.] Q-22 & Q-23. [See also Vol. 2, p. 335, lines 17-19 (Ms. Johnson).]

<sup>123</sup> Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest)

<sup>124</sup> Exhibit Eschelon 3, Johnson Direct, p. 86, lines 5-15; see also my Oregon direct testimony, p. 81, lines 3-13 (same).

<sup>125</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 50, lines 16-20.

<sup>126</sup> *See, e.g.*, Qwest Exhibit 1R, Albersheim Rebuttal, p. 55, lines 8-20 & Qwest Exhibits 1R.4 & 1R.5.

<sup>127</sup> *See, e.g.*, Exhibit Eschelon 3.79, Example #3, p. 4 (“Qwest is unable to honor the request that further information regarding DSL repair processes be added to the Qwest DSL PCATs for the following reasons: The purpose of the DSL Product Catalogs is to provide general product, process and ordering information. It is not feasible for each PCAT to go into extensive process information due to the volume of information that would entail.”); see also *id.*, Example #1, p. 1 (Qwest 9/1/04 email to Eschelon: “Bonnie, Bonnie, Bonnie You know that we do not document our internal processes.”); *id.* Example #2, p. 3 (“As previously shared with Eschelon, Qwest does not provide to external customer's Qwest's internal processes. Based on the questions below, Eschelon is asking for Qwest's internal processes. Additionally, it would be difficult to discuss every variable when testing to resolve a trouble report.”)

1 confirmed its existing documented process in CMP and indicated it would work  
2 on compliance with that process. Qwest nonetheless suggests that, because  
3 particular PCAT updates do not include a redlined change inserting a designated  
4 time frame of at least the day before, there is no time frame at all for sending a  
5 releasing FOC after a Qwest facility jeopardy has cleared.<sup>128</sup> This week, Qwest  
6 made this claim somewhat more explicitly when Qwest said the change request  
7 “was ultimately resolved without making any changes to PCAT language that in  
8 any way related to the timing of an FOC to the date service would attempt to be  
9 delivered.”<sup>129</sup> Qwest has provided no evidence that every term confirmed or  
10 developed in CMP results in a PCAT change, nor could it do so.<sup>130</sup> Qwest’s  
11 attempt to suggest that – just because Qwest has chosen not to include it in its  
12 PCAT – there is no established time frame or relationship between “the timing of  
13 an FOC” and the “date service would attempt to be delivered,” if correct, would  
14 mean that it would not be a violation of Qwest’s process to deliver the FOC  
15 (which establishes the due date) in every case of a cleared Qwest facility jeopardy  
16 *after* the requested due date and *after* attempted delivery. After all, Qwest says  
17 the PCAT contains the process and there is no “PCAT language that in any way  
18 related to the timing of an FOC to the date service would attempt to be

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<sup>128</sup> See, e.g., Qwest Exhibit 1R, Albersheim Rebuttal, p. 55, lines 8-20 & Qwest Exhibits 1R.4 & 1R.5.

<sup>129</sup> Qwest Response to Attachment 2 to Eschelon Post-Hearing Brief (Aug. 6, 2007), WA Docket No. UT-063061, p. 7.

<sup>130</sup> See, e.g., Exhibit Eschelon 3.79 (examples quoted in above footnote).

1 delivered.”<sup>131</sup> That would defeat the advance notice function of an FOC<sup>132</sup> and  
2 makes no sense. Furthermore, if Qwest’s claim were true, that would be all the  
3 more reason to place the time frame (at least the day before) in the  
4 interconnection agreement to avoid that result and ensure the advance notice  
5 function of an FOC is fulfilled.

6 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON’S PROPOSED PHRASE**  
7 **“THE DAY BEFORE” ALTERS THE TIMING OF NOTICES.<sup>133</sup> HOW**  
8 **DO YOU RESPOND?**

9 A. In my Rebuttal testimony<sup>134</sup> I describe Qwest’s claim that the phrase the day  
10 before in Eschelon’s proposal is a “requirement”<sup>135</sup> and is also a part of Qwest’s  
11 claim that Eschelon’s proposal “force[s] extra time” in to the process and causes  
12 delay.<sup>136</sup> This claim by Ms. Albersheim, is just another way to say the same

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<sup>131</sup> Qwest Response to Attachment 2 to Eschelon Post-Hearing Brief (Aug. 6, 2007), WA Docket No. UT-063061, p. 7.

<sup>132</sup> The FCC said: “[W]e address the OSS ordering issues that the Commission previously has found *relevant and probative* for analyzing a BOC’s ability to provide access to its ordering functions in a nondiscriminatory manner: a BOC’s ability to return *timely* status notices such as *firm order confirmation*, reject, *jeopardy*, and service order completion notices, to process manually handled orders accurately, and to scale its system.” FCC 9-State 271 Order, ¶85 (emphasis added) (discussed in Exhibit Eschelon 3, Johnson Direct, p. 93, line 1 – p. 96, line 7, with respect to Qwest’s suggestion that Eschelon may rely upon potential informal technician communications because an FOC is a mere formality). As this FCC quotation shows, it is important not simply to receive an FOC, but to receive a *timely* FOC – which requires a time frame within which to receive that FOC before the due date to serve the intended function of the FOC.

<sup>133</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 50, line 21.

<sup>134</sup> Exhibit Eschelon 3R, Johnson Rebuttal, p. 23.

<sup>135</sup> Qwest Exhibit 1, Albersheim Direct, p. 56, lines 36-37.

<sup>136</sup> Washington arbitration (Albersheim Responsive) (Dec. 4, 2006), p. 58, line 21 – p. 59, line 1 (“If a jeopardy situation can be resolved on the original due date, all parties should try to ensure that it is. This is in the best interests of the end-user customer. It makes no business sense to force extra time

1 thing.<sup>137</sup> In any of these variations, Qwest’s claim that Eschelon’s proposal  
2 causes delay or alters timing is inaccurate.

3 Eschelon is *not* proposing that, in any circumstance (with or without an FOC; on  
4 the original due date or on another date<sup>138</sup>), Qwest cannot attempt to deliver the  
5 circuit or that Qwest must wait to send the FOC before attempting delivery. This  
6 is self-evident from the language of Eschelon’s proposal (see below). Eschelon  
7 wants Qwest to use best efforts to deliver the circuit on the due date, just as  
8 Eschelon uses best efforts to accept the circuit on the due date,<sup>139</sup> and Eschelon’s  
9 language therefore *requires* best efforts. The language of Eschelon’s proposed  
10 language for Issue 12-72 – showing Eschelon has committed to use best efforts –  
11 is as follows:

12 **Issue 12-72 (with emphasis added):**

13 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these  
14 types are: (1) CLEC or CLEC End User Customer is not ready or  
15 service order is not accepted by the CLEC (when Qwest has tested

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into the process that could guarantee the original due date is **not** met. But that is exactly what Eschelon's 24-hour advance notice requirement would do.”). See Exhibit Eschelon 3, Johnson Direct, p. 80.

<sup>137</sup> See Exhibit Eschelon 3R, Johnson Rebuttal, pp. 23 – 28.

<sup>138</sup> The “original” due date means the due date requested by CLEC on its order (*i.e.*, the date in jeopardy). Qwest sometimes refers to the “due date” without distinguishing whether it means the original date, the new due date, or the date of attempted delivery without an FOC identifying the new due date. There is no properly established due date until Qwest sends an FOC with a new due date after the jeopardy is cleared. (*See* ICA Section 9.2.4.4.1) In other words, Qwest is making delivery unexpectedly without properly establishing the due date. (Eschelon may refer to the date of attempted delivery as the new due date for ease of reference, but I wanted to clarify that it is not properly a new due date until an FOC is sent with that date.) In any event, whether the unexpected delivery occurs on the original due date or another date, under Eschelon’s proposed language, Eschelon will use best efforts to accept service delivery.

<sup>139</sup> *See, e.g.*, Exhibit Eschelon 3.75 (Examples: No FOC After Qwest Facility Jeopardy yet Eschelon Accepts Circuit).

1 the service to meet all testing requirements.); and (2) End User  
2 Customer access was not provided. For these two types of  
3 jeopardies, Qwest will not characterize a jeopardy as CNR or send  
4 a CNR jeopardy to CLEC if a Qwest jeopardy exists, *Qwest*  
5 *attempts to deliver the service*, and Qwest has not sent an FOC  
6 notice to CLEC after the Qwest jeopardy occurs but at least the day  
7 before Qwest attempts to deliver the service. *CLEC will*  
8 *nonetheless use its best efforts to accept the service*. If needed,  
9 the Parties will attempt to set a new appointment time on the same  
10 day and, if unable to do so, Qwest will issue a Qwest Jeopardy  
11 notice and a FOC with a new Due Date.

12 Eschelon’s proposed language clearly states that, even when Qwest falls down  
13 and does not provide an FOC or provides an untimely FOC, Eschelon “will  
14 nonetheless use its best efforts to accept the service.”<sup>140</sup>

15 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON’S PROPOSED**  
16 **LANGUAGE “WOULD IMPACT QWEST’S PIDs”<sup>141</sup> EVEN THOUGH**  
17 **ESCHELON’S PROPOSED LANGUAGE EXPRESSLY STATES THAT**  
18 **NOTHING IN THE ICA LANGUAGE MODIFIES THE PIDs.<sup>142</sup> PLEASE**  
19 **RESPOND.**

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<sup>140</sup> Eschelon Proposed ICA Section 12.2.7.2.4.4.1. Nonetheless, Qwest continually ignores the actual language of Eschelon’s proposal to make arguments that are unsupported in the language. Recently, Qwest said that “Eschelon’s proposal would usually assign fault to Qwest even though the CLEC has adequate notice that a circuit is being delivered *and is able to accept delivery*.” Qwest Response to Attachment 2 to Eschelon Post-Hearing Brief (Aug. 6, 2007), WA Docket No. UT-063061, p. 4 (emphasis added). Under Eschelon’s proposal, however, if Eschelon is able to accept delivery, fault is not assigned on this basis (even though Qwest is at fault with respect to not providing an FOC or a timely FOC), because Eschelon compensated for Qwest’s FOC failure by using best efforts and accepting delivery. No additional jeopardy is assigned, as the service was delivered so the request is no longer in jeopardy.

<sup>141</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 59, line 19 – p. 60, line 3.

<sup>142</sup> Exhibit Eschelon 3 (Johnson Direct), p. 65, lines 9-12 (Section 12.2.7.2.4.4 , proposal #2).

1 A. Ms. Albersheim has testified that the existing PIDs currently require Qwest “to  
2 differentiate between Qwest caused and CLEC/customer caused delays.”<sup>143</sup> In  
3 other words, when applying the PIDs today, Qwest is not supposed to blindly  
4 assign “CNR” jeopardies in every case but rather is supposed to review the facts  
5 to determine which carrier “caused” the delay and, if it was the CLEC/customer,  
6 then assign a “CNR” jeopardy. She has also testified that Qwest agrees with “the  
7 notion that a CNR jeopardy should be assigned appropriately.”<sup>144</sup> In her rebuttal  
8 testimony, Ms. Albersheim added: “The OP-3 PIDs, which measure whether  
9 Qwest delivers service on time, exclude CNR jeopardies.”<sup>145</sup> Note that Ms.  
10 Albersheim does *not* state that the OP-3 PIDs exclude CNR jeopardies regardless  
11 of whether they are CLEC/customer caused and even when Qwest *erroneously*  
12 assigns cause to a CLEC (by assigning CNR) when the delay is not caused by  
13 CLEC. That would be an improbable reading of the PIDs and inconsistent with  
14 her own reading of the PIDs leading her to conclude that the PIDs require Qwest  
15 to look at the *cause* of the delay (e.g., why CLEC is not ready). It would also give  
16 Qwest an incentive to classify Qwest-caused delays as CNR. Therefore, the only  
17 logical reading of the existing PIDs (without modification) is that they exclude

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<sup>143</sup> Albersheim AZ Direct testimony, Arizona T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”), page 75, lines 8-9; Albersheim CO Direct testimony, Colorado 06B-497T (“Colorado arbitration”), p. 61, lines 17-18; Albersheim MN Direct testimony, Minnesota P-5340, 421/IC-06-768 (“Minnesota arbitration”), p. 68, lines 12-13.

<sup>144</sup> Minnesota arbitration Tr., Vol., 1, p. 94, lines 5-6 (Ms. Albersheim). Regarding what is an appropriate assignment, Ms. Albersheim testified: “Q And if the CLEC doesn't have adequate notice that the circuit is being delivered, adequate notice consisting of an FOC, then you would agree that a CNR jeopardy is not appropriate; correct? A Yes.” Id. Tr. Vol. I p. 94, lines 7-11.

<sup>145</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 59, line 20 – p. 60, line 1.

1        *valid* CNR jeopardies (CLEC/customer caused delays). Eschelon’s language does  
2        not modify the PIDs. With adoption of Eschelon’s language, the PIDs will  
3        continue to exclude *valid* CNR jeopardies.

4        Ms. Albersheim has testified that, with the exception of a single phrase (which is  
5        otherwise documented by Qwest in its own CMP materials<sup>146</sup>), Eschelon’s  
6        jeopardies language reflects Qwest’s current process.<sup>147</sup> At no point does Qwest  
7        explain how any of Eschelon’s language reflecting Qwest’s current process can be  
8        inconsistent with the current PIDs or the current PAP or require modification of  
9        either of them. *If* Qwest is appropriately applying the PIDs and PAP today under  
10       its current process, then the result would not change under appropriate application  
11       of the PIDs or the PAP under ICA language reflecting that process. Ms.  
12       Albersheim, however, testifies that “Eschelon’s proposed language reduces the  
13       occurrence of CNR jeopardies.”<sup>148</sup> In addition, Eschelon’s examples in Exhibit  
14       3.76 (Qwest Exhibit 1R.9) and Ms. Albersheim’s testimony about them shows  
15       that, while Qwest sometimes<sup>149</sup> says it classifies jeopardies appropriately (*e.g.*,  
16       reflective of the company to which the jeopardy condition and missed due date

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<sup>146</sup> Exhibit Eschelon 3.74, p. 3 (February 26, 2004 CMP materials prepared and distributed by Qwest) (emphasis added); p. 11, p. 5, March 4, 2004 CMP ad hoc call minutes.

