

This Exhibit consists of the following documents from the Eschelon-Qwest Minnesota arbitration case (Minnesota Docket No. P-5340, 421/IC-06-768):

- Eschelon-Qwest Minnesota Arbitration Hearing Transcript, Volume IV, pp. 202-209 (Denney).
- Eschelon-Qwest Minnesota Arbitration Hearing Transcript, Volume V, pp. 51-58 (Fagerlund).
- Minnesota Direct Testimony of Douglas Denney (excerpt), pp. 19, 26, and 36.
- Minnesota Rebuttal Testimony of Douglas Denney (excerpt), pp. 8, 10 and 15.
- Minnesota Surrebuttal Testimony of Douglas Denney (excerpt), p. 18.

1 EVIDENTIARY HEARING - VOLUME 4 - OCTOBER 19, 2006
2 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
3 OF THE STATE OF MINNESOTA
4
5

6 In the Matter of the Petition of Eschelon Telecom, Inc.
7 for Arbitration of an Interconnection Agreement with
8 Qwest Corporation Pursuant to 47 U.S.C. 252(b)

9 OAH DOCKET NO. 3-2500-17369-2
10 PUC DOCKET NO. P5340,421/IC-06-768
11
12

13 Minnesota Public Utilities Commission
14 350 Metro Square Building
15 121 Seventh Place East
16 St. Paul, Minnesota
17

18 Met, pursuant to Notice, at 9:00 in the
19 morning on October 19, 2006.
20
21

22 BEFORE: Judge Kathleen Sheehy
23 Judge Steve Mihalchick
24 REPORTER: Angie D. Threlkeld, RPR CRR
25

Page 2

1 APPEARANCES:
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 9 and JOHN DEVANEY, Attorney at Law, Perkins Coi,
 10 607 14th Street NW, Washington, D.C. 20005, appeared
 11 for and on behalf of Qwest Corporation.
 12 GREGORY MERZ, Attorney at Law, Gray,
 13 Plant, Mooty, 500 IDS Center, 80 South Eighth
 14 Street, Minneapolis, Minnesota 55402, appeared for
 15 and on behalf of Eschelon Telecom.
 16 JULIA ANDERSON, Assistant Attorney
 17 General, 1400 Bremer Tower, 445 Minnesota Street,
 18 St. Paul, Minnesota 55101, appeared for and on
 19 behalf of the Department of Commerce.
 20 ALSO PRESENT:
 21 Kevin O'Grady, PUC Staff.
 22
 23
 24 WHEREUPON, the following proceedings were
 25 duly had and entered of record, to wit:

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1 (Whereupon, Exhibits 33 through 36 were
 2 marked for identification by the
 3 court reporter.)
 4 JAMES D. WEBBER,
 5 After having been first duly sworn, was
 6 examined and testified on his oath as follows:
 7 JUDGE SHEEHY: All right. Good morning,
 8 everyone. It appears we are about to start the
 9 testimony of Mr. Webber.
 10 MR. MERZ: That's correct, Your Honor.
 11 JUDGE SHEEHY: Mr. Merz.
 12 DIRECT EXAMINATION
 13 BY MR. MERZ:
 14 Q Mr. Webber, would you tell us by whom are you
 15 employed?
 16 A QSI Consulting, Inc.
 17 Q What is your business address?
 18 A 4515 Barr Creek Lane in Naperville, Illinois.
 19 Q Do you have in front of you there a document that's
 20 been marked as Exhibit 33?
 21 A I do.
 22 Q Is Exhibit 33 your direct testimony filed in this
 23 case?
 24 A It is.
 25 Q Do you also have a document marked Exhibit 34?

