BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Ken Nickolai	Commissioner
Marshall Johnson	Commissioner
Phyllis Reha	Commissioner
Thomas Pugh	Commissioner

In the Matter of Qwest's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. § 251	ISSUE DATE: March 30, 2007 DOCKET NO. P-421/AM-06-713
In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)	DOCKET NO. P-5340,421/IC-06-768
In the Matter of Qwest Corporation's Conversion of UNEs to Non-UNEs	DOCKET NO. P-421/CI-07-370
In the Matter of Qwest Corporation's Arrangements for Commingled Elements	DOCKET NO. P-421/CI-07-371

ORDER RESOLVING ARBITRATION ISSUES, REQUIRING FILED INTERCONNECTION AGREEMENT, OPENING INVESTIGATIONS AND REFERRING ISSUE TO CONTESTED CASE PROCEEDING

PROCEDURAL HISTORY

Since 1999, Cady Telemanagement, Inc., and its successor Eschelon Telecom, Inc. (Eschelon), have operated in Minnesota pursuant to an interconnection agreement (ICA) with US WEST Communications, Inc., and its successor Qwest Corporation (Qwest).[1] The parties have been discussing revisions to their agreement since then.

On May 26, 2006, after the parties failed to reach agreement on various terms of a new interconnection agreement, Eschelon petitioned the Commission to arbitrate the dispute pursuant to Sections 251 and 252 of the federal Telecommunications Act of 1996 (the Act).[2]

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[1] *In the Matter of a Request for Approval of the Interconnection Agreement and Amendment One to the Agreement Between US WEST Communications, Inc., and Cady Telemanagement, Inc.*, Docket No. P-5340, 421/M-99-1223.

[2] Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

On June 23, 2006, the Commission issued its ORDER REFERRING MATTER TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR ARBITRATION, ASSIGNING ARBITRATORS, AND GIVING NOTICE OF FIRST PREHEARING CONFERENCE.

On July 12, 2006, the Minnesota Department of Commerce (the Department) intervened in the case.[3] In addition, participants Time Warner Telecom, Inc. (Time Warner), and Integra Telecom of Minnesota, Inc. (Integra), filed comments in this case pursuant to Minnesota Rules part 7812.1700, subpart 10.

On October 16-20, 2006, Administrative Law Judges Kathleen D. Sheehy and Steve M. Mihalchick (the arbitrators) conducted arbitration hearings in St. Paul, Minnesota.

On January 9, 2007, the arbitrators issued their Arbitrators' Report recommending a basis for resolving the arbitrated issues.

On January 26, 2007, the Department, Eschelon and Qwest filed exceptions to the Arbitrators' Report.

The Commission met on March 6 to consider this matter.[4] The record of this case closed on that date.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

A. Procedure

The federal Telecommunications Act of 1996 was designed to open telecommunications markets to competition, including the local exchange market.[5] To this end, the 1996 Act requires each incumbent local exchange carrier (incumbent LEC or ILEC) to enter into an interconnection agreement with any requesting competitive local exchange carrier (CLEC) establishing the terms under which they would connect their networks to permit each carrier's customers to call the other's. An ILEC must do the following:

- Permit CLECs to purchase its services at wholesale prices and resell them to retail customers ("end use customers").

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[3] The Department's intervention is granted as a matter of right. Minn. Stat. § 216A.07, subd. 3; Minn. Rules part 7812.1700, subp. 10.

[4] The Commission originally scheduled to hear this matter on March 1, 2007, but rescheduled the meeting due to inclement weather.

[5] See conference report accompanying S. 652.

- Permit CLECs to interconnect with its network on just, reasonable and nondiscriminatory terms.
- Offer unbundled network elements (UNEs) – that is, offer to rent certain elements of its network to CLECs without requiring the CLEC to also rent unwanted elements – on just, reasonable, and nondiscriminatory terms,[6] including cost-based rates.[7]

In addition, § 271 of the Act requires Bell operating companies (BOCs) such as Qwest to provide access to certain elements[8] even if they do not qualify as UNEs.[9] BOCs must provide access to these § 271 elements on just, reasonable and nondiscriminatory terms[10] – but unlike UNEs, the Act does not require BOCs to provide § 271 elements at cost-based rates.

In determining whether an element qualifies as a UNE, the Federal Communications Commission (FCC) considers, among other things, whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[11] Because this determination is fact-specific and the telecommunications market is constantly evolving, an element's status as a UNE may change over time.[12]

A CLEC desiring to provide local exchange service can seek agreements with an ILEC related to interconnection with the ILEC's network, the purchase of finished services for resale, and the

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[6] 47 U.S.C. § 251(c).

[7] 47 U.S.C. § 252(d)(1)(A)(i); 47 C.F.R. § 51.501 *et seq.*

[8] 47 U.S.C. § 271(c)(2)(B).

[9] See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 664 (2003), *corrected by* Errata, 18 FCC Rcd 19020 (2003) (collectively, *Triennial Review Order*), *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) *cert. denied*, 125 S.Ct. 313, 316, 345 (2004).

[10] 47 U.S.C. §§ 201, 202.

[11] 47 U.S.C. § 251(d)(2)

[12] The FCC announced its most recent systematic analysis of UNEs in its *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533 (released February 4, 2005) (*Triennial Review Remand Order*, or TRRO).

purchase of the ILEC's UNEs and other elements.[13] If the ILEC and the CLEC cannot reach agreement, either party may ask the State commission to arbitrate unresolved issues and to order terms consistent with the 1996 Act.[14] In particular, parties may ask a state Commission to determine the total element long-run incremental cost (TELRIC) of UNEs, interconnection, and methods of obtaining access to UNEs.[15]

B. Decision Standard

In resolving the issues in this arbitration and imposing conditions, the Commission must (1) ensure that the resolution meets the requirements of § 251 of the 1996 Act, including any legally enforceable regulations prescribed by the Federal Communications Commission (FCC) pursuant to § 251; (2) establish any rates for interconnection, services or network elements according to § 252(d) of the 1996 Act; and (3) provide a schedule for implementation by the parties.[16]

The Commission may also establish and enforce other requirements of state law when addressing issues related to intercompany agreements under § 252.[17] The Minnesota Legislature directs the Commission to encourage, among other things, economically efficient deployment of infrastructure for higher speed telecommunication services, fair and reasonable competition for local exchange telephone service, improved service quality, and customer choice.[18] In addition, the Commission must adopt policies "using any existing federal standards as minimum standards and incorporating any additional standards or requirements necessary to ensure the provision of high-quality telephone services throughout the state."[19] These policies must facilitate the kind of interconnection that "the commission considers necessary to promote fair and reasonable competition"[20] and, in particular, must "prescribe appropriate regulatory standards for new local telephone service providers that facilitate and support the development of competitive services...."[21]

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[13] 47 U.S.C. §§ 251(c), 252(a).