<sup>147</sup> Minnesota arbitration Tr., Vol. 1, p. 37, lines 16-23 (Ms. Albersheim). Qwest claims that Eschelon’s proposed phrase “at least the day before” is not part of Qwest’s current process. *See id.* p. 37, lines 11-19. Other than that phrase, however, Qwest admits that the remainder of Eschelon’s proposed language reflects Qwest’s current process. *See id.* p. 37, lines 16-23].

<sup>148</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 60, lines 1-2.

<sup>149</sup> *See, e.g.*, Minnesota arbitration Tr., Vol., 1, p. 94, lines 5-6 (Ms. Albersheim) (“We don’t disagree with the notion that a CNR jeopardy should be assigned appropriately.”)

1 are properly attributable, consistent with the PIDs and PAP), in practice Qwest  
2 will inappropriately classify a jeopardy as CNR when Qwest has failed to provide  
3 a timely FOC or even any FOC at all. Specifically, when Ms. Albersheim (who  
4 separately testified that a CNR would be inappropriate if no FOC is provided<sup>150</sup>)  
5 was provided with Eschelon's examples, she admitted that even in the eight  
6 examples for which she admitted Qwest provided *no FOC at all* (as opposed to an  
7 untimely FOC not provided at least the day before), Qwest had classified the  
8 missed due date as Eschelon-caused (CNR).<sup>151</sup> Qwest has since defended this  
9 classification as appropriate, and even suggested that "to prohibit Qwest from  
10 classifying an order as 'customer not ready' in this particular circumstance"  
11 would be a modification to Qwest's current processes.<sup>152</sup> About the PAP, Qwest  
12 has said:

13 Eschelon is technically correct that its proposal has no impact on the  
14 performance indicator definitions; it nonetheless has a very significant  
15 impact on Qwest's Performance Assurance Plan. ***Specifically, if a Qwest  
16 technician classifies an order as a Qwest jeopardy, it counts as a missed  
17 commitment, even though Qwest was ready and able to deliver the  
18 circuit. If, by contrast, the Qwest technician classifies the order as  
19 customer not ready, it is excluded from the calculation entirely.***  
20 Eschelon's proposal, however, changes the application of those  
21 definitions.<sup>153</sup>

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<sup>150</sup> Minnesota arbitration Tr. Vol. I p. 94, lines 7-11 (Ms. Albersheim) ("Q And if the CLEC doesn't have adequate notice that the circuit is being delivered, adequate notice consisting of an FOC, then you would agree that a CNR jeopardy is not appropriate; correct? A Yes.").

<sup>151</sup> Minnesota arbitration Tr. Vol. I p. 39, line 15 – p. 40, line 14 (Ms. Albersheim).

<sup>152</sup> Qwest Reconsideration Request, p. 2.

<sup>153</sup> Qwest WA Brief, WA Docket No. UT-063061 (July 20, 2007), p. 57, ¶165 (emphasis added); see also Qwest MN Reconsideration Request, p. 5.



1 If Qwest is allowed to assign “CNR” to a jeopardy whenever the CLEC is not  
2 ready regardless of whether Qwest caused CLEC to be not ready by failing to  
3 provide an FOC or timely FOC, Qwest’s own words in this quote describe an  
4 incentive under the existing PIDs to improperly classify orders as CNR to avoid  
5 proper inclusion of a Qwest missed due date in the PAP results. Note the absence  
6 of any qualifying terms in Qwest’s legal argument such as “properly” classifies an  
7 order as CNR. Ms. Albersheim’s testimony, however, has repeatedly recognized  
8 that currently under the PIDs Qwest is not allowed to assign “CNR” to any delay,  
9 but only to those delays which are “CLEC/customer caused” delays.<sup>154</sup>

10 Qwest cites nothing in the PIDs or the PAP stating or suggesting that, if Qwest  
11 violates its duty regarding FOCs<sup>155</sup> and as a result Eschelon is denied the  
12 opportunity to adequately prepare to accept delivery so that the due date is  
13 missed, Qwest may shift the consequences of its failure to Eschelon and require  
14 Eschelon to supplement its order for a delayed due date. In other words, Qwest  
15 has provided no facts to support its suggestion that Eschelon’s proposal changes

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<sup>154</sup> Albersheim AZ Direct testimony, Arizona T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”), page 75, lines 8-9; Albersheim CO Direct testimony, Colorado 06B-497T (“Colorado arbitration”), p. 61, lines 17-18; Albersheim MN Direct testimony, Minnesota P-5340, 421/IC-06-768 (“Minnesota arbitration”), p. 68, lines 12-13.

<sup>155</sup> Regarding FOCs, the Minnesota Commission expressly found that “Qwest acknowledges that it has *a duty* to give notice (called a firm order confirmation, or FOC) when scheduling an order due date, and when re-confirming an order that had previously been placed in jeopardy.” Exhibit Eschelon 2.25 (MN Order Resolving Arbitration), p. 19 (emphasis added). Agreed upon language in ICA Section 9.2.4.4.1 (like the SGAT) provides: “If Qwest must make changes to the commitment date, Qwest will promptly issue a Qwest Jeopardy notification to CLEC that will clearly state the reason for the change in commitment date. Qwest will also submit a new Firm Order Confirmation that will clearly identify the new Due Date.”

1 the intended and correct application of the PIDs. To the contrary, Qwest seems to  
2 be admitting that it is currently incorrectly applying the PIDs so it should be  
3 allowed to continue to do so, to Eschelon's and its customers' detriment. Qwest  
4 should correctly apply the PIDs, if it is not doing so today. As the Minnesota  
5 Commission stated:

6 The Commission realizes that circumstances change and not every  
7 deadline will be met; the Commission also realizes that circumstances  
8 change and some previously unmeetable deadlines can in fact be met. The  
9 Commission cannot know when these circumstances will reflect some  
10 fault on the part of Qwest and when they simply reflect the challenges of  
11 managing a complex telecommunications system; for this reason the PIDs  
12 do not prescribe penalties for every instance of missing a deadline, but  
13 merely for cumulative instances. But where Eschelon had no role in  
14 causing Qwest to issue an initial jeopardy notice, and had no role in  
15 delaying Qwest's issuance of a subsequent FOC until less than a day  
16 before the deadline, the Commission cannot find the merit in holding  
17 Eschelon responsible when the deadline is missed.

18 Nothing in Eschelon's language requires Qwest to delay filling an order.  
19 To the contrary, Eschelon's language calls upon each party to use their  
20 best efforts to meet deadlines with or without a timely FOC. Eschelon's  
21 language merely specifies the consequences for failing to offer a timely  
22 FOC - specifically, Eschelon would not be held responsible for any failure  
23 to meet the installation deadline, and the new deadline need not be delayed  
24 a minimum of three days.

25 Nor does the Commission read Eschelon's language to alter the PIDs.  
26 Given the apparent confusion on that point, however, the Commission will  
27 approve Eschelon's language together with Eschelon's statement clarifying  
28 that this new language does not modify the PIDs.<sup>156</sup>

29 The PIDs are not the primary business issue.<sup>157</sup> Eschelon's proposal should be  
30 adopted to avoid customer delays. Therefore, Eschelon has voluntarily proposed

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<sup>156</sup> Exhibit Eschelon 2.25 (MN Order Resolving Arbitration Issues, p. 21).

1 language committing Eschelon to use best efforts to accept delivery of the  
2 circuit/service even when Qwest has provided an untimely FOC or no FOC at  
3 all.<sup>158</sup> Despite Qwest’s previous claims about Eschelon’s attempt to “gain  
4 advantageous PAP treatment,”<sup>159</sup> this Eschelon ICA language means that  
5 Eschelon *will not receive PAP payments* for the untimely or missed FOC as a  
6 direct result of Eschelon’s own efforts to accept service despite Qwest’s failure to  
7 provide a timely FOC. Eschelon’s proposed language is solid evidence that the  
8 first priority under that language, consistent with the public interest, is to serve  
9 end user customers in a timely manner. If, despite Eschelon’s best efforts,  
10 Qwest’s failure to provide an FOC or a timely FOC causes a missed due date,  
11 Qwest is not be able under the existing PIDs or PAP to legitimately attribute its  
12 failure to Eschelon by coding the missed due date as CNR.

13 **Q. MS. ALBERSHEIM CLAIMS THAT QWEST “NEVER” MADE A**  
14 **COMMITMENT TO DELIVER A NEW DUE DATE RESOLVING AN**  
15 **ORDER IN JEOPARDY THE DAY BEFORE THE NEW DUE DATE.<sup>160</sup> IS**  
16 **THAT TRUE?**

17 A. No. Ms. Albersheim is wrong when she says that the “evidence presented by  
18 Eschelon regarding the applicable CMP Change Requests shows that Qwest never

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<sup>157</sup> Exhibit Eschelon 3, Johnson Direct, p. 67, line 16 – p. 68, line 7.

<sup>158</sup> ICA Section 12.2.7.2.4.4.1.

<sup>159</sup> Qwest Reconsideration Request, p. 7.

<sup>160</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 51, lines 1-5; Qwest Exhibit 1R, Albersheim Rebuttal, p. 58, line 13.

1 made such a commitment.”<sup>161</sup> In my response below, I point directly to the  
2 exhibits where Qwest makes this commitment. Qwest both made a commitment  
3 to send an Firm Order Confirmation (“FOC”) with the due date after a Qwest  
4 facility jeopardy and to do so at least the day before the due date. Eschelon  
5 submitted the evidence of this Qwest commitment with its direct testimony, so  
6 this evidence was in the record at the time that Ms. Albersheim made her  
7 statement to the contrary. In addition, I will explain how Qwest creates confusion  
8 by discussing two CMP change requests together – PC081403-1<sup>162</sup> and  
9 PC072303-1<sup>163</sup> – when change request PC072303-1 does not even relate to FOCs  
10 that follow a Qwest facility jeopardy.<sup>164</sup>

11 **Q. DID QWEST COMMIT TO DELIVER A NEW DUE DATE RESOLVING**  
12 **AN ORDER IN JEOPARDY AND TO DO SO AT LEAST THE DAY**  
13 **BEFORE THE NEW DUE DATE?**

14 A. Yes. On February 26, 2004, in CMP Qwest provided to Eschelon a response to  
15 an example in which Qwest, after a Qwest facility jeopardy, had not provided an  
16 FOC with a new due date the day before.<sup>165</sup> In its response, Qwest made the

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<sup>161</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 51, lines 1-5; Qwest Exhibit 1R, Albersheim Rebuttal, p. 58, line 13.

<sup>162</sup> Exhibit Eschelon 3.72; *see also* Qwest Exhibit 1R.2 (Albersheim).

<sup>163</sup> Exhibit Eschelon 3.73; *see also* Qwest Exhibit 1R.1 (Albersheim).

<sup>164</sup> Exhibit Eschelon 3.73; *see also* Qwest Exhibit 1R.1 (Albersheim).

<sup>165</sup> Exhibit Eschelon 3.71, p. 5 (2/26/04). The notice for the March 4, 2004 meeting was dated February 26, 2004. Exhibit Eschelon 3.74, p. 1. The enclosed materials (distributed with the notice on 2/26/04) are dated February 25, 2004 and are part of Exhibit Eschelon 3.74, pp. 2-6.

1 commitment in CMP that Ms. Albersheim suggests Qwest did not make. To  
2 confirm Qwest's process and ensure a mutual understanding of the facts,  
3 Eschelon specifically asked Qwest whether, under Qwest's process, "shouldn't  
4 we have received the releasing FOC the day before the order is due?"<sup>166</sup> Qwest  
5 responded:

6 **Yes an FOC should have been sent prior to the Due Date.**<sup>167</sup>

7 During the March 4, 2004 call to discuss these materials (including Eschelon's  
8 example and Qwest's response), Eschelon "confirmed that the CLEC should  
9 *always* receive the FOC before the due date."<sup>168</sup> Qwest "agreed, and confirmed  
10 that Qwest cannot expect the CLEC to be ready for the service if we haven't  
11 notified you."<sup>169</sup> With this commitment from Qwest, change request PC081403-1  
12 was closed.<sup>170</sup>

13 A copy of the meeting materials provided on February 26, 2004 is included in  
14 Exhibit Eschelon 3.74 to my direct testimony.<sup>171</sup> Similarly, the copy of the  
15 Detail for Change Request PC081403-1, which Ms. Albersheim attaches to her

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<sup>166</sup> Exhibit Eschelon 3.71, p. 5 (2/26/04) (emphasis added) & Exhibit Eschelon 3.74, p. 3.

<sup>167</sup> Exhibit Eschelon 3.71, p. 5 (2/26/04) (emphasis added) & Exhibit Eschelon 3.74, p. 3.

<sup>168</sup> Exhibit Eschelon 3.71, p. 5 (3/4/04) & Exhibit Eschelon 3.71, p. 21; Qwest Exhibit 1R.2, p. 6.

<sup>169</sup> Exhibit Eschelon 3.71, p. 5 (3/4/04) & Exhibit Eschelon 3.71, p. 21; Qwest Exhibit 1R.2, p. 6.

<sup>170</sup> Exhibit Eschelon 3.71, pp. 5-6 (7/21/04) & Exhibit Eschelon 3.71, p. 20; Qwest Exhibit 1R.2, p. 5. Qwest agreed that, after a Qwest facility jeopardy, if Qwest did not send an FOC with the new due date the day before, this should be treated as a "compliance issue." *See id.* In other words, Qwest's process is to provide the FOC the day before, and when it does not do so, it is out of compliance with its own process.