<p style="text-align: right;">Page 202</p> <p>1 has decided to define these as something that they 2 are saying they can't define. You're defining them 3 as your special access availability. It's not clear 4 to me that Qwest could not provide these like they 5 do with EELs today over, you know, using the single 6 circuit ID. It's not clear at all. 7 Q So is it your testimony that Qwest could begin using 8 single circuit IDs for commingled EELs, it could 9 begin accepting single local service requests and 10 use single billing account numbers for commingled 11 EELs without incurring any costs; is that your 12 testimony? 13 A Qwest does those things today for loops and 14 transport combinations, and we believe that Qwest 15 can do that -- you know, should be able to do that 16 going forward. Just because we've changed the name 17 of something shouldn't -- I don't see why that 18 changes the cost of Qwest providing these 19 circuits -- 20 Q So the answer to my -- 21 A -- yes. 22 Q -- question is that we could do all that I just 23 listed without incurring any costs; is that correct? 24 A And I don't know the any -- the any cost part. 25 There's -- You know, the name of the product, there</p>	<p style="text-align: right;">Page 204</p> <p>1 changing UNEs. Do you recall a discussion about 2 that yesterday that I had with Mr. Starkey? 3 A Yes. 4 Q What is your understanding, if you have one, of the 5 activities that are encompassed by the terms moving, 6 adding, or changing UNEs? 7 A Well, I mean, I just -- I'm going to defer to 8 Mr. Starkey and his testimony on this issue, but I 9 believe these are -- these are activities -- moving, 10 adding, or changing, which is closed language, that 11 Qwest is going to do these things in the agreement. 12 I read this as closed. The issue really is about 13 whether access -- the words about access to or 14 activities available for I thought is the open part 15 of that language. 16 Q Well, let me ask you a different question. 17 A So -- 18 Q Would you agree with me that Qwest should be 19 compensated for whatever activities are encompassed 20 by the terms moving, adding, or changes to UNEs? 21 A Well, I believe Qwest -- I mean, for a lot of these 22 things, I mean, Qwest is compensated. I mean, we 23 went through a cost case establishing -- you know, 24 establishing rates and costs for different things. 25 And there's -- I mean, there's two ways of</p>
<p style="text-align: right;">Page 203</p> <p>1 may be -- there may be some minor costs. I don't 2 see any significant cost to doing that. 3 Q Okay. And that's not based -- Your conclusion about 4 no cost is not based on any study that you've 5 conducted; is that correct? 6 A I mean, to -- There's no cost study, because Qwest 7 is doing it today. So that's -- I mean, I think 8 I've stated that's the basis of my -- 9 Q Okay. 10 A -- the basis of my conclusion. 11 Q I think you were here yesterday for -- I'm changing 12 the subject now to issue 9-31, access to UNEs, which 13 I don't think is addressed in your testimony; but 14 you were the recipient of a punt yesterday. Punt -- 15 I didn't mean that pejoratively. But -- 16 A 9-31. What's the ICA section? Can you -- So I can 17 just refresh myself. 18 Q Bear with me a moment. It -- 19 JUDGE SHEEHY: 9.1.2. 20 MR. DEVANEY: Thank you. 21 THE WITNESS: Got it. Thank you. 22 BY MR. DEVANEY: 23 Q This is the proposal that Eschelon has presented 24 that -- and I'm paraphrasing -- that would establish 25 that access to UNEs includes moving, adding, or</p>	<p style="text-align: right;">Page 205</p> <p>1 generating that compensation, either recurring or 2 nonrecurring rates. And I believe you are 3 compensated. And I agree for those activities that 4 you -- you know, that you do, Qwest should be and is 5 compensated. 6 Q Okay. Well, what does moving UNEs mean, as proposed 7 by Eschelon's language? What activities are 8 encompassed by that? 9 A I mean, moving could be changing the -- you know, 10 kind of changing the point at the end of -- say, at 11 the -- at the -- you know, in the office where the 12 UNE's connecting to the -- to Eschelon's facilities, 13 you know, so you're moving from one termination 14 point to another. 15 Q But moving is not a defined term anywhere, is it? 16 A Right. I think you had that conversation yesterday. 17 Q Right. 18 A Right. 19 Q So we don't know if whatever activities are 20 encompassed by that undefined term are included as 21 rate elements in the interconnection agreement, do 22 we? 23 A No, I think -- I think we do, because, I mean, we're 24 not asking here for something extraordinary that's 25 outside of activities that Qwest currently does.</p>

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1 And those -- So the rates -- When we set the rates
 2 for the unbundled network elements, as you'll
 3 remember, you know, these included the activities --
 4 these included factors like Mr. Starkey referred to.
 5 They include, you know, costs to -- so that Qwest is
 6 recovered, you know, for its normal, you know,
 7 activities associated with provisioning of loops.
 8 Q So is the intent here that Qwest will provide the
 9 same access to UNEs that it provides for its own
 10 customers and affiliates?
 11 A I don't know that there's anything here about own
 12 customers and affiliates. It's about what Qwest is
 13 currently doing today to provide UNEs, to provide --
 14 to provide access to these, you know. And we've
 15 listed some things like design changes, maintenance
 16 of service. And I believe really the focus of this
 17 language is the rates at which these activities
 18 would be compensated for. And what Eschelon
 19 believes is these should be TELRIC -- you know,
 20 TELRIC rates would be the basis for these types of
 21 activities.
 22 Q And I don't want to prolong this, but you say these
 23 types of activities. The words moving, changing, or
 24 adding to UNEs, if this -- if this language is
 25 adopted, for Qwest to be compensated there has to be

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1 rate elements in the interconnection agreement that
 2 link up with the activities encompassed by those
 3 three terms; would you agree with that?
 4 A No, I don't -- I don't agree with that because of
 5 the way -- I mean, remember when we set the
 6 recurring rates, there were these cost factors that
 7 we put into these rates that included things for --
 8 network operations types of activities or network
 9 operations. There wasn't a specific -- We didn't
 10 define each and every network operations activity
 11 and create a separate rate. Or there's -- Remember
 12 there's a maintenance factor that gets applied to
 13 all of the UNEs. That maintenance factor would
 14 include going out, doing repairs, maintaining the
 15 network, if there's moves that are included in --
 16 you know, that Qwest is moving the circuit, like you
 17 heard in retirement or replacing, those types of
 18 things are already recovered in the recurring rates.
 19 So I don't agree that there should be a separate --
 20 Q Okay. So that --
 21 A -- rate element necessarily.
 22 Q That's helpful. So it's your testimony here that
 23 moving, adding, changing to activities that would be
 24 required by Eschelon's language are already included
 25 in the monthly recurring rates in Minnesota for