[14] 47 U.S.C. § 252(b).

[15] 47 C.F.R. §§ 51.501, 51.505.

[16] 47 U.S.C. § 252(c).

[17] 47 U.S.C. §§ 251(d)(3), 252(e)(3), 253(b), 261 and 601(c)(1); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996) (*Local Competition First Report and Order*) at ¶¶ 233, 244.

[18] Minn. Stat. § 237.011.

[19] Minn. Stat. § 237.16, subd. 8(a).

[20] *Id.* at subd. 8(a)(2).

[21] *Id.* at subd. 8(a)(6).

To these ends, the Legislature authorizes the Commission to remedy unreasonable or insufficient services or omissions[22] by making any just and reasonable order necessary, up to and including revoking a carrier's authority to provide service.[23]

In short, the Commission must impose terms and conditions in this proceeding that are just, reasonable, nondiscriminatory and fair to both the new entrants and the incumbent, consistent with the requirements of federal and state law.

II. FUTURE PROCEEDINGS

The 1996 Act requires parties to submit "any interconnection agreement adopted by negotiation or arbitration . . . for approval to the State commission."[24] The State commission must then approve or reject the agreement within 90 days as to a negotiated agreement and 30 days as to an arbitrated contract.[25] But the 1996 Act does not establish any deadline by which parties must submit a final interconnection agreement; the Act merely requires that arbitration decisions contain a schedule for implementation.[26]

In this case, the arbitrators recommend that the Commission refrain from establishing a specific date for parties to file their proposed interconnection agreements, and instead hold this docket open pending the outcome of a pending docket addressing the scope of Qwest's obligation to provide UNEs (the "*Wire Center Docket*").[27] The Department and Eshelon support this recommendation. But Qwest expresses concern that awaiting the resolution of other dockets will needlessly postpone the implementation of new interconnection terms.

The Commission appreciates the *Wire Center Docket*'s relevance to the parties in this proceeding, and the parties' desire not to duplicate the work of implementing new interconnection terms. To this end, the Commission desires to provide all parties with enough time to analyze and incorporate changes arising from the *Wire Center Docket* into the interconnection agreement that is the focus of the current docket. At the same time, the Commission does not wish to needlessly delay the implementation of the most up-to-date interconnection terms.

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[22] Minn. Stat. § 237.081.

[23] Minn. Stat. § 237.16, subd. 5.

[24] 47 U.S.C. § 252(e)(1).

[25] 47 U.S.C. § 252(e)(4).

[26] 47 U.S.C. § 252(c).

[27] Arbitrators' Report at ¶ 3, citing *In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Docket No. P-5692/M-06-211; *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-999/CI-06-685.

Given these competing concerns, the Commission will direct parties in this arbitration to submit their final ICAs, containing all arbitrated and negotiated terms, within 120 days of this Order. This should provide sufficient time for pending dockets to reach resolution before the parties would file their final agreement. But if the *Wire Center Docket* is not resolved in the next 100 days, the parties may petition to extend the deadline. The Commission will authorize its Executive Secretary to act on such petitions.

The parties shall put their entire ICAs together and craft any additional language that the Commission has not specifically ordered in this arbitration. The approval proceeding will enable the Commission to (1) review provisions arrived at through negotiations; (2) make any necessary adjustments to the arbitrated terms; and (3) ensure that the final ICA language comports with the Commission's decisions in this arbitration. The Commission will review the entire agreement for compliance with the relevant law and consistency with the public interest as required by the 1996 Act.[28]

SPECIFIC FINDINGS AND CONCLUSIONS

I. CONTESTED ISSUES

Eschelon and Qwest submitted 143 pages of contested issues for the arbitrators consideration,[29] addressing the following topics:

1. Interval Changes and Placement
2. Effective Date of Rate Changes
3. Effective Date of a Legally Binding Change
4. Suspension of Order Processing
5. Definition of Repeated Delinquency – Magnitude In Dispute
6. Definition of Repeated Delinquency – Frequency of Delinquency
7. Disputing Deposit Requirement
8. Alternative Approach to Deposits
9. Increase in Deposits Based Upon Review of Credit Standing
10. Copy of Non-Disclosure Agreement
11. Transit Record: Charge and Bill Validation
12. Available Inventory/Posting of Price Quotes
13. Available Inventory/Space Augments
14. Direct Current (DC) Power/Usage Pricing
15. Initial Power Management
16. Quote Preparation Fee
17. Non-Discriminatory Access to UNEs
18. Network Maintenance and Modernization/Adverse Effect

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[28] See 47 U.S.C. § 252(e).

[29] Revised Minnesota Disputed Issues List (October 31, 2006).

19. Relationship Between Section 9.1.9 and Copper Retirement
20. Location at Which Changes Occur
21. Conversion of a UNE to a Non-UNE
22. Cross Connect/Unbundled Customer Controlled Rearrangement Element
23. Loop-Transport Combinations
24. Service Eligibility Criteria Audits
25. Arrangements for Commingled Elements
26. Loop-Multiplex Circuit Combinations
27. Acknowledgment of Mistakes
28. Communications with CLEC Customers
29. Expedited Orders
30. Pending Service Order Notification
31. Jeopardies, Classification, Correction
32. Fatal Rejection Notices
33. Loss, Completion and Trouble Reports
34. Controlled Production Testing
35. Rates and IntraLATA[30] (Local) Toll Traffic
36. Unapproved Rates
37. Private Line Special Access

The arbitrators addressed each of these topics in their report. Parties subsequently filed exceptions regarding collections issues (topics 4 through 9 above), transit records (topic 11), loop-transit combinations (topic 23), loop-multiplex circuit combinations (topic 26), acknowledgment of mistakes (topic 27), requests to expedite orders (topic 29), jeopardy notices (topic 31) and controlled production testing (topic 34).