<sup>171</sup> Exhibit Eschelon 3.74, pp. 2-6. For the March 4, 2004 ad hoc CMP meeting minutes, see Exhibit Eschelon 3.72, p. 5 & Qwest Exhibit 1R.2, pp.6-7.

1 testimony as Qwest Exhibit 1R.2 (and which Eschelon provided as part of its  
2 direct testimony in Exhibit Eschelon 3.72),<sup>172</sup> establishes that Eschelon accurately  
3 quoted from that Change Request Detail in its chronology of this issue.<sup>173</sup>

4 **Q. MS. ALBERSHEIM STATES THAT THE “CMP RECORD PROVES”**  
5 **THAT QWEST “NEVER” MADE THIS COMMITMENT, AND SHE**  
6 **SUGGESTS THAT SHE IS BEING MORE COMPLETE IN HER**  
7 **PRESENTATION OF THE “CMP RECORD” BECAUSE SHE**  
8 **ATTACHES THE “ACTUAL” CHANGE REQUESTS.<sup>174</sup> DID MS.**  
9 **ALBERSHEIM PRESENT ANY NEW PART OF THE CMP RECORD OR**  
10 **POINT TO ANY INFORMATION IN THE CMP DOCUMENTS**  
11 **PROVIDED BY ESCHELON TO SHOW THAT QWEST DID NOT MAKE**  
12 **THE COMMITMENTS QUOTED ABOVE?**

13 **A.** No. Ms. Albersheim testified that her purpose in attaching the “actual” change  
14 requests containing CMP meeting minutes as Qwest Exhibit 1R.1 and Qwest  
15 Exhibit 1R.2 to her rebuttal testimony was to show “there was never an explicit  
16 request by Eschelon or an agreement by Qwest to provide ‘at least a day’ or 24-

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<sup>172</sup> Though page numbers for Qwest Exhibit 1R.2 and Exhibit Eschelon 3.72 differ, they are the same document. This is a Qwest document that Qwest provides on its web site in HTML format. Qwest produced this exhibit in a landscape PDF version, while Eschelon converted the document to a Word portrait version in an effort to comply with the Utah rules.

<sup>173</sup> Compare Qwest Exhibit 1R2.1 (Albersheim) with excerpts in the chronology in Exhibit Eschelon 3.71 (see also the full change request in Exhibit Eschelon 3.72).

<sup>174</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 51, lines 1-11.

1 hours notice in advance of a new due date.”<sup>175</sup> Eschelon attached both of those  
2 identical change requests, however, to its *direct* testimony.<sup>176</sup>

3 Also, despite Ms. Albersheim’s suggestion that she was making a more complete  
4 record by attaching “the actual Change Requests, which include the minutes from  
5 the Project Meetings,”<sup>177</sup> the February 25, 2004<sup>178</sup> Qwest meeting materials that  
6 contain key evidence of this Qwest commitment are notably absent from her  
7 testimony and its exhibits (even though Eschelon pointed Qwest directly to it in  
8 its my direct testimony).<sup>179</sup> Ms. Albersheim attached Change Request PC081403-  
9 1 to her testimony (as Qwest Exhibit 1R.2). Qwest Exhibit 1R.2 specifically  
10 refers to the March 4, 2004 ad hoc meeting discussed above,<sup>180</sup> but Ms.

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<sup>175</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 51, lines 8-11. In Arizona she said her purpose in attaching the change requests was to “present a more complete record of the activities that took place regarding the Change Requests in question.” Albersheim AZ Rebuttal (Feb. 9, 2007), p. 21, lines 15-17.

<sup>176</sup> Compare Qwest Exhibit 1R.1 (Albersheim) with Exhibit Eschelon 3.73 (Johnson). Compare Qwest Exhibit 1R.2 (Albersheim) with Exhibit Eschelon 3.72 (Johnson).

<sup>177</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 51, lines 6-7. See Arizona arbitration, Albersheim Rebuttal, p. 21, lines 15-17 (“In order to present a more complete record of the activities that took place regarding the Change Requests in question, I have attached the actual Change Requests, which include the minutes from the Project Meetings.”).

<sup>178</sup> Exhibit Eschelon 3.71, p. /5 (2/26/04) refers to meeting materials dated 2/25/06. The correct date for this meeting material is 2/25/04.

<sup>179</sup> Exhibit Eschelon 3, Johnson Direct, p. 75. Exhibit Eschelon 3.71, p. 5 (chronology, 2/26/04). Eschelon explained in Exhibit Eschelon 3.71 that Qwest’s commitment is documented in written materials dated February 25, 2004 that were attached to the March 4, 2004 meeting notice relating to Change Request PC081403-1. See *id.* & Exhibit Eschelon 3.71, p. 5 (2/26/04 & 3/4/04). See also Exhibit Eschelon 3.74, p. 1 (2/26/04 notice) & Exhibit Eschelon 3.74, pp. 2-6 (meeting materials dated 2/25/04).

<sup>180</sup> Qwest Exhibit 1R.2, p. 4 (“3/4/04 – Held ad hoc meeting with CLECs”) & pp. 6-7.

1 Albersheim omitted the materials provided by Qwest on February 26, 2004<sup>181</sup> for  
2 that ad hoc meeting from her exhibits.<sup>182</sup> Key documentation of Qwest's  
3 commitment to send an FOC at least the day before the due date (which I quoted  
4 and cited above), however, is contained in that documentation omitted by Qwest.

5 **Q. QWEST DISCUSSES TWO DIFFERENT CHANGE REQUESTS. DOES**  
6 **QWEST CLEARLY DISTINGUISH THEM?**

7 A. No. Qwest introduces confusion by discussing two different change requests  
8 without explaining the facts relating to them or distinguishing clearly when Qwest  
9 is discussing which change request. Change request PC081403-1 is the subject of  
10 Eschelon's Jeopardy Classification and Firm Order Confirmations Chronology  
11 (Exhibit Eschelon 3.71, p. 3) and relates to situations involving Qwest facility  
12 jeopardies. I'll refer to this as the *Qwest Jeopardy Change Request*.<sup>183</sup> In the  
13 *Qwest Jeopardy Change Request*, Eschelon requested "a reasonable time frame to  
14 prepare to accept the circuit."<sup>184</sup> Initially, Eschelon identified a minimum of 2 to  
15 4 hours as a time frame for discussion.<sup>185</sup> As indicated above, however, Qwest

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<sup>181</sup> See Exhibit Eschelon 3.74 (Johnson); Exhibit Eschelon 3.74, p. 3 ("shouldn't we have received the releasing FOC the day before the order is due? . . . . Response #1 This example is non-compliance to a documented process. Yes an FOC should have been sent prior to the Due Date").

<sup>182</sup> See Exhibit Eschelon 3.71, p. 5 (2/26/04). The notice for the March 4, 2004 meeting was dated February 26, 2004. Exhibit Eschelon 3.74, p. 1. The enclosed materials (distributed with the notice on 2/26/04) are dated February 25, 2004 and are part of Exhibit Eschelon 3.74, pp. 2-6.

<sup>183</sup> Change Request PC081403-1 is Exhibit Eschelon 3.72 (Johnson); it is also Qwest Exhibit 1R.2.

<sup>184</sup> Exhibit Eschelon 3.72, p. 2. See also Qwest Exhibit 1R.2, p. 3. Eschelon was requesting not a delay but advance notice of delivery of a circuit so that Eschelon could be prepared to accept the circuit *on time*.



1 later committed to a longer time frame (to provide the FOC the day before the due  
2 date), as that is Qwest's process.<sup>186</sup>

3 The other change request (PC072303-1)<sup>187</sup> has nothing to do with Qwest facility  
4 jeopardies.<sup>188</sup> It relates to situations in which there is no Qwest-caused jeopardy  
5 (of any kind, facility or otherwise).<sup>189</sup> The issue in this change request is whether  
6 Eschelon has until 5:00 p.m. to accept a circuit for basic installations on the due  
7 date or whether Qwest can declare an Eschelon-caused ("Customer Not Ready"  
8 or "CNR") jeopardy if it attempts to deliver the circuit earlier in the day and  
9 Eschelon is not ready at that time but is ready before 5:00 p.m. In these cases,  
10 Eschelon has received an FOC for the due date, but the question revolves around  
11 timing of delivery on that date. I will refer to this as the *Before 5:00 p.m. CNR*  
12 *Jeopardy Change Request*.<sup>190</sup> As a result of this change request, Qwest made "a

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<sup>185</sup> Exhibit Eschelon 3.72, p. 11; Qwest Exhibit 1R.2, p. 15; Qwest Exhibit 1R, Albersheim Rebuttal , p. 54lines 1-3. Eschelon was clear that this was a "minimum" only, and the request therefore included a longer time frame to prepare to accept the circuit. See Qwest Exhibit 1R.2, p. 12 (12/8/03) ("4 hour minimum"). Note that Qwest, as part of its ICA proposal, commits to no time frame (whether 4 hours or 24 hours). In fact, Qwest's CMP Process Manager has denied that Qwest must send an FOC at all in these situations, much less send them in advance. Exhibit Eschelon 3.71, pp. 16-18.

<sup>186</sup> Exhibit Eschelon 3.74, p. 3 (2/26/04) (quoted above); see also Qwest Exhibit 1R.2, p. 6 (3/4/04 minutes).

<sup>187</sup> Change Request PC072303-1 is Exhibit Eschelon 3.73; it is also Qwest Exhibit 1R.1.

<sup>188</sup> The term "Qwest facility jeopardy" refers generally to a Qwest-caused issue or potential issue that places delivery of the requested facility on the due date at risk (i.e., in "jeopardy") due to an issue relating to facilities in the Qwest network (such as lack of facilities, bad pairs, etc.). Further information about the type of jeopardy dealt with in Eschelon's proposed language for this issue is provided in footnotes 4, 5, and 6 to Exhibit Eschelon 3.76. In particular, see the discussion of "K jeeps" in footnote 6 of Exhibit Eschelon 3.76.

<sup>189</sup> Exhibit Eschelon 3.73 (Johnson); see also Qwest Exhibit 1R.1 (Albersheim) (PC072303-1).

<sup>190</sup> Exhibit Eschelon 3.73 (Johnson); see also Qwest Exhibit 1R.1 (Albersheim) (PC072303-1).

1 back end system change” to “hold the CNR jeopardy notifications until 6 PM  
2 Mountain time.”<sup>191</sup>

3 A comparison of the description of the change request in Qwest Exhibit 1R.2  
4 (*Qwest Jeopardy Change Request*) and Qwest Exhibit 1R.1 (*Before 5:00 p.m.*  
5 *CNR Jeopardy Change Request*) shows that Eschelon made different requests in  
6 each one. The titles alone demonstrate this:

7 *Qwest Jeopardy Change Request* (PC081403-1): “Delayed Order  
8 process modified to allow the CLEC a designated time frame to  
9 respond to a released delayed order after Qwest sends an updated  
10 FOC.”<sup>192</sup>

11 *Before 5:00 p.m. CNR Jeopardy Change Request* (PC072303-1):  
12 “Customer Not Ready (“CNR”) jeopardy notice should not be sent  
13 by Qwest to CLECs before 5 PM local time on the due date (for  
14 basic install)”<sup>193</sup>

15 Although there were “synergies”<sup>194</sup> because both change requests dealt to some  
16 extent with jeopardies, the resolution of one request did not replace the other.  
17 The change in the timing of jeopardies until 6 p.m. for situations when the due  
18 date was provided on an FOC as a result of the *Before 5:00 p.m. CNR Jeopardy*  
19 *Change Request* did not resolve the request for a reasonable time frame to prepare

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<sup>191</sup> Qwest Exhibit 1R.1, p. 6 (Qwest 9/9/03 Response) (PC072303-1).  
<sup>192</sup> Exhibit Eschelon 3.72 p. 11; Qwest Exhibit 1R.2, p. 1 (PC081403-1). This is the title of Eschelon’s Change Request. When Qwest later expanded the Change Request, it added another title (“Jeopardy Notification Process Changes”) but Eschelon requested that the original title and change description also be retained as its request remained a part of the expanded Change Request. See Qwest Exhibit 1R.2, p. 1.  
<sup>193</sup> Exhibit Eschelon 3.73, p. 1; Qwest Exhibit 1R.1 (PC072303-1), p. 1.  
<sup>194</sup> Qwest Exhibit 1R.2, p. 16 (10/8/03); Qwest Exhibit 1R, Albersheim Rebuttal, p. 53, lines 8-10 & 19.

1 to accept the circuit in situations when Qwest failed to deliver a FOC after a  
2 Qwest facility jeopardy in the *Qwest Jeopardy Change Request*.

3 **Q. IN MS. ALBERSHEIM’S REBUTTAL TESTIMONY, SHE RESPONDS TO**  
4 **THE QUESTION “WHAT DID ESCHELON ASK FOR IN . . . CHANGE**  
5 **REQUEST PC-081403.”<sup>195</sup> PLEASE RESPOND.**

6 A. It appears her choice in how to describe Eschelon’s request may be related to  
7 Qwest’s claim of a “compromise”<sup>196</sup> to limit issues in CMP. As I discuss below,  
8 there was no such compromise. I personally submitted both change requests and  
9 represented Eschelon in CMP in these meetings, and Eschelon did not give up its  
10 Change Request or associated expected deliverables as part of a compromise or  
11 otherwise. The jeopardies discussion was *expanded* in CMP to include more  
12 issues. This is shown by the change in title, which is more general in scope and  
13 thus broader and more inclusive than the original title, while still including  
14 Eschelon’s original request:

15 “Title: Jeopardy Notification Process Changes (new title). Delayed  
16 order process modified to allow the CLEC a designated time frame  
17 to respond to a released delayed order after Qwest sends an  
18 updated FOC (old title).”<sup>197</sup>

19 Ms. Albersheim testifies that “Eschelon asked to ‘change the jeopardy notification  
20 process to reduce unnecessary jeopardy notices being sent to the CLEC when the

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<sup>195</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 52, lines 1-2.