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1 UNEs; is that correct?
 2 A I -- Yes, I believe that they are. And there's a
 3 cost case that can -- You know, if there's a debate
 4 over these, I know -- there are -- there are some
 5 rate elements that we'll be having a debate in the
 6 upcoming cost case --
 7 Q Okay.
 8 A -- about whether they're appropriately recovered in
 9 recurring versus nonrecurring rates. And that -- I
 10 think that -- you know, that will be the debate that
 11 will take place there.
 12 MR. DEVANEY: Your Honor, may I consult
 13 with my client for one moment?
 14 JUDGE SHEEHY: Yes.
 15 MR. DEVANEY: Thank you, Mr. Denney.
 16 THE WITNESS: Thank you.
 17 JUDGE SHEEHY: Ms. Anderson.
 18 CROSS-EXAMINATION
 19 BY MS. ANDERSON:
 20 Q Good afternoon, Mr. Denney.
 21 A Good afternoon.
 22 Q I'm going to ask you first of all about subject
 23 matter 2, issue 2-3. And I believe that shows up on
 24 your direct testimony at page 8, lines 9 through 10,
 25 concerning the effective date of UNE pricing

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1 decisions.
 2 A And --
 3 Q Are you there, sir?
 4 A Right. And I believe -- I mean, there's been an
 5 update to some of the -- some of the language
 6 surrounding this. So I'm not sure that this is the
 7 latest language proposal.
 8 Q My question is somewhat general.
 9 A Okay.
 10 Q Let me know then if you think you can answer it. Is
 11 it Eschelon's view -- And, first of all, at least
 12 the version of Qwest's proposal as the department
 13 sees it is that Eschelon believes Qwest's proposal
 14 leads to some ambiguity, is that right, with respect
 15 to specific -- any specific commission order? In
 16 other words, the date of an effective UNE pricing
 17 decision, under Qwest's language you believe there's
 18 some ambiguity there; correct?
 19 A Yes, that's correct.
 20 Q Now, Dr. Fagerlund has testified essentially that if
 21 you left the agreed-upon language in Section 22 and
 22 not also included language in Section 2.2 that the
 23 ambiguity concern of Eschelon would be eliminated.
 24 Do you agree with that?
 25 A Can you explain -- explain to me again what

1 EVIDENTIARY HEARING - VOLUME 5 - OCTOBER 20, 2006
2 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
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4
5

6 In the Matter of the Petition of Eschelon Telecom, Inc.
7 for Arbitration of an Interconnection Agreement with
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9 OAH DOCKET NO. 3-2500-17369-2
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13 Minnesota Public Utilities Commission
14 350 Metro Square Building
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18 Met, pursuant to Notice, at 9:00 in the
19 morning on October 20, 2006.
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22 BEFORE: Judge Kathleen Sheehy
23 Judge Steve Mihalchick
24 REPORTER: Angie D. Threlkeld, RPR CRR
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 6 80202, and PHILIP J. ROSELLI, Attorney at Law,
 7 Kamlet, Shepherd & Reichert, LLP, 1515 Arapahoe
 8 Street, Tower 1, Suite 1600, Denver, Colorado 80202,
 9 and JOHN DEVANEY, Attorney at Law, Perkins Coi,
 10 607 14th Street NW, Washington, D.C. 20005, appeared
 11 for and on behalf of Qwest Corporation.
 12 GREGORY MERZ, Attorney at Law, Gray,
 13 Plant, Mooty, 500 IDS Center, 80 South Eighth
 14 Street, Minneapolis, Minnesota 55402, appeared for
 15 and on behalf of Eschelon Telecom.
 16 JULIA ANDERSON, Assistant Attorney
 17 General, 1400 Bremer Tower, 445 Minnesota Street,
 18 St. Paul, Minnesota 55101, appeared for and on
 19 behalf of the Department of Commerce.
 20 ALSO PRESENT:
 21 Kevin O'Grady, PUC Staff.
 22
 23
 24 WHEREUPON, the following proceedings were
 25 duly had and entered of record, to wit:

Page 4

1 (Whereupon, Exhibits 48, 49, 50, and 51
 2 were marked for identification by the
 3 court reporter.)
 4 JUDGE SHEEHY: All right. Good morning,
 5 everyone. It's my understanding -- Let's see. The
 6 reply testimony of Katherine Doherty and the
 7 surreply testimony of Katherine Doherty have been
 8 marked as Exhibits 48 and 49. And it's my
 9 understanding there is no cross of Ms. Doherty
 10 planned, and the parties agree to admission of her
 11 testimony --
 12 MR. MERZ: That's correct, Your Honor.
 13 JUDGE SHEEHY: -- by stipulation.
 14 MR. DEVANEY: That is correct.
 15 JUDGE SHEEHY: All right. Then Exhibits
 16 48 and 49 are received exhibit.
 17 (Whereupon, Exhibits 48 and 49 were
 18 received.)
 19 MR. MERZ: I have one issue from
 20 yesterday that I just wanted to make sure I mention.
 21 JUDGE SHEEHY: Sure.
 22 MR. MERZ: We had previously filed an
 23 errata to Mr. Denney's testimony, and I just want to
 24 make sure that the record is clear that the
 25 replacement copies are inserted into the hearing