II. ARBITRATORS' REPORT

Having reviewed the full record of this proceeding and provided an opportunity for all parties to be heard, the Commission generally finds the recommendations of the Arbitrators' Report to be a thorough and reasonable analysis of the issues. The Commission generally concurs in the arbitrators' analyses, findings and recommendations, and will generally accept, adopt and incorporate them into this Order.

In particular, the Commission will adopt the arbitrators' recommendations regarding topics 5, 6, 7, 8, 9, 11, 26, 29 (with respect to the selection of ICA language) and 34. In addition, the Commission finds merit in the arbitrators' recommendations to open some new investigations involving Qwest and all interested CLECs:

- Regarding the terms under which Qwest converts from providing a network element that is deemed a UNE to providing the same element when it is no longer deemed a UNE (topic 21), the Commission will initiate an investigation *In the Matter of Qwest*

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[30] "LATA" refers to a "local access and transport area." 47 U.S.C. §§ 151(25), 271. "IntraLATA traffic" refers to calls between parties within the same LATA, often referred to as "local calls."

Corporation's Conversion of UNEs to Non-UNEs, Docket No. P-421/CI-07-730. This investigation will establish appropriate terms for Qwest to convert UNEs to non-UNEs, including a determination of whether the charge for providing this service must be limited to Qwest's total element long run incremental cost.

- Regarding Qwest's procedures for providing CLECs with commingled enhanced extended loops (topic 25), the Commission adopts the arbitrators' recommendation and hereby initiates an investigation *In the Matter of Qwest Corporation's Arrangements for Commingled Elements*, Docket No. P-421/CI-07-731, for the purpose of determining appropriate procedures.

With respect to a few topics, however, the Commission is persuaded that a superior alternative exists to the one recommended by the arbitrators. These topics are addressed below:

III. ISSUES

Topic 4: May Qwest discontinue processing orders from Eschelon if Eschelon fails to make prompt payments? (ICA Section 5.4.2)

A. The Issue

To introduce competition into the local telecommunications market, the 1996 Act compels ILECs to cooperate with their competitors in the use of telecommunications plant. This produces a dynamic whereby a CLEC is an ILEC's customer in the wholesale market but is the ILEC's competitor in the retail market.

As a result of this relationship, each party has both the opportunity and the incentive to act in anticompetitive ways toward the other. Because the ILEC controls much of the plant, the ILEC has the opportunity to harm a CLEC's business through various technical means that degrade the quality of the service that the CLEC can provide to its customers. The CLEC, in turn, can harm the ILEC's business by withholding payment for the ILEC's services. Much of the language in ICAs is designed to limit the discretion an ILEC has over the quality of service delivered to a CLEC's customer, and to limit the CLEC's discretion regarding the amount and timing of payments to the ILEC.

This issue addresses both concerns. To the extent that Eschelon relies on Qwest's plant to serve a customer, Eschelon places orders for service with Qwest's wholesale operations. Eschelon might, for example, ask Qwest to install a new line to a customer's premises, or repair an existing line. If Qwest were to stop processing orders for Eschelon, Eschelon's customers might not be able to receive new lines or to get existing lines repaired. This fact might prompt the customer to stop doing business with Eschelon. Eschelon expresses concern that Qwest might exercise any discretion to stop processing orders inappropriately, causing irreparable harm in the form of lost customers and damaged reputation for service quality. On the other hand, Qwest claims that Eschelon has a history of late payments, that large unpaid balances deprive Qwest of the time value of money and increase the risk Qwest faces of a possible default, and that threatening to stop processing orders is an effective mechanism for securing those payments.

Qwest proposes language that would permit Qwest to discontinue processing Eschelon's orders for certain services if Eschelon fails to make full payment (except for sums in dispute) within 30 days of the payment due date. Qwest proposes to give Eschelon and the Commission at least ten business days' notice of its intention to discontinue processing orders, but Qwest does not propose to await Commission action on that notice. Qwest's interconnection agreements with some other CLECs contain similar provisions.

Eschelon's proposed language would require Qwest to secure Commission approval before discontinuing order processing or, alternatively, would require Qwest to resume order processing during the pendency of any Eschelon complaint on the issue. Integra and Time Warner support Eschelon's language.

B. The Arbitrators' Recommendation

Finding that Qwest had articulated legitimate grounds for concern about late payments, the arbitrators recommend adopting Qwest's proposed language. In an effort to better reconcile Qwest's proposal with Eschelon's concerns, the arbitrators suggest possible means to further limit Qwest's discretion to suspend order processing. If the Commission were concerned that a 10-day notice would not provide sufficient time to respond, the Commission could extend the notice period. Or if the Commission were concerned that an unpaid bill for service provided to Eschelon's operations in another state might prompt Qwest to withhold service processing in Minnesota, the Commission could declare that Qwest's authority to suspend order processing in Minnesota would be limited to circumstances in which Eschelon failed to pay for services rendered in Minnesota.

Eschelon continues to support its proposed language. In lieu of that, Eschelon supports the additional safeguards proposed by the arbitrators. In addition, Eschelon proposes another constraint on Qwest's discretion to suspend order processing: If at the end of the 10-day notice period Qwest does not exercise its right to suspend order processing, Eschelon asks that Qwest be required to give a five-day notice before subsequently exercising its right to suspend.

Finally, Eschelon notes that Qwest's language would permit Qwest to withhold processing a variety of orders, including orders to stop providing certain services to a customer and to limit a customer's access to toll services. This is an anomalous result. First, if Qwest is motivated by concern over a CLEC's accruing debt, Qwest should not object to processing orders that will tend to reduce a CLEC's future debt. Second, customers are legally entitled to decline telephone services which they did not request, and to block certain toll services. The Department shares this concern, and proposes the following language to address it:

> 5.4.2 . . . . Qwest may only discontinue order processing (as defined below) to CLEC under the following conditions:
>
> 1) if payment for services rendered in Minnesota are more than 30 days past due; and
>
> 2) if such payment does not include amounts disputed under section 21.8; and
>
> 3) if Qwest has given CLEC and the Commission ten (10) business days prior written notice.