<sup>196</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, line 7 and Qwest Exhibit 1R, Albersheim Rebuttal, p. 58, lines 11-13.

1 Due Date is not in jeopardy and to improve the overall jeopardy notification  
2 process.”<sup>198</sup> This description is very broad, referring generally to improving the  
3 *overall* process. Ms. Albersheim then references Qwest Exhibit 1R.2 – Expected  
4 Deliverable in a footnote as support for her claim. A closer review of Qwest  
5 Exhibit 1R.2 shows there are two expected deliverables in this Change Request.  
6 The description of change (the first paragraph you read in the Change Request)  
7 makes it clear that Qwest updated the Change Request with Qwest’s new,  
8 *additional* description of change and expected deliverable (Ms. Albersheim  
9 quotes Qwest’s expected deliverable). The description of change states:

10 “Changed the description of this CR as a result of synergies with  
11 PC072303-1. During the October 15 CMP meeting we discussed  
12 whether we should close/leave open/ or update CR PC081403-1  
13 'Delayed order process modified to allow the CLEC a designated  
14 time frame to respond to a released delayed order'. The reason we  
15 wanted to close/leave open or update PC081403-1 is because  
16 PC072303-1 is meeting many of the needs. Bonnie Johnson agreed  
17 to change this CR, *as long as we retained the original CR*  
18 *description.*”<sup>199</sup>

19 Qwest had determined the scope was *larger* than Eschelon’s request regarding the  
20 jeopardy process, and wanted to update the description and expected deliverable  
21 to increase the scope. I asked that Eschelon’s description of change remain as a  
22 part of the Change Request so it would be clear that Eschelon’s request would be  
23 included and to avoid the very kind of confusion Ms. Albersheim has now

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<sup>197</sup> Qwest Exhibit 1R.2, p. 1.  
<sup>198</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 52, lines 3-5.  
<sup>199</sup> Qwest Exhibit 1R.2 pp.2-3 (emphasis added).

1 introduced. Eschelon’s description of change and expected deliverable, which  
2 remained a part of the Charge Request, stated:

3 “Qwest will contact the CLEC to test and accept only after the  
4 updated FOC has been sent and *a designated time frame* has  
5 passed. *Qwest will not put the order in a CNR (customer not*  
6 *ready) jeopardy status* until this time frame has passed and the  
7 CLEC is not ready. When Qwest puts a CLECs request in delayed  
8 for facilities jeopardy status, Qwest should be *required to send the*  
9 *CLEC an updated FOC when the delayed order is released* and  
10 *allow the CLEC a reasonable time frame to prepare* to accept the  
11 circuit. Qwest releases orders form a held status (in some cases the  
12 CLEC has not even received an updated FOC) and immediately  
13 contacts the CLEC to accept the circuit. Because Qwest does not  
14 allow the CLEC a reasonable amount of time to prepare for the  
15 release of the delayed order, the CLEC may not be ready when  
16 Qwest calls to test with the CLEC. Qwest then places the request  
17 in a CNR jeopardy status. Qwest should modify the Delayed order  
18 process, to require Qwest *to send an updated FOC and then allow*  
19 *a reasonable amount of time for the CLEC to react and prepare*  
20 *to accept the circuit before contacting the CLEC for testing.*

21 Expected Deliverable:  
22 *Qwest will modify, document and train a process, that requires*  
23 *Qwest to send an updated FOC and allow a CLEC a reasonable*  
24 *amount of time (from the time the updated FOC is sent) to*  
25 *prepare for testing before Qwest contacts the CLEC to test and*  
26 *accept the circuit.*<sup>200</sup>

27 This shows that Eschelon clearly made these requests as part of this Change  
28 Request. The description of change quoted above shows that I took steps to  
29 ensure that, when Qwest expanded the scope of the Change Request, Eschelon’s  
30 request (including this expected deliverable) remained a part of the Change  
31 Request. Eschelon specifically requested a documented “designated time frame”  
32 and, as the quotations from Qwest documentation in my discussion above, Qwest

1 committed in writing in posted minutes (i.e., documented) that it had an internally  
2 documented process to provide the FOC the day before delivering the circuit.

3 **Q. MS. ALBERSHEIM DESCRIBES THE ALLEGED “RESULT” OF THE**  
4 ***QWEST JEOPARDY CHANGE REQUEST* AND STATES THAT QWEST**  
5 **AGREED TO PROVIDE ADDITIONAL JEOPARDY INFORMATION**  
6 **WITHIN 72 HOURS.<sup>201</sup> PLEASE RESPOND.**

7 A. Ms. Albersheim is attempting to suggest that Eschelon accepted the 72-hour  
8 information *instead* of Eschelon’s request for “a reasonable time frame to prepare  
9 to accept the circuit (from the time the updated FOC is sent)”<sup>202</sup> in the *Qwest*  
10 *Jeopardy Change Request*.<sup>203</sup> Clearly, that is not the case. I personally submitted  
11 this change request, which outlined Eschelon’s expected deliverables, to CMP and  
12 when participating in CMP on behalf of Eschelon, I did not agree to give up  
13 Eschelon’s request for a reasonable time frame to prepare to accept the circuit.  
14 Not only would Eschelon not have done so, given the importance of this issue, but  
15 also Eschelon did not need to give up this request, as this expected deliverable

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<sup>200</sup> Qwest Exhibit 1R.2 p. 3 (emphasis added).

<sup>201</sup> Qwest Exhibit 1R, Albersheim Rebuttal, P. 52, lines 7-13.

<sup>202</sup> Exhibit Eschelon 3.72, p. 2. *See also* Qwest Exhibit 1R.2, p. 3. Ms. Albersheim quotes the later expected deliverable (Qwest Exhibit 1R, Albersheim Rebuttal, p. 52, lines 1-5), without mentioning Eschelon’s expected deliverable at Qwest Exhibit 1R.2, p. 3. Eschelon’s initial description of change and expected deliverable remained a part of the expanded Charge Request. *See* Eschelon Exhibit 3 (Johnson Direct), p. 87, line 1 – p. 89, line 7.

<sup>203</sup> This week, Qwest made this claim explicitly in its Response to Attachment 2 to Eschelon Post-Hearing Brief (Aug. 6, 2007), WA Docket No. UT-063061, p. 7. Qwest stated: “. . . Eschelon initiated a change request asking for a requirement that an FOC be provided a day in advance. . . . ***Instead*** the language contained a provision indicating that Qwest would usually provide an updated due date within 72 hours.” *Id.* (emphasis added).

1 was met with Qwest’s commitment in CMP that it would work on compliance  
2 with its existing process to provide an FOC at least the day before<sup>204</sup> (and  
3 therefore no changes in process or the PCAT were needed, as this was an issue of  
4 Qwest compliance with an existing process<sup>205</sup>). Three facts, in particular, show  
5 that Qwest’s suggestion is incorrect: (1) examples demonstrate Qwest’s  
6 suggestion leads to illogical outcomes; (2) the *Qwest Jeopardy Change Request*  
7 was expanded to include the 72 hour issue in addition to Eschelon’s other  
8 expected deliverable; and (3) Qwest’s CMP minutes and PCAT redline show a  
9 different result than the one suggested by Qwest now.

10 First, examples in the record show that it is illogical to assume that Qwest sending  
11 either updated details about the reason for a jeopardy or an FOC within 72 hours  
12 after the initial jeopardy satisfied Eschelon request for “a reasonable time frame to  
13 prepare”<sup>206</sup> before the due date. It is clear from the examples that in some cases  
14 Qwest may not send Eschelon a Qwest facility jeopardy notice until the day  
15 before or even sometimes on Eschelon’s requested due date.<sup>207</sup> To believe the 72  
16 hour change would satisfy Eschelon’s request, therefore, one would have to

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<sup>204</sup> See Exhibit Eschelon (Johnson Rebuttal), p. 18 *quoting* both Eschelon 3.74, p. 3 (Feb. 26, 2004 CMP materials prepared by Qwest); and Exhibit Eschelon 3.72, p. 5, March 4, 2004 (CMP ad hoc call minutes prepared by Qwest).

<sup>205</sup> Qwest CMP materials state: “*Is this a compliance issue*, shouldn’t we have received the releasing FOC the day before the order is due? . . . Response #1 *This example is non-compliance to a documented process. Yes* an FOC should have been sent prior to the Due Date.” See Eschelon 3.74, p. 3 (Feb. 26, 2004 CMP materials prepared by Qwest), quoted in Exhibit Eschelon (Johnson Rebuttal), p. 18.

<sup>206</sup> Exhibit Eschelon 3.72, p. 2. *See also* Qwest Exhibit 1R.2, p. 3.

<sup>207</sup> See Exhibit Eschelon 3.76; Qwest Exhibit 1.R9.

1 believe that Qwest sending the FOC one or two days *after* Eschelon’s requested  
2 due date would meet Eschelon’s request for reasonable advance notice *before* the  
3 due date. If Qwest sends the initial jeopardy on the requested due date, “within  
4 72 hours” would mean that Qwest will not send additional details or an FOC until  
5 2 to 3 days *after* the requested due date. For example, Row 17 of Exhibit  
6 Eschelon 3.76 describes an example when Qwest’s own technician notes show  
7 Qwest provided no FOC.<sup>208</sup> In the Row 17 example, Eschelon’s requested due  
8 date was Friday, April 14<sup>th</sup>. Per Qwest’s notes, Qwest did not send its Qwest  
9 facility jeopardy, indicating it would not make the due date, until approximately  
10 3:00 pm on the due date (April 14<sup>th</sup>). Per the Qwest 72-hour change, Qwest is to  
11 provide either additional information about the initial jeopardy or an FOC with a  
12 revised due date within 72 hours of the initial jeopardy.<sup>209</sup> As the requested due  
13 date was a Friday and Qwest uses business hours, the 72 hour CMP change would  
14 mean that the 72 hour time period would not end until Wednesday, April 19<sup>th</sup> –  
15 days *after* the requested due date. In other words, a customer expecting delivery  
16 on Friday may not receive either an FOC or additional information about the  
17 delay until the following Wednesday. This result cannot possibly fulfill a request  
18 for advance notice in time to prepare for service delivery on the requested due  
19 date (Friday, April 14<sup>th</sup>, in this example).

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<sup>208</sup> Exhibit Eschelon 3.76 (Row 17 on pages 18-19). This example also appears in Row 20 of Qwest Exhibit 1R.9.

<sup>209</sup> Qwest Exhibit 1R.4 (redlined PCAT), p. 8, row 1, 2<sup>nd</sup> bullet point. See below for discussion of this change.



1 Second, Qwest’s CMP documentation clearly shows that, when Qwest expanded  
2 the scope of the *Qwest Jeopardy Change Request*, Eschelon’s request (including  
3 the reasonable time frame expected deliverable) remained a part of the *Qwest*  
4 *Jeopardy Change Request*, as described in my direct testimony.<sup>210</sup> The  
5 description of the change request was expanded to broadly seek to “improve the  
6 **overall** jeopardy notification process” on October 30, 2003.<sup>211</sup> The 72 hour  
7 request was not made until January 23, 2004.<sup>212</sup> Once the scope of the change  
8 request was expanded to the overall jeopardy process, Eschelon identified this  
9 additional issue of inadequate detail provided with Qwest’s initial automated  
10 facility jeopardy notice. Qwest’s CMP minutes show that I said:

11 “Bonnie advised they do want more detail on what the jep’d problem is.  
12 They need to know if it is a F1 pair, or the street needs to be dug up. She  
13 would like more detail on one jep in particular: ‘Local Facility not  
14 available’. Bonnie asked when does this jep occur. What situation causes  
15 this jep to be assigned?”<sup>213</sup>

16 In other words, a jeopardy message indicating that a local facility is not available  
17 does not provide any indication for business planning purposes of whether the  
18 delay is likely to be very long (because, for example, a street needs to be dug up  
19 to provide the facility) or the delay is likely to be shorter (because, for example, a  
20 bad pair needs to be replaced). Although Qwest refers to an FOC in its response

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<sup>210</sup> Eschelon Exhibit 3 (Johnson Direct), p. 87, line 1 – p. 89, line 7.

<sup>211</sup> Exhibit Eschelon 3.72, p. 2 (emphasis added) & p. 3 (fourth row – 10/30/03 entry).

<sup>212</sup> Qwest Exhibit 1R.2, page 9 of 16; See also Exhibit Eschelon 3.72, page 7 of 12.

<sup>213</sup> Qwest Exhibit 1R.2, page 9 of 16; See also Exhibit Eschelon 3.72, page 7 of 12.

1 (as discussed below), the issue with this additional aspect of the expanded change  
2 request dealt primarily with the content of the initial jeopardy notice. As Qwest  
3 claimed it had insufficient information at the time it sent the initial jeopardy about  
4 the nature of the Qwest facility problem,<sup>214</sup> Qwest committed to provide  
5 additional detail when it became available while the Qwest facility jeopardy  
6 condition continued<sup>215</sup> and to do so within 72 hours of the initial jeopardy.<sup>216</sup>  
7 This is not the same issue as Eschelon’s request for reasonable advance notice to  
8 prepare for service delivery. The multi-issue expanded change request regarding  
9 the overall jeopardy process addressed both issues.<sup>217</sup>

10 Third, Qwest’s CMP minutes and redlined PCAT show a different result than the  
11 one suggested by Qwest’s witness now. Qwest CMP minutes state:

12 Qwest proposed that an updated Jeopardy Notification with additional  
13 detailed remarks would be sent within 72 hrs from when the Initial  
14 Jeopardy was sent if a solution to the delayed condition has not been  
15 reached. The proposal means that within 72 hrs from the initial Jeopardy  
16 Notification, *the CLEC will receive one of the following: 1. FOC*  
17 *confirming original Due Date 2. FOC confirming revised Due Date*  
18 *based on Network resolution of the Jeopardy condition including*  
19 *details on the delay. 3) An “updated” Jeopardy Notification with more*

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<sup>214</sup> See, e.g., Qwest Exhibit 1R.2, page 9 of 16 (“Qwest does not know additional details until the engineer does investigation and finds out more.”).