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1 copy, just so there's no confusion later on.
 2 JUDGE MIHALCHICK: I think you said that
 3 yesterday.
 4 MR. MERZ: I couldn't remember if I had.
 5 I knew I had for Mr. Webber, but I wasn't certain
 6 about Mr. Denney. So...
 7 JUDGE SHEEHY: Okay. And the next
 8 exhibits we have marked are the reply testimony of
 9 Mr. Schneider, which is Exhibit 50, and the surreply
 10 testimony of Mr. Schneider, which is 51. And there
 11 is cross for Mr. Schneider?
 12 Okay. Then please take your seat.
 13 ROGER SCHNEIDER,
 14 After having been first duly sworn, was
 15 examined and testified on his oath as follows:
 16 JUDGE SHEEHY: Okay. Ms. Anderson.
 17 DIRECT EXAMINATION
 18 BY MS. ANDERSON:
 19 Q Good morning, Mr. Schneider.
 20 A Good morning.
 21 Q You have before you what has been marked for
 22 identification as Exhibit 50, the reply testimony
 23 and exhibit of Roger L. Schneider, do you not?
 24 A Get the right stack here. Yes.
 25 Q And also in front of you is what's been marked for

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1 MS. ANDERSON: None. Thank you.
2 EXAMINATION
3 BY JUDGE SHEEHY:
4 Q I have a question about -- I'm still kind of trying
5 to understand this issue on access to UNEs -- it's
6 issue 9-31 -- and what it's intended to accomplish
7 and why it's there. And I think an Eschelon
8 witness -- I can't remember who it was, maybe
9 Mr. Denney -- testified that this language about
10 access to UNEs means moving, changing, various
11 specific activities, design changes and things like
12 that, whatever the language says, that it was
13 intended to require Qwest to charge only TELRIC
14 rates for those particular activities. Was that
15 your understanding as well?
16 A Yeah, I think that's one of the goals.
17 Q Okay. And then Mr. Denney said that in his view
18 that all these activities were already included in
19 the recurring charges for UNE rates that have been
20 set in various cost studies over the years. And,
21 for example, the recurring charge would include
22 costs for repairing and changing and moving and
23 whatever else would be encompassed within that
24 language. But I haven't really seen that anyone --
25 I mean, is that your view? Have you looked at it in

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1 that way or --
2 A Well, it certainly --
3 Q -- is it --
4 A It certainly may. We would want to review -- for
5 any new charge, nonrecurring or recurring, a new
6 charge for one of these moving, adding, repairing,
7 changing, we would want to look at the list of
8 activities that are represented in the cost study
9 for that new charge, and we would like to then
10 compare that to the list of activities that are
11 represented by the recurring and nonrecurring
12 charges for the already-established prices and be
13 very careful then that there isn't duplication.
14 That's why throughout this case the
15 department has been opposed to taking a price from
16 somewhere else just because it's convenient or an
17 average of prices or a quote preparation for element
18 X and use it for element Y and so on, and we've said
19 that we don't support any of that. And the reason
20 is that before a price should come in, we think
21 there ought to be a careful review of the
22 activities. And then and only then would somebody
23 be -- I mean, if Qwest can say, We do these A, B,
24 and C things when you want us to move something or
25 change something and that's not covered, and we look

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1 and we see, you know, those costs wouldn't be
2 covered -- those expenses are not covered in any
3 other way, so then, yeah, if -- it would be -- they
4 would have proved that they have a right to a new
5 charge for that. So I think the process is there.
6 It's just you file a cost study, and we have a
7 review then of the activities.
8 Q Well, I would agree with you that is the way that I
9 would try to figure that out. But the question is
10 in the language that's proposed does that already
11 reach that conclusion without going through that
12 process? If it requires TELRIC rates for those
13 activities that are identified, doesn't it already
14 make that determination that those costs are
15 included in the UNE recurring rate?
16 A No, I would say those are two separate things.
17 First of all, are the costs recovered somewhere?
18 That's one question. Then a second question is do
19 you get to recover these at TELRIC or at a
20 non-TRILIC? So those are really two separate
21 questions. And as to the first, I don't think it
22 begs the -- I don't think it -- it already states
23 that anything here has to -- is -- I mean, let me
24 start over. It does not say that any conceivable
25 moving, adding to, repairing, and changing are

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1 already covered in current rates. I don't read that
2 here at all. That there is the -- there is an
3 opportunity for Qwest to file --
4 Q Okay.
5 A -- if they --
6 Q So you're just reading it to mean it has to be a
7 TELRIC rate, and whether or not that rate's been
8 established or that cost is included in some TELRIC
9 rate is still an open issue?
10 A Yes.
11 Q Okay. That helps me.
12 Okay. That's all I had. Any follow-up
13 questioning based on mine?
14 Mr. Devaney.
15 MR. DEVANEY: Yes, briefly.
16 RE-CROSS-EXAMINATION
17 BY MR. DEVANEY:
18 Q Dr. Fagerlund, with respect to the words moving,
19 adding, changing, I take it it's not your position
20 that this agreement should include a form of access
21 to UNEs that goes beyond the requirements of the
22 act, is it?
23 A Well, that certainly could be negotiated, that there
24 may be things that Qwest provides beyond the
25 requirements of the act.