The term "order processing" does not include orders or requests by CLEC to drop or remove a feature or service for a given end user or end user account, and also does not include orders or requests by CLEC to add any blocking capabilities to an end user account. Qwest may not discontinue processing the removal of features or services, or the addition of blocking capabilities, under any circumstances.

Nothing in this section precludes CLEC from using any dispute resolution procedures to contest Qwest's discontinuation of order processing, if CLEC believes Qwest has not met all three conditions listed above, or for any other reason.

C. Applicable Law

Notwithstanding the 1996 Act, states retain jurisdiction over an ILEC's operations.[31] The Commission is authorized to prescribe the terms and conditions of service delivery for the purpose of bringing about fair and reasonable competition for local exchange telephone services.[32] The Commission should exercise its authority to, among other objectives, encourage fair and reasonable competition for local exchange telephone service in a competitively neutral manner, maintain or improve service quality, promote customer choice, and ensure consumer protections.[33]

While statute bars Qwest from disconnecting service to a CLEC without prior Commission approval,[34] no party identifies a statute addressing Qwest's duty to continue processing orders specifically. However, statute requires local service providers 1) to refrain from charging any customer for services the customer did not request, and 2) to permit the customer to forbid the use of ("block") the customer's line for certain toll and information services.[35]

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[31] 47 U.S.C. § 251(d)(3); § 261(b), (c); 1996 Act § 601(c)(1). The Conference Committee Report for the 1996 Act expounds on the purpose of the uncodified language at § 601(c)(1) as follows: "The conference agreement adopts the House provision stating that the bill does not have any effect on any other ... State or local law unless the bill expressly so provides. This provision prevents affected parties from asserting that the bill impliedly preempts other laws." H. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 201 (1996), reprinted in 1996 U.S.C.C.A.N. 215.

[32] Minn. Stat. § 237.16, subd. 1(a).

[33] Minn. Stat. § 237.011.

[34] See Minn. Stat. § 237.74, subd. 9 (2006).

[35] Minn. Stat. §§ 327.663, 327.665; Minn. Rules part 7811.0600, subp. 1(E) and 7812.0600, subp. 1(E).

D. Commission Decision

The Commission finds merit in the arbitrators' analysis, and will generally accept their recommendation to adopt Qwest's language. The Commission has approved language similar to Qwest's proposal in other Qwest interconnection agreements, and no party has alleged that Qwest has exploited these terms for anticompetitive purposes. Consequently the Commission finds insufficient reason to adopt additional safeguards to guard against Qwest abusing these terms.

Nevertheless, the Commission finds merit in Eschelon's and the Department's concerns about how Qwest's language might impinge upon retail customers' rights to remove services and block charges on their accounts. In defense of those rights, therefore, the Commission will modify Qwest's language to incorporate the Department's proposed language. With this addition, the Commission is persuaded that the new interconnection language will appropriately constrain each party for the benefit of the other, and for the benefit of Eschelon's customers.

Topic 23: What terms should govern Qwest's duty to combine loops and transports at Eschelon's request? (ICA Section 9.23.4)

A. The Issue

Providing UNEs to CLECs typically requires Qwest personnel to make adjustments to cables and computers within Qwest's central offices, often including the computer that the CLEC has installed (co-located) there. When a CLEC purchases the use of multiple elements, often Qwest personnel must combine them on behalf of the CLEC.[36] The parties disagree about the precise terms under which certain combinations will occur.

In particular, the parties disagreed about language concerning "enhanced extended loops." A loop refers to the circuit connecting a customer's premises to the ILEC's computers in its central office. CLECs competing with Qwest typically do not have computers in each of Qwest's central offices. In order to use Qwest's plant to serve a customer connected to a remote central office, therefore, a CLEC needs to use not only the loop but also a circuit connecting the customer's central office to the central office containing the CLEC's computer (or cable connecting to the CLEC's computer). This combination of a loop and a circuit dedicated to transporting a signal between central offices (dedicated interoffice transport) has come to be known as an enhanced extended loop (EEL).

EELs come in many varieties, including EELs incorporating standard voice circuits, EELs incorporating high-capacity circuits, and EELs incorporating elements that do not qualify as UNEs.

Eschelon proposed agreement language seeking to address all of these types of EELs collectively as "Loop-Transport Combinations." The Department and Qwest object to Eschelon's language in part because it obscures the difference between EELs that consist entirely of UNEs and "commingled EELs" – that is, EELs involving both UNE and non-UNE elements. Eschelon's

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[36] See, for example, 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.315.

language stated that it would not apply to combinations that contained no UNEs, it did not specify how to treat combinations that contained both UNE and non-UNE elements.

On the other hand, Eschelon objects that Qwest's proposed language provides too much specificity. That is, Qwest's language stated that the non-UNE portion of any loop-transport combination would be governed by tariff. Eschelon argues that the non-UNE portion of the combination might be governed by terms other than those in Qwest's tariffs; for example, they could be governed by a commercial agreement.

B. The Arbitrators' Recommendation

Given the ambiguity created by Eschelon's proposed language, the arbitrators recommend adopting Qwest's proposed language. In its exceptions, Eschelon renewed its objections to that language.

At the Commission hearing, however, Eschelon and Qwest acknowledged that they had already agreed to language at proposed Section 24.1.2.1 that appeared to address all of their concerns. It reads as follows:

> The UNE component(s) of any Commingled arrangement is governed by the applicable terms of this Agreement. The other component(s) of any Commingled arrangement is governed by the terms of the alternative service arrangement, pursuant to which the component is offered (e.g., Qwest's applicable Tariffs, price list, catalogs, or commercial agreements).

They jointly ask the Commission to adopt this language in lieu of their initial positions and the arbitrators' recommendation. The Department supports this resolution as well.

C. Applicable Law

While the Commission has broad discretion to rule on arbitrated terms, the Commission is compelled to approve negotiated terms unless they discriminate against telecommunications carriers who are not party to the agreement, or unless they are inconsistent with the public interest, convenience and necessity.[37]

D. Commission Decision

While there may be merit in the arbitrators' recommendation, the fact that Eschelon and Qwest have reached agreement about this issue reduces the scope of the Commission's analysis. No

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[37] 47 U.S.C. § 252(e)(2); see *In the Matter of the Petition of AT&T Communications of the Midwest, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-442, 421/IC-03-759, ORDER RESOLVING ARBITRATION ISSUES AND REQUIRING FILED INTERCONNECTION AGREEMENT (November 18, 2003) at 7.

party has alleged that the proposed language would discriminate against any other party, or that it conflicts with the public interest, convenience and necessity. Finding no such defects, the Commission will approve the language agreed to by the parties, and decline the arbitrators' recommendation on this topic.