<sup>215</sup> Qwest Exhibit 1R.2, page 5 of 16 – 6 of 16 (Qwest will provide additional detail “if a solution to the delayed condition has not been reached.”); See also Exhibit Eschelon 3.72, page 4 of 12.

<sup>216</sup> Qwest Exhibit 1R.2, page 5 of 16 – 6 of 16; See also Exhibit Eschelon 3.72, page 4 of 12.

<sup>217</sup> Qwest admits that “Qwest made a number of revisions to the jeopardy process, including . . . .” Qwest Exhibit 1R (Albersheim Rebuttal), p. 52, line 8.

1                    *specific details of the Jeopardy condition.* An FOC will follow when  
2                    the revised Due Date has been determined.<sup>218</sup>

3                    The redlined PCAT also states:

4                    Within 72 hours of the initial jeopardy notice, *either an updated*  
5                    *jeopardy notification* with more specific details of the jeopardy  
6                    condition *or a FOC advising of the new DD* will be sent to you.  
7                    *If an updated jeopardy notice is sent, we will also send a FOC*  
8                    *advising you of the DD* Qwest can meet when the RFS Date is  
9                    known.<sup>219</sup>

10                  Note that none of the options identified by Qwest in CMP and its PCAT states (as  
11                  now claimed by Qwest): The facility may be delivered without either an updated  
12                  Jeopardy Notification or an FOC in advance of delivery.<sup>220</sup> Again, that result is  
13                  illogical. Obviously, Eschelon would have continued to object if that had been  
14                  the result in CMP. It was not. To address the separate problem of inadequate  
15                  detail at the time an initial jeopardy is sent, either there is no delivery because the  
16                  Qwest facility condition continues (and an updated jeopardy notice with more  
17                  specific details about the condition is sent) or the Qwest facility condition is  
18                  resolved and an FOC is sent with a due date for the upcoming delivery.<sup>221</sup>  
19                  Neither 72-hour scenario involves delivery without a timely FOC to allow the

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<sup>218</sup> Qwest Exhibit 1R.2, page 5 of 16 – 6 of 16; See also Exhibit Eschelon 3.72, page 4 of 12 (emphasis added).

<sup>219</sup> Qwest Exhibit 1R.4 (redlined PCAT), p. 8, row 1, 2<sup>nd</sup> bullet point.

<sup>220</sup> Similarly, it does *not* state: The facility may be delivered *unexpectedly (or after information received by word of mouth through technicians)* -- without either an updated Jeopardy Notification or an FOC in advance of delivery.

<sup>221</sup> If the jeopardy was cleared so that an FOC would be sent, Qwest did not have to provide the additional detail about the Qwest facility problem, as it was resolved. If, however, the problem was

1 CLEC to prepare. In CMP, to address the overall jeopardy notification process,  
2 Qwest committed both (1) to change the process to provide either an FOC or an  
3 updated Jeopardy Notification within 72 hours from the initial jeopardy (to  
4 address the problem of inadequate details about the Qwest facility jeopardy for  
5 planning purposes) and (2) to work on compliance with its existing process to  
6 provide the releasing FOC at least the day before the due date (to address the  
7 problem of inadequate notice to allow the CLEC to prepare for delivery).<sup>222</sup>

8 **Q WAS THERE ANY COMPROMISE TO COMPLETE ONE OF THESE**  
9 **CHANGE REQUESTS INSTEAD OF THE OTHER?**

10 A. No, although that seems to be the impression Qwest is attempting to create in its  
11 testimony. Qwest claims that it “proposed a compromise.”<sup>223</sup> Instead of  
12 describing the supposed compromise, Qwest directly quotes from October 6,  
13 2003, CMP minutes that make no reference to a compromise.<sup>224</sup> The quote  
14 actually refutes Qwest’s own claim. Qwest clearly refers in the quotation to two  
15 *phases*, both of which will be completed, and *not* a compromise to complete one  
16 request and not the other.<sup>225</sup> Phase 1 is “changing the jep timeframe to 6 pm”<sup>226</sup>

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not resolved, the additional detail would provide CLECs information about the nature of the problem to help plan for how long the delay might be.

<sup>222</sup> Exhibit Eschelon 3.72, p. 5, 3/4/04 Qwest CMP minutes; also at Qwest Exhibit 1R.2, p. 7.

<sup>223</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, line 7 and Qwest Exhibit 1R, Albersheim Rebuttal, p. 58, lines 11-12.

<sup>224</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, lines 10-21.

<sup>225</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, lines 13-15 and 18.

<sup>226</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, lines 12-13.

1 (i.e., *Before 5:00 p.m. CNR Jeopardy Change Request*, PC072303-1), and Phase 2  
2 is to “accommodate some time frames in between FOC and Jep”<sup>227</sup> (i.e., *Qwest*  
3 *Jeopardy Change Request*, PC081403-1). The *Before 5:00 p.m. CNR Jeopardy*  
4 *Change Request* (PC072303-1; Phase 1) was completed on February 18, 2004,  
5 with the back end system change to hold the CNR jeopardy notifications until 6  
6 p.m. Mountain time.<sup>228</sup> The *Qwest Jeopardy Change Request* (PC081403-1;  
7 Phase 2) was completed on July 21, 2004, with Qwest’s commitment of its  
8 existing process described above to send the FOC the day before the due date  
9 after a Qwest facility jeopardy.<sup>229</sup>

10 **Q. QWEST TWICE REFERS TO “THE CHANGE REQUEST” OR “THE**  
11 **CR.”<sup>230</sup> THE FIRST TIME, WHEN QWEST TESTIFIES THAT**  
12 **ESCHELON AGREED TO QWEST’S ALTERNATIVE PROPOSAL FOR**  
13 **“THE CHANGE REQUEST,” TO WHAT CHANGE REQUEST IS**  
14 **QWEST REFERRING?**

15 A. Qwest does not say, but from the description it is apparent that Qwest is referring  
16 to the *Before 5:00 p.m. CNR Jeopardy Change Request*, (PC072303-1; Phase 1).  
17 For this change request, Eschelon proposed a process change to not send a CNR  
18 jeopardy notice before 5 p.m. and instead Qwest offered the alternative proposal

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<sup>227</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, lines 17-18.

<sup>228</sup> Qwest Exhibit 1R.1, p. 1 (“Completed 2/18/2004”) & Qwest Exhibit 1R.1, 6 (describing back end system change) (PC072303-1).

<sup>229</sup> Qwest Exhibit 1R.2, 1 (“Completed 7/21/2004”) (PC081403-1).

<sup>230</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 54, line 24 and p. 55, line 2.

1 of a systems solution – “back end system change” – to hold the CNR jeopardy  
2 notice until 6 p.m. Mountain time. Eschelon accepted that proposal, and the  
3 change request was completed on February 18, 2004.

4 **Q. THE SECOND TIME THAT QWEST REFERS TO “THE CR” IS WHEN**  
5 **QWEST STATES THAT ESCHELON AGREED TO CLOSE “THE CR.”<sup>231</sup>**  
6 **TO WHICH CHANGE REQUEST IS QWEST REFERRING?**

7 A. Qwest does not say, but Qwest quotes from the July 21, 2004, CMP minutes for  
8 the *Qwest Jeopardy Change Request* (PC081403-1; Phase 2).<sup>232</sup> By referring to  
9 both change requests as “the Change Request” or “the CR,” Qwest’s testimony  
10 tends to suggest that there was some compromise with respect to the one change  
11 request (PC072303-1; Phase 1) that resolved the other change request  
12 (PC081403-1; Phase 2). This is not the case.

13 **Q. WAS THERE ANY REASON FOR ESCHELON TO ESCALATE THE**  
14 **OUTCOME OF “THE CR,”<sup>233</sup> GO TO THE CMP OVERSIGHT**  
15 **COMMITTEE TO DISPUTE THE OUTCOME OF “THE CR,”<sup>234</sup> USE**  
16 **THE CMP DISPUTE PROCESS FOR “THIS CR,”<sup>235</sup> OR SUBMIT**

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<sup>231</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 55, line 2.

<sup>232</sup> Compare Qwest Exhibit 1R, Albersheim Rebuttal, p. 54 line 33, p. 55 line 2 with Qwest Exhibit 1R.2, p. 5.

<sup>233</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 57, lines 1-4.

<sup>234</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 57, lines 10-12.

<sup>235</sup> Qwest Exhibit 1R, Albersheim Rebuttal, 57, lines 14-16.

1           **ANOTHER REQUEST<sup>236</sup> FOR EITHER OF THESE TWO CHANGE**  
2           **REQUESTS?**

3           A.     No. For both change requests, Qwest completed the change requests.<sup>237</sup> *The*  
4           *problem is that Qwest is no longer honoring the CMP resolution of the Qwest*  
5           *Jeopardy Change Request* (PC081403-1), as described in the attachment to my  
6           direct testimony.<sup>238</sup> It is frustrating, at best, for Eschelon to read testimony by  
7           Qwest saying that Eschelon should submit a change request in CMP to obtain a  
8           result that it already achieved through CMP. Qwest has elected to disregard its  
9           own CMP resolution without following its own CMP processes to initiate a  
10          change in that resolution when Qwest desires a different outcome.

11          **Q.     MS. ALBERSHEIM TESTIFIES THAT ESCHELON HAS PORTRAYED**  
12          **QWEST AS “CHANGING ITS MIND” OR ACTING**  
13          **“INCONSISTENTLY” WHEN “IN FACT” ESCHELON’S EXAMPLES**  
14          **ARE DEMONSTRATIVE OF “QWEST’S SIGNIFICANT EFFORTS TO**  
15          **BE RESPONSIVE TO ITS CLEC CUSTOMERS.”<sup>239</sup> IS MS.**  
16          **ALBERSHEIM CORRECT?**

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<sup>236</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 57, lines 18-20.

<sup>237</sup> As indicated above, *Before 5:00 p.m. CNR Jeopardy Change Request* (PC072303-1) was completed on February 18, 2004, with the back end system change to hold the CNR jeopardy notifications until 6 PM Mountain time. [Qwest Exhibit 1R.1, p. 1 (PC072303-1) (“Completed 2/18/2004”) and Qwest Exhibit 1R.1, p. 6 (describing back end system change)]. *Qwest Jeopardy Change Request* (PC081403-1) was completed on July 21, 2004, with the commitment described above to send the FOC the day before the due date after a Qwest facility jeopardy. [Qwest Exhibit 1R.2, p. 1 (“Completed 7/21/2004”) and Qwest Exhibit 1R.1 Albersheim/3-4 (7/21/04)].

<sup>238</sup> Exhibit Eschelon 3.71, pp. 16-18.

<sup>239</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 20, lines 3-5.

1 A. No. Qwest's email dated September 1, 2005,<sup>240</sup> is evidence that Qwest has  
2 arbitrarily changed its policy and did not honor the result achieved through  
3 completion of the Qwest Jeopardy Change Request (PC081403-1). As this email  
4 shows, Qwest is not only denying that it must provide the FOC after a Qwest  
5 facility jeopardy the day before the due date, Qwest has actually denied that it  
6 must provide it at all. And, Qwest maintains it may still classify the jeopardy as  
7 CNR if a CLEC is not ready as a result of Qwest's failure to provide notice.<sup>241</sup>  
8 While in February of 2004, Qwest confirmed in CMP that its process is to send an  
9 FOC "*prior to the Due Date*,"<sup>242</sup> Qwest later claimed that this is just a "goal"<sup>243</sup>  
10 and that there is no requirement in these situations to send an FOC at all. To  
11 confirm Qwest's new position and ensure that Eschelon was not  
12 misunderstanding it, Eschelon sent Qwest a scenario in which Qwest, after a  
13 facility jeopardy, sent no FOC at all and yet Qwest classified the jeopardy as a  
14 Customer Not Ready (*i.e.*, Eschelon-caused) jeopardy.<sup>244</sup> Despite completion of

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<sup>240</sup> Exhibit Eschelon 3.71, p. 18 (9/1/05 email from Qwest CMP Process Manager).

<sup>241</sup> Qwest Exhibit 1R, Albersheim Rebuttal , p. 63, lines 8-10 Qwest refers to unspecified "order activity" as "eliminate[ing] the need for an FOC," *see id.*, despite the unqualified requirement of the SGAT and closed language in the proposed ICA (9.2.4.4.1) to provide an FOC after a Qwest facility jeopardy.

<sup>242</sup> Exhibit Eschelon 3.71, p. 18.

<sup>243</sup> Exhibit Eschelon 3.71, p. 16 (8/29/05 email from CMP Process Manager) and Exhibit Eschelon 3.71, p. 18 (9/1/05 email from CMP Process Manager).

<sup>244</sup> Exhibit Eschelon 3.71, pp. 17-18 (9/1/05 Eschelon email).



1           *Qwest Jeopardy Change Request* (PC081403-1), Qwest’s CMP Process Manager  
2           responded: “Your scenario is correct.”<sup>245</sup>

3           In contrast, in CMP, Qwest “agreed, and confirmed that Qwest cannot expect the  
4           CLEC to be ready for the service if we haven’t notified you.”<sup>246</sup> Now, Qwest is  
5           expecting the CLEC to be ready for service even if Qwest has not notified the  
6           CLEC.<sup>247</sup> Qwest did not escalate in CMP, go to the CMP oversight committee,  
7           use the CMP dispute resolution process, or submit a Qwest-initiated CR to  
8           achieve this change. Qwest just arbitrarily changed its policy, despite all of  
9           Eschelon’s efforts to work through CMP as requested by Qwest. Qwest then adds  
10          salt to the wound by claiming this arbitrary action is indicative of “Qwest’s  
11          significant efforts to be responsive to its CLEC customers.”<sup>248</sup> Clearly, the  
12          interconnection agreement needs to address this issue for Eschelon to obtain any  
13          consistent, reliable result upon which it can plan its business.