<p style="text-align: right;">Page 54</p> <p>1 Q But are you suggesting this commission should order 2 that if it's not agreed to in negotiations? 3 A No, I don't believe the -- There's the issue of 4 state law and what authority the state commissions 5 have and so forth. But as a general proposition, 6 without -- trying to stay away from that other issue 7 of the authority that state commissions have to make 8 requirements and even have UNEs that don't interfere 9 with the purpose -- with the FCC, that whole 10 argument, with respect to the specific UNEs already 11 ordered by the -- already required by the 12 commission, the FCC, I don't think the state 13 commission should require that a -- Okay. I'll 14 start over. The state commission can't overturn a 15 decision by the FCC saying that such and such 16 service or element is not a UNE. So I would agree 17 with you that if the FCC has said something is not a 18 UNE, the state commission should not put in language 19 requiring that to be a UNE. 20 Q Okay. You testified earlier that the terms moving, 21 adding to, or changing aren't defined anywhere in 22 the agreement or in Eschelon's proposed language. I 23 think I'm -- am I fairly stating your testimony? 24 A Yes. I was actually saying that I wasn't able to 25 define them. But...</p>	<p style="text-align: right;">Page 56</p> <p>1 charges -- 2 Q Okay. 3 A -- or certain aspects. Again, we're talking about 4 some hypothetical repairing. And so some repairing 5 may be in recurring and... 6 Q I'm looking at Exhibit A to the interconnection 7 agreement. And I'll certainly come up and show you 8 this. You might know this though, because I know 9 how familiar you are with the cost proceeding. 10 Section 9.6.11 has a series of nonrecurring rates 11 for UDIT rearrangements. Are you familiar with 12 those rates? And I can come up and show you if you 13 like. 14 JUDGE SHEEHY: What page? He's got it 15 now. 16 BY MR. DEVANEY: 17 Q It's page 20 of Exhibit A. Do you see that? 18 A One of the reasons we have the UNE descriptions 19 matrix in Minnesota is so that I can refer to it and 20 understand what these UNEs are. But I see it here, 21 yes. 22 Q UDIT rearrangements? 23 A Yes. 24 Q Would a UDIT rearrangement in your view fall within 25 the moving, adding to, or changing language that</p>
<p style="text-align: right;">Page 55</p> <p>1 Q And so my question is, given the lack of definition 2 for those terms, would you agree with me that it's 3 certainly possible that a dispute could arise 4 between the parties if this language is adopted 5 under which Eschelon may demand a form of access 6 that goes beyond what the act requires? 7 A I don't believe they could successfully make that 8 claim based on this language. 9 Q But given the lack of definition, isn't it possible 10 that that dispute could be left hanging out there? 11 A Such an argument could always be made, but that -- 12 so you could have a dispute. I wouldn't say that 13 you're not going to have such a dispute, but I don't 14 think it would be successful. 15 MR. DEVANEY: Okay. Your Honor, may I 16 consult for one moment? 17 JUDGE SHEEHY: Yes. 18 BY MR. DEVANEY: 19 Q Dr. Fagerlund, if I heard you correctly earlier 20 discussing Judge Sheehy's question about whether 21 these moving, changing, or adding activities are 22 covered in recurring rates, did I hear you say that 23 you believe they are? 24 A No, I didn't say that they are. I was saying that 25 they could be in recurring or nonrecurring</p>	<p style="text-align: right;">Page 57</p> <p>1 Eschelon is proposing? 2 A I can't say that I know exactly what this UDIT 3 rearrangement is. So I really am not totally 4 familiar with what it is other than just what the 5 terms say, and sometimes that's not always accurate. 6 But maybe a good example of how some kind of 7 rearrangement of a UNE Eschelon would have access 8 to, and here we could have a UNE price for -- price 9 for that. 10 Q And it's not included in a recurring rate, correct; 11 it's in a nonrecurring rate? 12 A Yes, that -- that is a -- it's not a repair. It's a 13 rearrangement. It doesn't sound like a repair. It 14 sounds like an alteration. 15 Q So there's been testimony from Eschelon that the 16 costs of moving, adding, and changing are included 17 in recurring rates. If UDIT rearrangements fall 18 within those categories, that wouldn't be true, 19 correct, because it's a separate nonrecurring rate? 20 A Mr. Devaney, I don't know that they have said -- I 21 never heard Eschelon say that -- 22 JUDGE SHEEHY: I think it was yesterday 23 afternoon that the testimony took place. 24 THE WITNESS: Well, okay. Again, I have 25 never heard them say that moving, adding to,</p>

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1 et cetera are always included. I think it just
 2 means that they may be included. And that's what I
 3 was trying to say earlier. I think they may be.
 4 And so you do the analysis, and you find out if they
 5 are or if they're not. If they're not, you can have
 6 a new charge like this, your example.
 7 BY MR. DEVANEY:
 8 Q Okay.
 9 A So that's how I -- Because, otherwise, if this
 10 said -- in fact, I think I said in my testimony, if
 11 it said in here that they can have any moving,
 12 adding, and so forth at no additional price, then I
 13 wouldn't agree with that language. I don't read
 14 that into that language at all.
 15 Q But one of the -- This is my last question for you.
 16 One of the challenges we would face in conducting
 17 that kind of inquiry as to whether there are already
 18 rates for those activities is that the activities
 19 aren't defined; correct?
 20 A It appears to apply to activities that haven't been
 21 thought about yet, but -- in specific, but in
 22 general they're general categories.
 23 MR. DEVANEY: Thank you. That's all I
 24 have.
 25 MR. MERZ: No questions, Your Honor.