Topic 27: Under what circumstances should Qwest acknowledge to Eschelon's customer that a service quality problem resulted from Qwest's error? (ICA Section 12.1.4.1)

A. The Issue

When Qwest's errors in processing a service request harmed an Eschelon customer, the Commission directed Qwest in the *MN 616 Case*[38] to acknowledge its responsibility in order to avoid anticompetitive effects to Eschelon. Now Eschelon and Qwest each propose language to articulate Qwest's duty to acknowledge mistakes, but the parties disagree about the extent of this duty.

In particular, Eschelon proposes that Qwest has a duty to acknowledge when it has made a mistake "relating to products and services provided under this Agreement." In contrast, Qwest proposes to acknowledge mistakes only if they arose from processing a local or access service request. Qwest's language would not require Qwest to acknowledge mistakes that harmed a customer's service after the initial request had been completed – for example, mistakes arising during a subsequent repair.

B. The Arbitrators' Recommendation

Finding various aspects of Qwest's proposed language to be inconsistent with the compliance filings Qwest made in the *MN 616 Case*, the arbitrators generally recommend adoption of Eschelon's language. However, the arbitrators share Qwest's view that Eschelon's language would expand the range of mistakes Qwest would be required to acknowledge beyond the scope of the *MN 616 Case* Orders. The arbitrators do not regard this expansion as contrary to the public interest, but merely wish to bring this fact to the Commission's attention in case the Commission would prefer to limit the scope of this provision to "mistake[s] in processing wholesale orders."

Qwest asks the Commission to adopt this more limited language in the interest of simplicity. Qwest questions the need for this ICA language at all. Given that Eschelon has never actually called upon Qwest to acknowledge any errors since the *MN 616 Case*, Qwest finds no basis for expanding its obligations to acknowledge errors.

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[38] *In the Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, Docket No. P421/C-03-616, ORDER FINDING SERVICE INADEQUATE AND REQUIRING COMPLIANCE FILING (July 30, 2003); ORDER FINDING COMPLIANCE FILING INADEQUATE AND REQUIRING FURTHER FILINGS (November 12, 2003); ORDER ACCEPTING COMPLIANCE FILING IN PART AND REQUIRING FURTHER FILINGS (April 1, 2004).

The Department and Eschelon dispute the suggestion that Qwest's duties to acknowledge errors were ever so limited as Qwest's language suggests. According to these parties, the Commission's purpose in issuing increasingly detailed Orders in the *MN 616 Case* was broadly remedial. Moreover, regardless of the scope of the Orders that arose within the specific context of the *MN 616 Case*, the Department and Eschelon can find no policy reason why the Commission would want to guard against anticompetitive consequences of certain mistakes but not others.

Nevertheless, neither the Department nor Eschelon would object to the arbitrators' "mistake[s] in processing wholesale orders" language provided Qwest would interpret this language as broadly as they do. To that end, Eschelon proposes adopting the arbitrators' language but adding some elaboration as to what this language entails, as follows:

> 12.1.4.1 CLEC may make a written request to its Qwest Service Manager for root cause analysis and/or acknowledgment of mistake(s) in processing wholesale orders, *including pre-ordering, ordering, provisioning, maintenance and repair, and billing*. The written request should include the following information, when applicable and available: Purchase Order Number (PON), Service Order Number, billing telephone number, a description of the End User Customer impact and the ticket number associated with the repair of the impacting condition. It is expected that CLEC has followed usual procedures to correct a service impacting condition before beginning the process of requesting Qwest acknowledgment of error.

(Emphasis added.)

C. Applicable Law

The Legislature directs the Commission to exercise its authority in a manner to promote certain goals, including encouraging fair and reasonable competition for local exchange telephone service, and guarding against unfair competition and other practices harmful to promoting fair and reasonable competition.[39]

Before ever hearing the *MN 616 Case*, the Commission had discussed the possible anticompetitive consequences of lapses in the quality of Qwest's wholesale services:

> [To compete, a CLEC] must persuade customers to change their service provider. One aspect of that persuasion is building a public reputation that inspires confidence among potential customers. At this early stage of competition, however, a CLEC's reputation is quite fragile. [M]ost customers have had little experience with CLECs in general, let alone any specific CLEC in particular. A

[39] Minn. Stat. §§ 237.011; 237.16, subd. 8(7).

> missed installation or a blocked line may create the critical first impression that a customer has of a new provider. According to the [CLECs], that often becomes the last impression as well.[40]

The *MN 616 Case* merely provided the Commission with another opportunity to emphasis the point.

> Providing adequate wholesale service includes taking responsibility when the wholesale producer's actions harm [retail] customers who could reasonably conclude that a competing carrier was at fault. Without this kind of accountability and transparency, retail competition cannot thrive. Telecommunications service is an essential service, and few customers will transfer their service to a competitive carrier whose service quality appears to be inferior.[41]

D. Commission Decision

The Commission's concern for the anticompetitive consequences of service quality lapses has never been as narrow as Qwest's language would suggest. The Commission finds it reasonable for Qwest to acknowledge mistakes at any point in processing wholesale orders, including mistakes arising during pre-ordering, ordering, provisioning, maintenance and repair, and billing. In the interest of clarity, the Commission will adopt the arbitrators' language as modified by Eschelon.

Topic 29: How much should Eschelon have to pay to expedite an order on behalf of its customer? (ICA Sections 7.3.5.2, 9.1.12.1)

A. The Issue

The interconnection agreement sets forth cost-based prices for UNEs. Qwest has established a schedule for providing certain UNEs for both its own retail operations and for CLECs.[42] Qwest used to expedite its installations upon request but, Qwest alleges, CLECs abused this practice.

Even now, under certain circumstances Qwest will expedite the provision of traditional voice-grade local phone service ("plain old telephone service" or POTS) for both its own retail

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[40] *In the Matter of Qwest's Wholesale Service Quality Standards*, Docket No. P-421/AM-00-849, ORDER ADOPTING WHOLESALE SERVICE QUALITY STANDARDS (July 3, 2003) at 19, reversed in part on other grounds, 702 N.W. 2d 246 (Minn 2005).