14   **Q.    MS. ALBERSHEIM RESPONDS TO A SERIES OF Q & A’s ON PAGES 55**  
15   **AND 56 OF HER REBUTTAL TESTIMONY REGARDING REDLINED**

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<sup>245</sup> Exhibit Eschelon 3.71, p. 18 (9/1/05 Qwest email).

<sup>246</sup> Exhibit Eschelon 3.72, p. 5 (3/4/04); *See also*, Qwest Exhibit 1R.2, p. 6.

<sup>247</sup> Exhibit Eschelon 3.71, p. 18 (9/1/05 Qwest email); *See also* Qwest Exhibit 1R, Albersheim Rebuttal, p. 60, lines 11-14.

<sup>248</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 20, lines 3-5; Qwest Exhibit 1R, Albersheim Rebuttal, p. 6, lines 14-15; and Qwest Exhibit 1R, Albersheim Rebuttal, p. 25, line 6. Similarly, in response to an email from Eschelon indicating that “this is not the process we discussed in CMP,” Qwest responded: “Qwest will continue to strive to deliver service on the due date to meet our customers’ expectations.” *See* Exhibit Eschelon 3.71, p. 19. This is hardly responsive to the need expressed by Eschelon.

1           **CHANGES QWEST MADE TO ITS PCAT. MS. ALBERSHEIM CLAIMS**  
2           **“THESE DOCUMENTS REPRESENT THR RESULT OF CHANGE**  
3           **REQUEST PC081403-1.”<sup>249</sup> DID YOU ADDRESS THIS IN YOUR DIRECT**  
4           **TESTIMONY?**

5    A.    Yes. Ms. Albersheim’s rebuttal testimony is not responsive to my direct  
6           testimony in this respect. I provided detailed facts regarding Qwest’s claims that  
7           providing an FOC the day before is not its current practice, because Qwest did not  
8           include it in its PCAT, in my direct testimony.<sup>250</sup>

9    **Q.    MS. ALBERSHEIM ATTEMPTS TO EXPLAIN “QWEST’S RECENT**  
10           **UNWILLINGNESS” TO CONTINUE TO ROOT CAUSE ESCHELON’S**  
11           **ADDITIONAL JEPOARDY EXAMPLES.<sup>251</sup> IS QWEST’S CURRENT**  
12           **EXPLANATION CONTRARY TO THE EXPLANATION QWEST**  
13           **PROVIDED AT THE TIME, AS WELL AS CONTRARY TO FACTS IN**  
14           **THE RECORD REGARDING THE EXAMPLES?**

15    A.    Yes. Exhibit Eschelon 3.71 (at page 22) contains Qwest’s entire email containing  
16           the explanation Qwest provided at the time. On November 7, 2006, Qwest said:

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<sup>249</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 55, line 19.

<sup>250</sup> Exhibit Eschelon 3, Johnson Direct, pp. 85-90.

<sup>251</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 65, line 20 – p. 66, line 9. Although Qwest describes its unwillingness as “recent,” *see id.*, Qwest has been refusing to root cause the examples provided regularly by Eschelon for eight months (since early November of 2006). See Exhibit Eschelon 3.71 & Exhibit Eschelon 3 (Johnson Direct), p. 83, lines 17-20.

1           “Qwest has determined that due to resources Qwest will not be reviewing  
2           this report any longer. Qwest through self reporting internally will  
3           manage the process and compliance of the delayed order process.”<sup>252</sup>

4           Therefore, at the time of its decision, Qwest attributed its decision to stop  
5           providing root cause analysis of jeopardy-related examples to “resources.”<sup>253</sup>

6           In her testimony, Ms. Albersheim makes no mention of resources and instead  
7           attributes Qwest’s decision<sup>254</sup> to her assertion that “Eschelon continually presents  
8           the data on the premise that FOCs must be sent at least a day before the due  
9           date,”<sup>255</sup> making it “fruitless” and “pointless” to respond because Eschelon’s  
10          examples are “based on an incorrect premise.”<sup>256</sup> The record shows that the  
11          examples provided regularly to Qwest, however, have not included examples  
12          based on that premise (i.e., FOCs not sent *at least the day before* the due date are

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<sup>252</sup> Exhibit Eschelon 3.71, p. 22.

<sup>253</sup> Exhibit Eschelon 3.71, p. 22 (quoted above). As indicated in my direct testimony, it is difficult to accept Qwest’s claim that this Qwest decision is due to resources because obtaining compliance saves both companies resources that would otherwise be expended when the process breaks down and both companies have to scramble to correct the problem and re-do the work on another day when delivery has to be rescheduled. Exhibit Eschelon 3 (Johnson Direct), p. 84, lines 1-5. In addition, Eschelon expends its own resources on researching the data for Qwest to point Qwest to the problem areas, and this saves Qwest time that it would have to expend on finding these issues for itself. *Id.* lines 6-8.

<sup>254</sup> Eschelon pointed out in testimony regarding both Issue 12-64 (Root Cause and Acknowledgement of Mistakes) and Issues 12-71 – 12-73 (Jeopardies) that Qwest stopped providing this root cause analysis. Exhibit Eschelon 3R (Johnson Rebuttal), p. 8 line 13 – p. 10, line 9 & p. 12, line 14 – p. 13, line 1 (Issue 12-64) and Exhibit Eschelon 3 (Johnson Direct), p. 71, footnote 85 & p. 83, line 16 – p. 84, line 17 (Issues 12-71 – 12-73).

<sup>255</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 66, lines 1-3.

<sup>256</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 66, lines 2-7.

1           untimely) for *nearly two years*.<sup>257</sup> If Qwest was unwilling to accept Ms.  
2           Johnson's testimony on this point even though Ms. Johnson has personal  
3           knowledge of the facts, Ms. Albersheim could have confirmed this fact at any  
4           time by reviewing the examples that Eschelon has provided to Qwest on a weekly  
5           basis during that time period. Ms. Albersheim has presented no facts that the  
6           additional, ongoing examples are anything other than as presented by Eschelon  
7           (data relating to DS1 capable loop jeopardies that include examples when Qwest  
8           sent no FOC after the Qwest facility jeopardy but before attempting delivery<sup>258</sup>).  
9           Instead, Ms. Albersheim has testified erroneously that "Eschelon's data has been  
10          *continuously* presented based on an incorrect premise,"<sup>259</sup> when Ms. Johnson's  
11          direct testimony and the data to the contrary were readily available to her.

12          The record also shows that the examples provided weekly to Qwest -- after  
13          September 2005 through the present -- continue to include situations in which  
14          Qwest sends *no FOC at all* after a Qwest facility jeopardy but before attempting  
15          service delivery.<sup>260</sup> Qwest agrees with the premise that its process is to send an

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<sup>257</sup> Exhibit Eschelon 3 (Johnson Direct), p. 71, footnote 85 ("*Eschelon stopped including the no FOC the day before examples in September, 2005*, so that argument does not explain why Qwest refuses to review and root case the examples involving other jeopardy non compliance examples, including no FOC, which Eschelon continues to provide and which Qwest continues to refuse to review.") (emphasis added). Although Eschelon disagrees that the premise is "incorrect," Eschelon nonetheless removed these examples from the data per Qwest's request and, as discussed below, Qwest then continued to review and respond to the examples for a period of time.

<sup>258</sup> For ease of reference, I will refer to these as jeopardies with "no FOC" or "no FOC at all" -- meaning no FOC after the Qwest facility jeopardy but before attempted service delivery.

<sup>259</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 66, lines 6-7 (emphasis added).

<sup>260</sup> *See id.*; see also Exhibit Eschelon 3R (Johnson Rebuttal), p. 84, lines 6-9 & footnote 126.

1 FOC in these circumstances,<sup>261</sup> so sending no FOC is non-compliance with Qwest  
2 process.<sup>262</sup> Nonetheless, since November 7, 2006, Qwest has refused to root  
3 cause the examples in which Qwest sends no FOC after a Qwest facility jeopardy  
4 is cleared. Ms. Albersheim's explanation of an allegedly incorrect premise  
5 (involving an FOC that was sent but not the day before) has no application to  
6 these examples (involving no FOC at all). Ms. Albersheim provided no  
7 explanation of Qwest's refusal to root cause the examples involving no FOC.

8 Eschelon is a multi-million dollar Qwest customer that is expressing genuine  
9 concerns about the service Qwest provides, and Eschelon is providing back-up  
10 data directly to Qwest to support those concerns and help resolve the problems.  
11 Particularly given that Qwest requires CLECs to provide examples, Qwest should  
12 review CLEC-provided examples.<sup>263</sup>

13 **Q. MS. ALBERSHEIM TESTIFIES THAT QWEST'S "REFUSAL TO**  
14 **CONTINUE RESPONDING TO ESCHELON'S DATA IS NOT A SUDDEN**

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<sup>261</sup> Minnesota arbitration Tr., Vol. 1, p. 38, lines 17-19 (Ms. Albersheim) ("Q The FOC is the agreed upon process by which Qwest informs Eschelon of the due date for a circuit? A Yes."). Minnesota arbitration Tr., Vol. 1, p. 37, lines 20-23 (Ms. Albersheim) ("Q So you agree with me that Qwest's current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes."); *see also* ICA Section 9.2.4.4.1.

<sup>262</sup> Minnesota arbitration Tr. Vol. I p. 94, lines 7-11 (Ms. Albersheim) ("Q And if the CLEC doesn't have adequate notice that the circuit is being delivered, adequate notice consisting of an FOC, then you would agree that a CNR jeopardy is not appropriate; correct? A Yes."). *See also* Minnesota arbitration Tr., Vol. 1, p. 95, lines 19-24 (Ms. Albersheim) ("Q And you would agree that that's not proper, if the CLEC hasn't received an FOC in adequate time to be able to act on it; correct? A According to procedure, yes. Q That's Qwest's procedure? A Yes.").

<sup>263</sup> Qwest should review CLEC-provided examples, given that Qwest requires CLECs to provide examples. Exhibit Eschelon 3.51, p. 2 (last paragraph states: "the reporting CLEC should be

1           **REVERSAL”<sup>264</sup> AND THAT QWEST WAS “NEVER ABLE TO RESPOND**  
2           **TO ESCHELON’S DATA.”<sup>265</sup> DO YOU AGREE?**

3       A.    No.   Qwest’s sudden reversal of position took place on November 7, 2006.<sup>266</sup>  
4            Before that date, Qwest provided root cause of Eschelon’s jeopardies examples.  
5            After that date, Qwest refused to provide root cause of Eschelon’s jeopardies  
6            examples.

7            At no point after Eschelon commenced sending the jeopardies examples to Qwest  
8            in August of 2004 but before Eschelon has presented its case on the jeopardies  
9            issue in the Minnesota arbitration at the end of October 2006<sup>267</sup> did Qwest take  
10           the position later reflected in Qwest’s November 7, 2006 email (refusing to root  
11           cause any jeopardies examples). As the Jeopardies and FOCs Chronology  
12           (Exhibit Eschelon 3.71) shows, commencing in August of 2004 and well into  
13           2005, Qwest reviewed and responded to both kinds of examples (untimely FOCs,  
14           as well as no FOCs). For example, Qwest told Eschelon at that time that, in five  
15           examples for which Qwest said “a FOC was not sent *timely prior to the due*  
16           *date,*” Qwest provided coaching to the non-compliant Qwest employee(s) and

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prepared to discuss the specific details and examples . . . . Qwest will conduct a root cause analysis of the examples of the problem . . . .”).

<sup>264</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 66, lines 7-8.

<sup>265</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 66, lines 8-9.

<sup>266</sup> Exhibit Eschelon 3.71, p. 22 (Qwest email, quoted above).

<sup>267</sup> Eschelon filed testimony on Issues 12-71 – 12-73 in all three rounds of testimony in Minnesota, and Eschelon’s Minnesota testimony included jeopardies examples (both those involving an untimely FOC not provided at least the day before and those involving no FOC at all). The Minnesota

1 indicated Qwest would continue to monitor compliance with the process.<sup>268</sup>  
2 Qwest’s use of “timely” before “prior to” the due date shows that Qwest also  
3 understood that a “timely” FOC is one delivered “prior to” the due date.<sup>269</sup> After  
4 September of 2005 until November 7, 2006, Qwest continued to review and  
5 respond to jeopardies data for examples involving no FOC. In other words,  
6 contrary to Qwest’s claim that Qwest’s service management team was “never”  
7 able to respond to Eschelon’s data,<sup>270</sup> Qwest’s service management team  
8 responded to Eschelon’s data regarding jeopardies with no FOC until Qwest  
9 suddenly stopped doing so on November 7, 2006.

10 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON’S EXAMPLES IN**  
11 **QWEST EXHIBIT 1R.9 (EXHIBIT ESCHELON 3.76) “REPRESENTS A**  
12 **VERY SMALL PORTION OF THE TOTAL NUMBER OF ORDERS**  
13 **THAT ESCHELON PLACES WITH QWEST, DEMONSTRATING THAT**  
14 **SUCH ISSUES ARE RARE.”<sup>271</sup> PLEASE RESPOND.**

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arbitration hearing took place October 16-20, 2006, and Qwest and Eschelon filed the revised joint disputed issues matrix with the Minnesota ALJs on October 31, 2006.

<sup>268</sup> Exhibit Eschelon 3.71, pp. 7-8 (Qwest service manager email dated Aug. 25, 2004) (emphasis added); *id.* p. 7 (“Five of the LSRs in the spreadsheet are where a **FOC was not sent timely prior to the due date** . . . . Qwest will continue to monitor this”) (emphasis added); *id.* p. 8 (“5 were due to the issue described above with resolving the facility really late in the process; 5 of those will be addressed through coaching”). See the discussion on page 21 of my rebuttal testimony (Exhibit Eschelon 3R).

<sup>269</sup> *See id.* p. 7.

<sup>270</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 66, lines 8-9.

<sup>271</sup> Qwest Exhibit 1R, Albersheim Direct, p. 59, lines 5-7.