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1 JUDGE SHEEHY: Any redirect?
 2 REDIRECT EXAMINATION
 3 BY MS. ANDERSON:
 4 Q Dr. Fagerlund, you've been asked a series of
 5 questions now with respect to the access to UNEs.
 6 Is there anything else you would like to add?
 7 A No, thank you.
 8 MS. ANDERSON: Then I have nothing
 9 further.
 10 JUDGE SHEEHY: All right. You're
 11 excused.
 12 (Witness excused.)
 13 JUDGE SHEEHY: All right. Let's go off
 14 the record for a minute and talk about how we're
 15 going to finish up here.
 16 (Off-the-record discussion.)
 17 JUDGE SHEEHY: Okay. We can go back on,
 18 and we'll just put these deadlines on the record.
 19 We've had some discussion about how to -- what
 20 deadline should be set for various filings that the
 21 parties have agreed to in order to sort of bring all
 22 this information together for us. And Eschelon has
 23 committed to filing a language matrix that sets out
 24 the most current language positions of the parties,
 25 including language that was developed during the

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1 course of the hearing and getting that to Qwest for
 2 its review by October 25th, and Qwest has committed
 3 to returning that to Eschelon by October 27th with
 4 any changes that it believes are necessary. And
 5 then if that all goes smoothly, the language matrix
 6 and a new list of issues identifying specifically
 7 which ones are closed and which ones remain open
 8 will be filed with us at OAH by October 31st.
 9 The parties have agreed that there will
 10 be one round of post-hearing briefs, and that can be
 11 filed with us on November 17th. And we have agreed
 12 to attempt to get our recommendation out by
 13 January 10th. And we do understand that these are
 14 time-sensitive issues, so we'll do our best.
 15 Anything else we need to...
 16 MR. MERZ: We don't have anything
 17 further, Your Honor.
 18 JUDGE SHEEHY: Okay. The transcripts are
 19 going to be available by October 30th, according to
 20 the court reporter.
 21 MR. MERZ: Oh, that's an important issue.
 22 Actually, there is one other thing that we need to
 23 talk about. There are stayed issues.
 24 JUDGE SHEEHY: Oh, yes. What do we do
 25 about that?

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1 MR. MERZ: Well, and our thought was
 2 just -- I mean, we don't frankly know at this point
 3 when those issues will be resolved. And our thought
 4 is just the parties could -- The hearing is set for
 5 what, November 9th?
 6 MS. CLAUSON: I think the hearing in the
 7 wire center case is like the 11th, 12th, 13th. So
 8 in our brief we can -- we've asked that they be
 9 decided in this proceeding. So we'll have to --
 10 people will have to comment, both parties will have
 11 to comment in their briefs once we know the results
 12 in that case. The agreement, the DOC proposal that
 13 was circulated, we agreed there would be a mechanism
 14 to get them into our contract. So we'll have to
 15 comment on -- we can either agree on something or --
 16 MR. DEVANEY: Some supplemental briefing
 17 or something like that.
 18 MS. CLAUSON: No, I think it should be in
 19 this brief what we're proposing to do to then get
 20 the stayed issues dealt with.
 21 MR. MERZ: In terms of process.
 22 MR. DEVANEY: Not addressing the merits
 23 of those issues, but rather --
 24 MS. CLAUSON: Right, what we should do
 25 for a process to get them into. Because the DOC

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

LeRoy Koppendraye
Marshall Johnson
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**In the Matter of the Petition of Eschelon
Telecom, Inc. for Arbitration with Qwest
Corporation, Pursuant to 47 U.S. C. Section
252 of the Federal Telecommunications Act of
1996**

Docket No. P-5340, 421/IC-06-768

DIRECT TESTIMONY OF DOUGLAS DENNEY

ON BEHALF OF ESCHELON TELECOM, INC.

AUGUST 25, 2006

1 Under Eschelon's proposal, there is no need for the Commission to set rates for
2 design changes at this time. The issue to address here is the appropriate language
3 to be included in the ICA regarding charges, with the rate, if any, to be established
4 elsewhere. Thus, to the extent that Qwest believes design change costs are not
5 recovered in its existing recurring or non-recurring charges, it may come before
6 the Commission to propose a rate and substantiate its costs. This is consistent
7 with Commission policy and prior ruling that Qwest cannot assess miscellaneous
8 charges on CLECs without Commission approval. Absent Eschelon's language,
9 Eschelon could get all the way through this arbitration case as well as a cost case
10 addressing Qwest's proposed design change charges (if any), only to find out that
11 Qwest refuses to provide design changes or is demanding Eschelon execute an
12 ICA amendment (likely generating further dispute and arbitration) to obtain
13 design changes. Adopting Eschelon's language will avoid future disputes on this
14 issue. This arbitration is the appropriate forum for addressing the ICA language
15 and ensuring that the Commission maintains jurisdiction over rates.

16 **Q. WHAT IS QWEST'S PROPOSAL ON THESE ISSUES?**

17 A. Qwest does not agree with any of the Eschelon's proposed language
18 modifications, and proposes to leave these sections blank. The effective result
19 would allow Qwest to assess the very same design change charge for all three
20 types of design changes discussed under Issue No. 4-5 (i.e., loops, CFAs and

charge was not approved by this Commission and Qwest did not assess a charge throughout the term of the ICA.

1 Eschelon in states where Qwest is assessing these charges when only a few more
2 seconds of work is required. The fact that Qwest is charging more for design
3 changes than for installation and the effect this has on Eschelon's cost to acquire
4 customers demonstrates the need for Commission oversight for design changes.