[41] MN 616 Case, ORDER FINDING SERVICE INADEQUATE AND REQUIRING COMPLIANCE FILING at 8.

[42] See Qwest's Service Interval Guide (SIG), Exhibit C or Individual Case Basis (ICB) Due Dates as applicable.

operations and for CLECs at no additional cost. But Qwest now demands $200 per day to expedite the provision of "design" services, whether for its own customers or for CLECs. Is this an appropriate price?

B. The Arbitrators' Recommendation

The arbitrators conclude that Qwest is prohibited from discriminating in the provision of expedited services, and thus the price Qwest charges to expedite a service should reflect Qwest's costs. However, the record is inadequate to establish what the cost is. Consequently the arbitrators recommend initiating a new docket to establish the total element long-run incremental cost of expediting orders. In the meantime, the arbitrators recommend limiting the price of expediting an order to $100.

Eschelon supports this proposal, as well as the $100 interim rate. Eschelon notes that this rate would be paid in addition to the cost of the underlying UNE, and actually exceeds the cost of the typical UNE. The cost of a DS1 local loop, for example, is only $88.57. Eschelon reasons that, whatever the cost of expediting an installation, it probably won't be twice the cost of a standard installation.

Qwest opposes the arbitrators' recommendation. Qwest cites decisions by other state commissions for the proposition that ILECs have no obligation to provide expedited service, other industries charge a premium to provide expedited services, a $200 premium to expedite an order simply reflects the value of service, and the Commission lacks the authority to require Qwest to offer expedited services on a non-discriminatory basis at cost-based rates. According to Qwest, a request to expedite the installation of a UNE is a "superior service" which an ILEC need not offer, and need not offer at cost.

Without conceding its obligation to do so, Qwest argues that it refrains from discriminating in the provision of expedited services to CLECs. Qwest notes that it offers to expedite orders for CLECs on the same terms that it expedites orders for its own retail customers.

Finally, Qwest argues that if it were required to provide expedites at a minor charge, then CLECs would have an incentive to submit more – or all – of their orders with requests to expedite. Qwest anticipates that this would burden its resources, cause Qwest to incur penalties for missing standard provisioning intervals, and cause Qwest to violate its obligation to provide nondiscriminatory access to UNEs.

C. Applicable Law

Federal and state law prohibit Qwest from engaging in unreasonable discrimination.[43] The 1996 Act's § 251(c)(3) requires an ILEC to offer CLECs "nondiscriminatory access to network

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[43] 47 U.S.C. §§ 160(a)(1); 202(a); 222(c)(3); 224; 251; 252; 254; 271(b); 272©; 276(a); 47 C.F.R. §§ 51.307, 51.311, 51.313; Minn. Stat. §§ 237.07, subd. 2; 237.081, subd. 4; 237.09, subd. 1; 237.121(a)(5); 237.14; 237.60, subd. 3.

elements on an unbundled basis ... on rates, terms, and conditions that are just, reasonable, and nondiscriminatory...." The FCC construes this language to mean that –

> Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, *including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements*, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.[44]

(Emphasis added.) Similarly, Minnesota law states:

> To the extent prohibited by the Federal Communications Commission or public utilities commission, a telephone company shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to *its own* or an affiliate's *retail department* that sells to consumers.[45]

(Emphasis added).

But a LEC's obligation to provide UNEs for the benefit of CLECs is not open-ended. The 8th Circuit Court of Appeals has stated that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one."[46] On remand from that decision, the FCC stated that "we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use."[47]

D. Commission Decision

Qwest raises both legal and practical challenges to implementing the arbitrators' recommendations.

Whatever the merits of the claim that ILECs have no obligation to provide expedited service, or that other industries charge a premium to provide expedited services, or that $200 simply reflects the value of expediting an order, these claims are not at issue here. With respect to the claim that the Commission lacks authority to require Qwest to offer expedited services on a non-discriminatory basis at cost-based rates, the Commission is not convinced.

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[44] 47 C.F.R. § 51.311.

[45] Minn. Stat. § 237.09, subd. 2(a).

[46] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (emphasis in original).

[47] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696 (November 5, 1999) at ¶ 324.

Whether Qwest has an obligation to offer expedited access to UNEs or merely chooses to offer it, it is undisputed that Qwest does offer expedited access to its own retail operations. And if Qwest offers expedited access to UNEs for its own retail operations, Qwest has a duty to provide such access on a nondiscriminatory basis to CLECs as well.

Qwest argues that it refrains from discriminating in the provision of expedited access to CLECs. In support of this argument, Qwest invites the Commission to compare the price Qwest charges CLECs at *wholesale* to the $200 retail price it charges its own customers at *retail*. But the law bars Qwest from discriminating in the wholesale market specifically – that is, from imposing different terms and conditions for expedited service on different telecommunications carriers,[48] including itself.[49] Qwest must provide UNEs to CLECs on the same terms and conditions that it provides them to its own retail operations,[50] regardless of what it charges its retail customers. And the cost Qwest bears to provide expedited access to UNEs for its retail customers is simply the cost of expediting the service. This is also the cost that CLECs should bear to expedite access for their customers.

In arguing that expediting a UNE is a "superior service" which Qwest is not obligated to provide – and certainly is not obligated to provide at cost – Qwest misapplies a term of art. As noted above, the 8th Circuit and the FCC concluded that the 1996 Act does not provide a basis for the FCC to require ILECs to offer "superior" service – that is, to build facilities for CLECs if the ILEC would not build comparable facilities for itself. In contrast to those circumstances, Qwest not only provides expedited service for itself, Qwest offers the service to others on its tariff. The concerns articulated by the 8th Circuit and the FCC regarding "superior service" have no relevance to this issue.

Based on the arguments of the arbitrators and Eschelon, the Commission finds no legal prohibition on directing Qwest to provide expedited services at cost-based rates. To the contrary, the Commission finds that it is compelled to do so.