1 A. The recurring fact pattern dealt with in Issue 12-72, of which Qwest Exhibit  
2 1R.9/Exhibit Eschelon 3.76 contains examples, has occurred when Qwest  
3 provides an initial jeopardy notice indicating that the due date will be missed  
4 because there are no facilities to fill the order and then, when facilities become  
5 available, Qwest fails to provide an FOC or a timely FOC to let Eschelon know  
6 that it is ready to deliver.<sup>272</sup> To illustrate this pattern, Eschelon provided a  
7 number of examples in Exhibit Eschelon 3.76 (Qwest Exhibit 1.R9).<sup>273</sup> Eschelon  
8 has provided detail relating to jeopardies under my direction to Qwest on an  
9 approximately *weekly* basis *since at least August of 2004* as part of Eschelon's  
10 obtaining root cause of this important issue.<sup>274</sup> Despite this, at the arbitration  
11 hearing in Washington, Qwest spent a significant amount of its time on jeopardies  
12 establishing simply that 4 of the 22 examples that Eschelon used to illustrate this  
13 problem were Washington examples.<sup>275</sup> Qwest provided no evidence that, in the  
14 examples that Eschelon has been routinely providing to Qwest on a weekly basis  
15 since at least 2004, there were not also Washington or Utah examples. Instead,  
16 Qwest points out that, in a different exhibit where Eschelon provided a greater

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<sup>272</sup> Eschelon proposed ICA Section 12.2.7.2.4.4.1; Exhibit Eschelon 3, Johnson Direct, p. 68, line 8 – p. 69, line 14.

<sup>273</sup> See discussion in Exhibit Eschelon 3, Johnson Direct, p. 71, line 3 – p. 72, line 8.

<sup>274</sup> Exhibit Eschelon 3, Johnson Direct, p. 83, lines 2-9. Despite Qwest's apparent efforts to suggest that this issue is insignificant, Qwest provided no reason why Eschelon would expend resources researching and providing these examples weekly over time if it were not an important, customer-affecting issue.

<sup>275</sup> Washington arbitration (UT-063061), Transcript, p. 253 line 7 – p. 256, line 24 (cross of Ms. Johnson).



1 number of examples (Exhibit Eschelon 3.75<sup>276</sup>), the exhibit illustrated situations  
2 in which Eschelon succeeded (by scrambling and nonetheless accepting delivery)  
3 in overcoming Qwest’s failure to provide an FOC.<sup>277</sup> Qwest provided no  
4 analysis of its own of the additional examples provided on a weekly basis. In  
5 fact, the facts show Qwest has recently refused to root cause those examples,<sup>278</sup> so  
6 Qwest is choosing not to make itself aware of additional details provided by  
7 Eschelon. To the extent Qwest is arguing that the number of examples of the  
8 recurring fact pattern in 12-72 is small,<sup>279</sup> then Qwest cannot show a burden or  
9 downside resulting from adoption of Eschelon’s language. Qwest’s testimony  
10 that this situation is “rare”<sup>280</sup> also contradicts Qwest’s argument that Eschelon’s  
11 language addressing this situation would have “a significant impact on Qwest’s  
12 Performance Assurance Plan.”<sup>281</sup> To the extent Qwest argues that Eschelon can

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<sup>276</sup> See Eschelon’s discussion of Exhibit Eschelon 3.75 at Exhibit Eschelon 3, Johnson Direct, p. 70, line 10 – p. 71, line 2.

<sup>277</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 59, lines 13-17; see also Washington arbitration (UT-063061), Transcript, p. 256, line 24 – p. 257, line 6.

<sup>278</sup> Exhibit Eschelon 3.71 (at page 22), described in Exhibit Eschelon 3, Johnson Direct, p. 71, footnote 85 & in my discussion above in this surrebuttal testimony regarding Qwest’s refusal to root cause jeopardies data.

<sup>279</sup> See Qwest Exhibit 1R, Albersheim Rebuttal, p. 59, lines 5-7 (“demonstrating that such issues are rare”). See also *id.*, lines 13-16 (76%); Qwest Response to Attachment 2 to Eschelon Post-Hearing Brief (Aug. 6, 2007), WA Docket No. UT-063061, p. 9 (Eschelon Exhibit 3.75 (which was marked Exh. No. 117 in WA) “demonstrates that 80% of the time, Eschelon is able to accept service on time without an FOC”). When Qwest refers to the exhibit and “80% *of the time*,” see *id.* (emphasis added), Qwest does not acknowledge that the exhibit contains examples and does not include the universe of data regarding this recurring fact pattern, including the examples in the data Eschelon provides to Qwest on a weekly basis (which are also examples).

<sup>280</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 59, line 7.

<sup>281</sup> Qwest WA Brief, WA Docket No. UT-063061 (July 20, 2007), p. 57, ¶165. See also Qwest Exhibit 1R, Albersheim Rebuttal, p. 60, lines 1-3 (“Since Eschelon’s proposed language reduces the occurrence of CNR jeopardies, its proposed language cannot help but impact Qwest performance on

1 often compensate for Qwest’s failure by accepting delivery,<sup>282</sup> then Qwest need  
2 look no further than Eschelon’s ICA language. Section 12.2.7.2.4.4.1 provides,  
3 when Eschelon can accept service despite Qwest’s failure to provide an FOC or a  
4 timely FOC: “CLEC will *nonetheless use its best efforts to accept* the service.”  
5 This language expressly commits the companies to use best efforts to accept  
6 service, despite Qwest’s failure to provide an FOC or a timely FOC, so that these  
7 results achieved through Eschelon’s ability to compensate for Qwest’s FOC  
8 failure will continue.<sup>283</sup> Qwest’s proposal, in contrast, would make no  
9 commitment on behalf of Qwest to act in this manner.<sup>284</sup>

10 **Q. MS. ALBERSHEIM CLAIMS THAT QWEST DOES NOT ALWAYS USE**  
11 **THE FULL THREE-DAY INTERVAL TO PROVISION A**  
12 **SUPPLEMENTAL ORDER<sup>285</sup> AND THAT THE THREE-DAY INTERVAL**

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these PIDs.”). If Qwest is applying the PIDs appropriately so that Qwest-caused delays are not attributed to Eschelon, why would the occurrence of CNR (i.e., Eschelon-caused) jeopardies be reduced? See my discussion in this surrebuttal testimony of Ms. Albersheim’s claims regarding Eschelon’s language relating to the PIDs.

<sup>282</sup> See, e.g., Qwest Exhibit 1R, Albersheim Rebuttal, p. 59, lines 7-9.

<sup>283</sup> Therefore, Qwest’s claim that Eschelon’s proposal “forces extra time” into the process (Albersheim Reb. Exh. No. 18C 58: 23-24) is erroneous, as there is no requirement in Eschelon’s language to delay delivery until after an FOC is sent (despite the contractual requirement to send one). Starkey Surreb., Exh. No. 71, 215:5 – 216:8. If Qwest fails to meet its contractual commitment to provide an FOC, Eschelon will nonetheless attempt to accept delivery without delay, because of the importance Eschelon places on timely delivery of service to its customers. *Id.* If the obstacles are too great because of Qwest’s failure to provide proper timely notice to Eschelon of service delivery, and Eschelon cannot accept delivery at the time, Qwest should not classify this as a CLEC (CNR) jeopardy

<sup>284</sup> In response to all of Eschelon’s proposed jeopardies language, Qwest’s proposed language, in its entirety, provides: “12.2.7.2.4.4 Specific procedures are contained in Qwest’s documentation, available on Qwest’s wholesale web site.”

<sup>285</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 65, lines 3-9.

1           **DOES “NOT REALLY” RESULT IN CUSTOMERS RECEIVING**  
2           **SERVICE LATER THAN THEY WOULD OTHERWISE.<sup>286</sup> PLEASE**  
3           **RESPOND.**

4       A.     These claims are similar to Qwest’s recent legal argument that it “is *extremely*  
5           *unlikely* that Eschelon’s proposed changes will result in faster service to  
6           customers.”<sup>287</sup> Ms. Albersheim has previously testified, however, that when  
7           Qwest attributes a missed due date to Eschelon by classifying the jeopardy as  
8           CNR, Qwest requires Eschelon to supplement its request for a later due date and  
9           this “*almost always*” results in a delay longer than the standard interval.<sup>288</sup> Her  
10          own previous testimony shows the likelihood of a delay is much greater than she  
11          now attempts to suggest.

12          Regarding the 22<sup>289</sup> examples provided by Eschelon (Exhibit Eschelon  
13          3.76/Qwest Exhibit 1R.9),<sup>290</sup> Qwest indirectly admits that delays occur as a result

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<sup>286</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 65, lines 11-18.

<sup>287</sup> Qwest’s Request for Reconsideration Request, *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) of the Federal Telecommunications Act of 1996* [“Minnesota Qwest-Eschelon ICA Arbitration”], MPUC Docket No. P-421/CI-07-370; P-421/CI-07-371 (April 9, 2007) [“Qwest Reconsideration Request”], p. 1 (emphasis added). The Minnesota Commission rejected Qwest’s Reconsideration Request. See Order Denying Reconsideration, MN PUC Docket No. P-5340,421/IC-06-768 (June 4, 2007).

<sup>288</sup> Exhibit Eschelon 1.5, p. 8 [Minnesota Hrg. Tr. Vol. I p. 43, lines 8-17 (Ms. Albersheim)].

<sup>289</sup> Eschelon provided 22 examples in this case. Qwest’s reference to 23 examples includes an example provided by Eschelon in Minnesota but which Eschelon later withdrew and is not claiming is an example of the situation described in Eschelon’s language.

<sup>290</sup> In footnote 28 on page 59 to Ms. Albersheim’s rebuttal testimony, she states she filed Qwest exhibit 1R.9 for “clarity and easier reading” and criticizes Eschelon for filing a more complete and up to date exhibit that she describes as a “heavily annotated” response to an exhibit she filed in another case. The exhibit she filed in another case was a “heavily annotated” response to a list of examples

1 of Qwest’s failure to provide a timely FOC because Ms. Albersheim analyzes the  
2 supplemented date, rather than the original due date. Ms. Albersheim testifies  
3 that 17 were “provisioned early”<sup>291</sup> – but early means earlier than the  
4 *supplemented* due date.<sup>292</sup> Similarly, in its Reconsideration Request regarding  
5 the same examples, Qwest stated: “In nearly every single instance, Qwest  
6 delivered service before the *supplemented* due date.”<sup>293</sup> Note, Qwest did not say  
7 the original due date (the date requested by CLEC).<sup>294</sup> Qwest’s statements

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initially provided in an Eschelon exhibit. The result of Qwest’s reverting to her earlier exhibit is that Qwest has provided a one-sided document that omits Eschelon’s reply to Qwest’s review and also contains confidential information (such as a telephone number that is confidential CPNI). When Eschelon combined the information from both parties’ exhibits into one exhibit, Eschelon not only included Qwest’s review but also redacted it to provide it in a non-proprietary form in the column entitled “Qwest Review From RA-30.” (Initials were used for names and customer-identifying information was redacted.) Although Ms. Albersheim included additional columns (columns P and Q) that it added in other cases, a review of this information in the two exhibits (Exhibit Eschelon 3.76 and Qwest Exhibit 1R.9) shows it is the same except for Qwest having corrected typographical errors (e.g., compare line 19 column 6 in Exhibit Eschelon 3.76 to the line numbered 22 titled Qwest tech notes in Qwest exhibit 1R.9 and the Qwest response in MN RA-30 states “FOG sent....” while in the new updated response in 1R.9 Qwest corrects this to “FOG sent....”). Non-proprietary Exhibit Eschelon 3.76 provides both sides of the story (Eschelon’s examples and reply, as well as Qwest’s review).

<sup>291</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 65, line 8.

<sup>292</sup> In addition, Ms. Albersheim claims that some of these were provisioned “on the same day that the supplemental order was submitted.” Qwest Exhibit 1R (Albersheim Rebuttal), p. 65, lines 8-9. This should not be construed as the CLEC requested due date. For example, in the example in Row 2 (Exhibit Eschelon 3.76, pp. 2-4), Eschelon’s requested due date (i.e., for timely delivery) was Feb. 9<sup>th</sup>. Qwest missed that date. Qwest called to attempt delivery on the 10<sup>th</sup> but had not sent a timely FOC allowing Eschelon to prepare. Qwest sent a CNR jeopardy notice on Feb. 11<sup>th</sup>, which was a Friday. On Monday the 14<sup>th</sup>, Eschelon placed a supplemental order. Although Qwest provisioned the service on the same day that the supplemental order was submitted (Feb. 14<sup>th</sup>), service delivery was late because the requested due date was Feb. 9<sup>th</sup>.

<sup>293</sup> Qwest’s Reconsideration Request, p. 4 (emphasis added).

<sup>294</sup> The requested due date is the due date Qwest confirms with an FOC. Qwest’s own documentation states: “The FOC is your acknowledgement that Qwest has received your request, created a Qwest service order, and *established a due date for your request*. The FOC provides you details for you to coordinate the overall provisioning and installation of the requested services . . . .” See Qwest’s Provisioning and Installation PCAT (emphasis added) (<http://www.qwest.com/wholesale/clecs/provisioning.html>).

1 recognize that, in these examples, the *requested due date* was missed (*i.e.*, service  
2 to the customer was delayed).