5 **Q. WHY WOULD DESIGN CHANGE CHARGES BE LESS THAN**
6 **INSTALLATION CHARGES?**

7 A. Because the design change is one component (or a subset of components) of
8 installation, the work (and cost) involved in performing a design change will be
9 less than the work (and cost) of performing the installation. For instance, a CFA
10 change and a NCI code change, two examples of design changes, do not involve a
11 Qwest outside plant dispatch, and therefore, this costly component of the
12 installation rate should not be reflected in any design change charge for these
13 activities.⁹ At the very most, even if the design change includes all components
14 of installation, the design change charge should not be more than the installation
15 charge. Yet in most states the rate for design changes (which Qwest applies to all
16 design changes) is higher than the installation rate. Qwest's current practice of
17 billing more in some states for Design Changes than the Commission-approved
18 installation rate (i.e., for a new install and not just a later change in design) shows
19 that Commission oversight is warranted with regard to design changes.¹⁰ There is

⁹ Eschelon reserves the right to argue that separate charges for design changes are not warranted because they may already be recovered in other rates. This is an issue for any Commission case investigating Qwest-proposed design change charges.

¹⁰ For example in the following states Qwest charges a design change charge that exceeds the SGAT rates

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Direct Testimony of Douglas Denney
August 25, 2006

1 times in Exhibit A (for loops, CFA, and UDIT). If Qwest seeks Commission
2 approval of rates, and Eschelon (or another CLEC) demonstrates that there should
3 be three different design change rates for loops, CFA, and UDIT, Eschelon's
4 language again accommodates this outcome, and the Exhibit A would be
5 populated with three different rates. And if the Commission determines that
6 design change charges are already recovered in other rates²⁰ (or if Qwest does not
7 seek Commission approval of separate design change charges in Minnesota), the
8 Exhibit A could be left blank for these three rates, or in the alternative, a
9 placeholder stating "no charge" could be inserted. Again, there is no need to
10 establish rates in this proceeding or amend the Exhibit A pricing appendix, as
11 Eschelon's language will accommodate those rates when, and if, they are
12 approved by the Commission.

13 Qwest's proposal to omit Eschelon's language, on the other hand, only supports
14 Eschelon's contention that Qwest intends to apply access rates for design changes
15 outside the ICA. And this is Eschelon's primary problem with Qwest's proposal:
16 that is, by omitting language that makes clear that design changes will be in
17 Exhibit A, over which the Commission will have authority, Qwest is setting the
18 stage for removing these charges from Commission purview and applying non-
19 cost based access rates.²¹ If Qwest believes that it can substantiate separate

²⁰ Eschelon reserved the right to argue that the rate for design change charges should be zero because, for example, these costs are already recovered in other rates.

²¹ This assumes that Qwest will not use the lack of language to quit providing design changes altogether.

**STATE OF MINNESOTA
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**In the Matter of the Petition of Eschelon
Telecom, Inc. for Arbitration with Qwest
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252 of the Federal Telecommunications Act of
1996**

Docket No. P-5340, 421/IC-06-768

REBUTTAL TESTIMONY OF DOUGLAS DENNEY

ON BEHALF OF ESCHELON TELECOM, INC.

SEPTEMBER 22, 2006

1 **SUBJECT MATTER NO. 4. DESIGN CHANGES**

2 **Issue Nos. 4-5, 4-5(a) and 4-5(b): ICA Sections 9.2.3.8, 9.2.3.9 and 9.6.3.6**

3 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF ISSUE 4-5 AND SUBPARTS**
4 **(DESIGN CHANGES).**

5 A. Issues 4-5, 4-5(a) and 4-5(b) apply to design change charges for loops, CFA
6 changes during a coordinated cut, and Unbundled Dedicated Interoffice Transport
7 (“UDIT”), respectively.¹²

8 **Q. QWEST STATES THAT IT IS WILLING TO ACCEPT ESCHELON’S**
9 **LANGUAGE FOR ISSUES 4-5(A) AND 4-5(C) AND CLOSE THESE**
10 **ISSUES.¹³ IS THIS THE END OF THE STORY FOR THESE ISSUES?**

11 A. No. The key issue still remains as to whether Qwest already recovers design
12 change charges elsewhere, and if not, the appropriate rate that should apply for
13 design changes for loops and UDIT. Qwest has not shown that these costs are not
14 recovered via other rates, nor has Qwest provided any cost support for the charges
15 it would assess for these design changes. Qwest’s agreement to include the rates
16 for design changes in the ICA is an implicit acknowledgement that these rates
17 should be cost-based and nondiscriminatory, but that is not the approach Qwest is
18 taking with these rates. Qwest intends to apply tariffed access rates to design
19 changes, as evidenced by the process notification Qwest issued on August 31,

¹² Note: Ms. Stewart uses an older numbering convention for these issues, *i.e.*, 4-5(a) for loop design changes, 4-5(b) for CFA design changes and 4-5(c) for UDIT design changes. The issues are the same as the issues referred to in my testimony as Issues 4-5, 4-5(a) and 4-5(b), respectively.

1 Ms. Stewart argues against Eschelon’s proposal for Issue 9-31¹⁵ which identifies,
2 among other activities, design changes as part of access to unbundled network
3 elements. She states that Qwest is concerned Eschelon may be seeking “TELRIC
4 rates for services not within Section 251 of the Act and for which TELRIC rates
5 do not apply.”¹⁶

6 These facts, taken in conjunction with Qwest’s August 31, 2006 notice, strongly
7 imply that Qwest will attempt to apply charges for these activities without
8 Commission approval or review.