However, while the Commission is not persuaded by Qwest's legal objections, the Commission acknowledges the practical challenges Qwest identifies. Qwest speculates about the burdens it would bear if the Commission were to establish "a minor charge" that resulted in a glut of requests to expedite. Admittedly, establishing costs can be challenging; the cost Qwest bears to expedite an order may vary depending on the number of expedite requests Qwest receives, and the number of requests Qwest receives may vary with the cost to expedite an order. Fortunately, the arbitrators' and Eschelon's recommendations are designed to address these very concerns: a cost docket will provide Qwest with the forum it needs to demonstrate the burdens that expedited orders impose on Qwest's operations. With an adequate record, the Commission will be able to establish a charge that permits Qwest to recover its costs, whether they be major or minor.

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[48] See, for example, 47 C.F.R. §§ 51.311(a), 51.313(a) (requiring equal treatment among "telecommunications carriers"). Both Eschelon and Qwest are telecommunications carriers. 47 C.F.R. §§ 51.5.

[49] See, for example, 47 C.F.R. §§ 51.311(b), 51.313(b) (requiring each ILEC to provide CLECs with access to UNEs at least equal to the access it provides to "itself").

[50] Minn. Stat. § 237.09, subd. 2(a).

That said, the Commission will decline the arbitrators' recommendation to initiate a new docket to establish the appropriate rate. Rather, in the interest of administrative efficiency the Commission will refer this matter to a proceeding already underway, Docket No. P-421/AM-06-713 *In the Matter of Qwest's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. § 251.* In the meantime, the Commission will adopt the interim rate recommended by the arbitrators and Eschelon.

Topic 31: How should the parties allocate fault for a missed order for purposes of characterizing an order as "Customer Not Ready"? (ICA Section 12.2.7.2.4.4)

A. The Issue

While Qwest confirms the dates upon which it plans to fulfill wholesale orders from each CLEC, occasionally an installation order cannot be completed on time. If Qwest accepts responsibility for having missed the deadline, Qwest may incur financial penalties for failure to meet performance indicator definitions (PIDs); PIDs are terms that are common to many ICAs.[51] On the other hand, if Qwest concludes that the responsibility for the failure lies with the CLEC or its customer ("Customer Not Ready"), Qwest avoids the risk of financial penalties. In addition, the order is re-scheduled with at least a three-day delay.[52]

This issue pertains to assigning fault when 1) Qwest issues a "jeopardy notice," informing Eschelon that it might not be able to perform the work as scheduled, 2) Qwest then provides Eschelon with less than a day's notice that Qwest will be able to perform the work as originally scheduled, and 3) the order cannot be completed because Eschelon or its customer are unprepared to work with Qwest.

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. Qwest acknowledges that the purpose of issuing a FOC on previously "jeopardized" orders is to enable a CLEC to make the appropriate arrangements to cooperate with Qwest in filling the order. And Qwest acknowledges that it has a duty to accurately differentiate between delays caused by Qwest and delays caused by a CLEC or its customers.

Eshelon objects to its customers enduring three-day delays due to circumstances beyond Eschelon's and the customer's control. Eschelon proposes language designed to characterize missed orders as Qwest's fault if Qwest fails to give a day's notice of its intention to complete a previously jeopardized order on time:

> 12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR).

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[51] See Exhibit B; Exhibit K, Appendices A and B.

[52] Proposed ICA § 9.2.4.4.1.

12.2.7.2.4.4.1 There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or service order is not accepted by the CLEC (when Qwest has tested the service to meet all testing requirements.); and (2) End User Customer access was not provided. For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs but at least a day before Qwest attempts to deliver the service. CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.

12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy.

Qwest offers many objections to Eschelon's language. According to Qwest, the problem triggering Eschelon's concerns is too rare to warrant the procedures Eschelon proposes. Also, Qwest argues that Eschelon's language could have the effect of delaying service to Eschelon's customers.

Instead of adopting Eschelon's language, Qwest recommends that the Commission leave this matter be governed by the procedures Qwest provides at its wholesale site on the World Wide Web. To the extent that changes are warranted in Qwest's procedures for fulfilling wholesale orders, Qwest recommends that the Commission direct Eschelon to use the change management process in the parties' agreement; this process would provide a mechanism for balancing Eschelon's interests with the interests of other CLECs as well.

B. The Arbitrators' Recommendation

The arbitrators recommend declining Eschelon's proposed language, leaving this matter to be governed by the terms of Qwest's website. Noting that Qwest has already committed to providing Eschelon with FOC notices before attempting to complete previously jeopardized orders, the arbitrators conclude that no additional language is necessary to provide Eschelon with adequate notice, and that the main goal of Eschelon's language must be to influence how the PID language is interpreted. The arbitrators reason that this is a matter that should be addressed outside the context of a single CLEC's interconnection agreement. Qwest supports this position.

Eschelon argues that the arbitrators misapprehended the point of Eschelon's concerns, and therefore its proposed language.

According to Eschelon, Qwest acknowledges that it would be unreasonable to blame Eschelon if an installation date is missed because Qwest neglected to give timely notice of the new date. But Eschelon argues that this acknowledgment is meaningless unless the parties agree what "timely" notice entails. Eschelon states that its language is designed to resolve this question, and establish the consequences for the failure to give timely notice. With the exception of establishing the one-day-notice policy, Eschelon alleges that its language merely reflects practices that Qwest professes to use today.

Moreover, whatever the merits of Qwest's current practices and website language, Eschelon states that these practices and terms are subject to change without Commission approval unless they are embedded in a Commission-approved interconnection agreement.

Finally, Eschelon denies the arbitrators' assertion that the main goal of Eschelon's assertion was to somehow modify the PIDs. To clarify this point, Eshelon offers the following amendment to its proposed language:

> Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Appendices A and B to Exhibit K of this Agreement.

C. Applicable Law

The 1996 Act's § 251(c)(3) requires each ILEC to offer CLECs "nondiscriminatory access to network elements on an unbundled basis ... on rates, terms, and conditions that are just, reasonable, and nondiscriminatory...."

D. Commission Decision

The Commission finds merit in Eschelon's concerns, and consequently in the language Eschelon proposes to address those concerns. Simply put, Eschelon should not be held responsible when it relies on Qwest's statement that Qwest will not be able to meet a deadline.

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

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

Nor does the Commission read Eschelon's language to alter the PIDs. Given the apparent confusion on that point, however, the Commission will approve Eschelon's language together with Eschelon's statement clarifying that this new language does not modify the PIDs.

The Commission will so order.