3 In these examples, Qwest assigned a CNR jeopardy (despite having provided no  
4 FOC at all or an untimely FOC), and as a result of the CNR classification,  
5 Eschelon was forced to supplement its order and request a due date at least three  
6 days out.<sup>295</sup> No supplemental order would have been required if Qwest had not  
7 erroneously said it was CNR.<sup>296</sup> No supplemental order would have been  
8 required if Qwest sent an FOC after the facility jeopardy cleared and Eschelon  
9 accepted the circuit (and therefore no CNR jeopardy attaches and no new due date  
10 is needed). By inappropriately assigning CNR, Qwest is forcing Eschelon to  
11 request a later date to compensate for Qwest's failure to send an FOC and then  
12 suggesting Eschelon ought to be grateful that the delay was not even longer (the  
13 entire three-day supplemental order period or more – *i.e.*, “before the  
14 supplemented due date”<sup>297</sup>). Contrary to Qwest's claim that the examples in  
15 Qwest Exhibit 1R.9 help show “Eschelon's proposal will not speed up service to  
16 customers,”<sup>298</sup> Qwest's own description of the result in these examples shows that  
17 Eschelon's ICA language will avoid these very delays. Eschelon's language will

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<sup>295</sup> Exhibit Eschelon 3 (Johnson Direct), p. 38, lines 1-14 & p. 71, line 8 – p. 72, line 9.

<sup>296</sup> Regarding the supplemental order, see Qwest's Reconsideration Request, p. 3 (Qwest states: “Eschelon accurately indicated to the Commission that, when Qwest classifies an order as customer not ready, Eschelon is required to supplement its order to reflect a new due date *at least three days out.*”) (emphasis added).

<sup>297</sup> Qwest's Reconsideration Request, p. 4.

<sup>298</sup> Qwest's Reconsideration Request, p. 4.

1 do so by allowing the parties “to set a new appointment time *on the same day*”<sup>299</sup>  
2 instead of requiring Eschelon to submit a supplemental request for a date at least  
3 three days out (while hoping, with no contractual right to request less than three  
4 days, that Qwest might deliver the circuit earlier than the full three-day delay, if  
5 the order is not delayed even more than three days).

6 **Q. WHEN DISCUSSING QWEST EXHIBIT 1R.9 (EXHIBIT ESCHELON**  
7 **3.76), MS. ALBERSHEIM REFERS TO EXAMPLES THAT “PROPERLY”**  
8 **REQUIRE A SUPPLEMENT.<sup>300</sup> DO YOU AGREE WITH MS.**  
9 **ALBERSHEIM’S DESCRIPTION OR HER SUGGESTION THAT**  
10 **QWEST’S PROPOSED APPROACH MEETS ESCHELON’S BUSINESS**  
11 **NEED?**

12 A. No. As I discuss in my direct testimony,<sup>301</sup> in the case of a Qwest-caused  
13 jeopardy, Qwest must take action to attempt to meet the due date or, if it cannot  
14 be met, continue to process the order (including sending Eschelon a jeopardy  
15 notice and issuing an FOC with a new date)<sup>302</sup> *with no supplemental order* from  
16 Eschelon.<sup>303</sup> (Therefore, requiring a supplemental order is not “proper.”) A

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<sup>299</sup> ICA Section 12.2.7.2.4.4.1 (emphasis added).

<sup>300</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 65, line 7.

<sup>301</sup> Exhibit Eschelon 3 (Johnson Direct), p. 64.

<sup>302</sup> Qwest’s Provisioning and Installation Overview PCAT, stating: “If the column contains “Yes” and Qwest has the responsibility to resolve the jeopardy condition, we will advise you of the new DD when the jeopardy condition has been resolved. This is usually within 72 hours.” (emphasis added). See <http://www.qwest.com/wholesale/clecs/provisioning.html>

<sup>303</sup> See *id.*; see also Qwest’s Installation and Overview PCAT available at [http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy\\_Data\\_Provisioning\\_August20](http://www.qwest.com/wholesale/downloads/2005/050812/Jeopardy_Data_Provisioning_August20)

1 Qwest jeopardy properly classified as caused by Qwest does not require Eschelon  
2 to supplement the due date and therefore does not build in the three day delay. In  
3 contrast, an erroneous classification of a missed due date as caused by Eschelon,  
4 when in fact the delay was due to Qwest's failure to provide an FOC or a timely  
5 FOC, will build in this required request for a three-day delay and associated delay  
6 in delivery of the Customer's service (i.e., it improperly requires a supplement).  
7 Eschelon should not have to delay service to its customer because Qwest failed to  
8 properly notify Eschelon in sufficient time to schedule resources, make  
9 arrangements with the End User Customer for access to its premises, or take other  
10 steps necessary to prepare to accept delivery of service.

11 Qwest sometimes talks in terms of "faster service"<sup>304</sup> and speeding up delivery of  
12 service.<sup>305</sup> Eschelon has made it clear that it is seeking advance notice to avoid  
13 delay and help ensure "timely" delivery of the circuit.<sup>306</sup> Timely delivery is not  
14 always synonymous with "faster." Regarding the examples in Qwest Exhibit  
15 1R.9, Qwest used the terms "faster" and "early" to mean delivery earlier than the  
16 built-in delay (after the original due date but before the supplemented due  
17 date).<sup>307</sup> As discussed above, a delay that is faster than an even longer delay is

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[05.doc](#). According to this Qwest matrix, in case of Qwest-caused jeopardy "Qwest will work to solve the problem." *See id.*

<sup>304</sup> Qwest's Reconsideration Request, p. 1.

<sup>305</sup> Qwest's Reconsideration Request, p. 3 (Heading 1).

<sup>306</sup> See, e.g., Exhibit Eschelon 3 (Johnson Direct), p. 62, line 15 – p. 63, line 1.

<sup>307</sup> Qwest's Reconsideration Request, p. 4; see Qwest Exhibit 1R (Albersheim Rebuttal), p. 65, line 8.

1 still slower than delivery on the requested due date. In other words, service  
2 delivery is still untimely, even if delivered earlier than an otherwise longer delay.  
3 To provide excellent service to its customers, Eschelon needs an opportunity to  
4 plan its resources, make arrangements for customer premise access, and set  
5 customer expectations – just as Qwest allows itself an opportunity to do these  
6 things for itself.<sup>308</sup> Foregoing an FOC<sup>309</sup> in favor of keeping Eschelon guessing  
7 about when Qwest will attempt to deliver service (will it be early? will it be late?  
8 will it be late, but earlier than the described three days?) is not a desirable or  
9 efficient approach.<sup>310</sup> The approach reflected in Eschelon’s ICA language (which  
10 was adopted by the Minnesota Commission<sup>311</sup>) is more accurate and efficient.

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<sup>308</sup> Qwest Exhibit 1R (Albersheim Rebuttal), p. 64, lines 11-15. Regarding this testimony about Qwest’s need for flexibility to manage its technicians’ work assignments, etc. (which is the same as Qwest Colorado testimony quoted in my direct), see Eschelon’s response in my direct testimony. See Exhibit Eschelon 3 (Johnson Direct), p. 72, line 9 – p. 74, line 10.

<sup>309</sup> Regarding Qwest’s suggestion that an FOC is a mere formality, see Eschelon’s response at Exhibit Eschelon 3 (Johnson Direct), p. 93, line 1 – p. 96, line 1.

<sup>310</sup> Qwest’s proposed approach of Eschelon preparing for delivery even though it receives no FOC or an untimely FOC means that the Eschelon would be scheduling its personnel for acceptance of service, waiting all day on the due date, and possibly subsequent dates, standing ready to accept Qwest’s service – holding its own employees and the End User Customer – *just in case* Qwest clears its jeopardy in the last moment without adequate notice to Eschelon. In the end, Qwest may not show up. This wastes CLECs’ time and resources, not to mention the inconvenience Qwest is causing the CLEC’s End User Customer. Qwest gives itself three full days to prepare after CLEC is not ready on the due date. Qwest cannot expect Eschelon to staff resources and inconvenience the customer on the off chance that, even though Qwest hasn’t followed the ICA requirement to provide an FOC, it shows up at the doorstep. See Exhibit Eschelon 3 (Johnson Direct), p. 73, line 7 – p. 74, line 10.

<sup>311</sup> The Minnesota Commission adopted Eschelon’s proposed language on all three issues, including Eschelon’s proposal for Issue 12-71, the language shown in proposal #2. Exhibit Eschelon 2.25, pp. 23-24 [MN Order Resolving Arbitration, pp. 23-24, ¶6 (Topic 31)].



1 **D. SUBJECT MATTER NO. ISSUE 43. CONTROLLED PRODUCTION**

2 **Issue No. 12-87: ICA Section 12.6.9.4**<sup>312</sup>

3 **Q. MS. ALBERSHEIM’S REBUTTAL TESTIMONY SEEMS TO SUGGEST**  
4 **THAT ESCHELON HAS PROPOSED THAT IT BE ALLEVIATED FROM**  
5 **ANY CONTROLLED PRODUCTION TESTING – EVEN WHERE NEW**  
6 **RELEASES ARE CONCERNED. IS THAT ACCURATE?**

7 A. No, it is not. Under both of Eschelon’s proposals,<sup>313</sup> Eschelon would indeed  
8 participate in controlled production testing with new releases such as IMA  
9 Release 20.0 (i.e., “new implementations”).<sup>314</sup> I discuss this issue on pages 41-42  
10 of my rebuttal testimony. Eschelon also discussed why, if this is Qwest’s current  
11 practice, it needs to be addressed in the ICA in Eschelon’s previous testimony on  
12 this issue.<sup>315</sup>

13 **Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON’S PROPOSED**  
14 **LANGUAGE DOES NOT REFLECT QWEST’S CURRENT PRACTICE.**<sup>316</sup>

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<sup>312</sup> Throughout discussion of Issue 12-87 there are references to the Implementation Guidelines. Excerpts are included with my testimony as Exhibit Eschelon 3.83.

<sup>313</sup> Exhibit Eschelon 3, Johnson Direct, p. 99, line 16 – 100 line 23.

<sup>314</sup> See Qwest Exhibit 1R, Albersheim Rebuttal, p. 69, lines 10-12. Ms. Albersheim has admitted that Release 20.0 is a “new implementation” (i.e., the term used in Eschelon’s proposed language). See Qwest-Eschelon ICA MN Arbitration, Qwest Exhibit 1R, Albersheim Rebuttal, p. 73 (“The underlying architecture of IMA Release 20 .0 is changing from EDI to XML. This is such a significant change that Qwest is treating this as a new implementation”).

<sup>315</sup> Exhibit Eschelon 3, Johnson Direct, pp. 105-109.

<sup>316</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 68, lines 18-22.

1           **HAS MS. ALBERSHEIM PROVIDED SWORN TESTIMONY TO THE**  
2           **CONTRARY?**

3    A.    Yes. I discuss her reversal of position on pages 103-105 of my direct testimony.  
4           The Minnesota commission upheld the ALJs' finding that "Qwest agrees that  
5           Eschelon's language accurately depicts its current practice, which does not  
6           require CLECs to recertify if they have successfully completed testing of a  
7           previous release; in addition, Qwest admits that Qwest can control whether a  
8           CLEC can access its OSS."<sup>317</sup> I address the Minnesota ALJs' ruling on page 109  
9           of my direct testimony.

10   **Q.    MS. ALBERSHEIM CLAIMS THAT THERE IS NO STATEMENT TO**  
11   **SUGGEST THAT THESE SYSTEMS DOCUMENTS WILL ALSO BE**  
12   **PLACED UNDER CMP SUPERVISION.<sup>318</sup> IS THAT THE CASE?**

13   A.    No. I addressed the CMP Redesign meeting minutes in my direct<sup>319</sup> and rebuttal  
14           testimony,<sup>320</sup> and Eschelon provided excerpts from the meeting minutes in  
15           Exhibit Eschelon 3.80 and 3.81. Qwest provided no documentation to support its  
16           claims. Qwest admits that Eschelon was an active participant in the CMP

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<sup>317</sup> Exhibit Eschelon 2.25, MN PUC Arbitration Order, p. 22, ¶1; Exhibit Eschelon 2.25 MN Arbitrators' Report, ¶255.

<sup>318</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 74, lines 19-21.

<sup>319</sup> Exhibit Eschelon 3, Johnson Direct, pp. 105-107.

<sup>320</sup> Exhibit Eschelon 3R, Johnson Rebuttal, p. 35.

1 Redesign team.<sup>321</sup> Despite this explicit language stating that the guideline is  
2 within the scope of CMP, Ms. Albersheim continues<sup>322</sup> to maintain it is not, but  
3 provides no evidence to support her statement. She attempts to re-characterize the  
4 statements in the minutes, claiming that they “reflect that such changes will be  
5 documented in all relevant systems documentation, including the EDI  
6 Implementation Guidelines.”<sup>323</sup> The minutes, however, specifically state – not  
7 simply that the changes will be documented – but that they will be *within the*  
8 *scope of CMP*. Qwest has admitted it is not handling them within the scope of  
9 CMP at this time.<sup>324</sup>

10 **Q. DOES QWEST RAISE ANY OTHER NEW ISSUES REGARDING ISSUE**  
11 **12-87 IN ITS REBUTTAL TESTIMONY?**

12 A. No. Given that Ms. Albersheim’s rebuttal does not appear to raise any other new  
13 issues and suggests that Eschelon has proposed to be relieved of all obligations  
14 pertaining to controlled production testing – even for new releases – which is  
15 incorrect, I will not repeat that discussion here.

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<sup>321</sup> Qwest Exhibit 1, Albersheim Direct, p. 21, lines 10-12 (“According to the records of the CMP redesign, Eschelon was an active and vocal participant in the CMP redesign process, meaning that Eschelon had a hand in the design of the CMP as it exists today.”).

<sup>322</sup> In the Minnesota Arbitration of the same contract language, Ms. Albersheim testified that the IMA Implementation Guideline documents are not and should not be under the CMP control. *See* Qwest-Eschelon ICA MN Arbitration, Albersheim MN Surrebuttal, p. 44 lines 4-10.

<sup>323</sup> Qwest Exhibit 1R, Albersheim Rebuttal, p. 74, lines 18-19.

<sup>324</sup> Ms. Albersheim testified that the IMA Implementation Guideline documents *are not* and should not be under the CMP control. *See* Qwest-Eschelon ICA MN Arbitration, Albersheim MN Surrebuttal, p. 44 lines 4-10.

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

2 **A. Yes.**