9 To the extent that Qwest attempts to show that these costs are not recovered by
10 other rates and seeks cost recovery for them in separate rates, those rates should
11 be non-discriminatory, cost-based TELRIC rates.

12 **Q. BESIDES QWEST’S ATTEMPT TO APPLY TARIFFED ACCESS**
13 **CHARGES FOR DESIGN CHANGES, DOES ESCHELON HAVE OTHER**
14 **CONCERNS REGARDING QWEST’S ATTEMPTS TO RESTRICT**
15 **ACCESS TO DESIGN CHANGES?**

16 A. Yes. On September 11, 2006, Qwest issued a Level 3 CMP notice that revised its
17 Provisioning and Installation Overview by changing the verbal supplement for
18 CFA slot change on the due date. Qwest added the following language:

¹⁵ Issue 9-31 is discussed in detail in the testimony of Mr. Starkey.

¹⁶ *Stewart Direct*, page 14, lines 4 – 7.

1 **SUPPORT SYSTEMS” DURING THIS TYPE OF CFA DESIGN**
2 **CHANGE.²⁵ WHAT IS THE PURPOSE OF THIS TESTIMONY?**

3 A. Ms. Stewart is attempting to build upon her incorrect notion that Eschelon’s
4 language would prevent Qwest from assessing a charge for this type of CFA
5 design change, by referring to costs that would purportedly go un-recovered if
6 Qwest were not allowed to assess a charge in these instances. However, Ms.
7 Stewart’s notion is incorrect, as under Eschelon’s proposal Qwest has the
8 opportunity to substantiate its costs regarding these design changes at the
9 Commission and request a rate that recovers the costs that Qwest alleges it incurs.

10 Furthermore, Eschelon is already separately paying for coordination during these
11 coordinated cuts, and this coordination should cover the types of activities that
12 Ms. Stewart mentions (*i.e.*, re-review the service order and update downstream
13 OSS). As explained in my direct testimony²⁶, the actual design change work of
14 the central office technician to perform a CFA design change in this scenario
15 would take a matter of seconds or minutes. And a few minutes of the central
16 office technician’s time should not amount to a charge in the neighborhood of \$70
17 or more, which is what Qwest is assessing in other states.

18

changes...”]

²⁵ *Stewart Direct*, pages 10, lines 12-16.

²⁶ *Denney Direct*, pages 31 – 34.

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Docket No. P-5340, 421/IC-06-768

SURREBUTTAL TESTIMONY OF DOUGLAS DENNEY

ON BEHALF OF ESCHELON TELECOM, INC.

October 9, 2006

PUC Docket P-5340, 421/IC-06-768
Eschelon Telecom, Inc.
Surrebuttal Testimony of Douglas Denney
October 9, 2006

1 A. No. The fact that Eschelon has agreed to compensate Qwest for design
2 changes (either because Qwest is already recovering design change costs or
3 because Qwest establishes cost-based rates for design changes) cannot be
4 disputed. This is clear in Eschelon's direct testimony,³⁰ and was reiterated in
5 my rebuttal testimony.³¹ Ms. Stewart's own testimony even shows that she
6 understood when writing her rebuttal testimony that it is Eschelon's position
7 that Qwest should be compensated for design changes to the extent these costs
8 are not double-recovered,³² and the Department of Commerce understands that
9 Eschelon's language would allow Qwest to be compensated for design changes
10 provided to Eschelon.³³ Furthermore, Eschelon has also agreed to language in
11 Section 5.1.6 of the ICA which states that "Nothing in this Agreement shall
12 prevent either Party from seeking to recover costs..."

³⁰ *Denney Direct*, p. 18 ("Qwest can assess a cost-based rate for design changes so long as Qwest files cost support with the Commission and receives Commission approval."); *Denney Direct*, p. 15 ("Eschelon needs a ruling that provides certainty that Qwest will continue to provide changes at cost-based rates."); *Denney Direct*, p. 35, lines 6-12.

³¹ See *Denney Rebuttal*, p. 12. ("Eschelon's position statement, testimony and, most importantly, contract language make very clear that Eschelon is not attempting to prevent or limit Qwest from recovering its costs.") See also *Denney Rebuttal*, p. 14, lines 3-16 ("Eschelon's language does in fact allow Qwest to assess a CFA design change charge in this circumstance to the extent that Qwest has a Commission-approved rate."); See also *Denney Rebuttal*, p. 15, lines 3-9 ("...under Eschelon's proposal Qwest has the opportunity to substantiate its costs regarding these design changes at the Commission and request a rate...")

³² *Stewart Rebuttal*, p. 3, lines 16-18 ("Eschelon acknowledges that Qwest incurs costs to perform design changes for unbundled loops and, further, recognizes that Qwest should be compensated for these costs.") This contradicts Ms. Stewart's testimony at page 1 of her rebuttal where she testifies: "The real dispute relating to design changes is...whether Eschelon will agree to pay for these changes and to compensate Qwest for the costs it incurs to perform them."

³³ *Fagerlund Rebuttal*, p. 9, lines 12-15 ("I support the Eschelon language in Section 9.2.3.8 that provides recognition that a Design Change charge for unbundled loops could be proposed in the future, but leaves open what that charge will be.")