ORDER

1. The Commission decides the arbitrated issues as discussed in the body of this Order. Except as otherwise specified, the Commission adopts the findings, conclusions and recommendations of the Arbitrators' Report. In particular, the Commission adopts the following recommendations:

   A. *Topic 21:* Regarding the terms under which Qwest converts from providing a network element that is deemed a UNE to providing the same element when it is no longer deemed a UNE, the Commission adopts the arbitrators' recommendation and hereby initiates an investigation *In the Matter of Qwest Corporation's Conversion of UNEs to Non-UNEs*, Docket No. P-999/CI-07-730.. This investigation shall establish appropriate terms for Qwest to convert UNEs to non-UNEs, including a determination of whether the charge for providing this service must be limited to Qwest's total element long run incremental cost.

   B. *Topic 25:* Regarding Qwest's procedures for providing CLECs with commingled EELs, the Commission adopts the arbitrators' recommendation and hereby initiates an investigation *In the Matter of Qwest Corporation's Arrangements for Commingled Elements*, Docket No. P-999/CI-07-731, for the purpose of determining appropriate procedures.

   The Commission's decisions differ for the arbitrators' recommendations, however, with respect to the following topics.

2. *Topic 4*: Regarding Qwest's discretion to discontinue processing Eschelon's orders if Eschelon fails to make timely payments, the parties shall adopt Qwest's proposed language as amended to incorporate the following:

   5.4.2 . . . . Qwest may only discontinue order processing (as defined below) to CLEC under the following conditions:

   1) if payment for services rendered in Minnesota are more than 30 days past due; and

   2) if such payment does not include amounts disputed under section 21.8; and

   3) if Qwest has given CLEC and the Commission ten (10) business days prior written notice.

   The term "order processing" does not include orders or requests by CLEC to drop or remove a feature or service for a given end user or end user account, and also does not include orders or requests by CLEC to add any blocking capabilities to an end user account. Qwest may not discontinue processing the removal of features or services, or the addition of blocking capabilities, under any circumstances.

   Nothing in this section precludes CLEC from using any dispute resolution procedures to contest Qwest's discontinuation of order processing, if CLEC believes Qwest has not met all three conditions listed above, or for any other reason.

3. *Topic 23*: Regarding the terms under which Qwest combines loops and transport at Eschelon's request, the parties shall adopt the following language:

9.23.4 The UNE component(s) of any Commingled arrangement is governed by the applicable terms of this Agreement. The other component(s) of any Commingled arrangement is governed by the terms of the alternative service arrangement, pursuant to which the component is offered (e.g., Qwest's applicable Tariffs, price list, catalogs, or commercial agreements).

4. *Topic 27*: Regarding Qwest's duty to acknowledge to Eschelon's customer that a service quality problem resulted from Qwest's error, the parties shall adopt the following language:

12.1.4.1 CLEC may make a written request to its Qwest Service Manager for root cause analysis and/or acknowledgment of mistake(s) in processing wholesale orders, including pre-ordering, ordering, provisioning, maintenance and repair, and billing. The written request should include the following information, when applicable and available: Purchase Order Number (PON), Service Order Number, billing telephone number, a description of the End User Customer impact and the ticket number associated with the repair of the impacting condition. It is expected that CLEC has followed usual procedures to correct a service impacting condition before beginning the process of requesting Qwest acknowledgment of error.

5. *Topic 29*: The task of developing a record for determining Qwest's total element long-run incremental cost to expedite an order is referred to Docket No. P-421/AM-06-713 *In the Matter of Qwest's Application for Commission Review of TELRIC Rates Pursuant to 47 U.S.C. § 251*, now pending before the Office of Administrative Hearings. On an interim basis, Qwest may charge Eschelon up to $100 to expedite an order on behalf of an Eschelon customer.

6. *Topic 31*: In identifying the party at fault when a retail customer's order is missed, the parties shall adopt the following language:

12.2.7.2.4.4 A jeopardy caused by Qwest will be classified as a Qwest jeopardy, and a jeopardy caused by CLEC will be classified as Customer Not Ready (CNR). Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Appendices A and B to Exhibit K of this Agreement.

12.2.7.2.4.4.1 There are several types of jeopardies. Two of these types are: (1) CLEC or CLEC End User Customer is not ready or service order is not accepted by the CLEC (when Qwest has tested the service to meet all testing requirements.); and (2) End User Customer access was not provided. For these two types of jeopardies, Qwest will not characterize a jeopardy as CNR or send a CNR jeopardy to CLEC if a Qwest jeopardy exists, Qwest attempts to deliver the service, and Qwest has not sent an FOC notice to CLEC after the Qwest jeopardy occurs

but at least a day before Qwest attempts to deliver the service. CLEC will nonetheless use its best efforts to accept the service. If needed, the Parties will attempt to set a new appointment time on the same day and, if unable to do so, Qwest will issue a Qwest Jeopardy notice and a FOC with a new Due Date.

12.2.7.2.4.4.2 If CLEC establishes to Qwest that a jeopardy was not caused by CLEC, Qwest will correct the erroneous CNR classification and treat the jeopardy as a Qwest jeopardy.

7. The parties shall submit a final ICA containing all arbitrated and negotiated terms to the Commission for review pursuant to 47 U.S.C. § 252(e) within 120 days of this Order. If the Commission does not issue a final order in the *Wire Center Docket*[53] in the next 100 days, parties may petition to extend this deadline. The Commission delegates to its Executive Secretary the authority to grant such extensions.

8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice) or 1-800-627-3529 (TTY relay service).

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[53] *In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis*, Docket No. P-5692/M-06-211; *In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates*, Docket No. P-999/CI-06-685.

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 30th day of March, 2007 she served the attached

ORDER RESOLVING ARBITRATION ISSUES, REQUIRING FILED INTERCONNECTION AGREEMENT, OPENING INVESTIGATIONS AND REFERRING ISSUE TO CONTESTED CASE PROCEEDING.

MNPUC Docket Number: P-421/AM-06-713; P-5340,421/IC-06-768; P-421/CI-07-370; and P-421/CI-07-371

XX	By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid
XX	By personal service
XX	By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Eric Witte
Marcia Johnson
Kate Kahlert
AG
Kevin O'Grady
Mark Oberlander
Ganesh Krishnan
John Lindell
Mary Swoboda
Jessie Schmoker
Linda Chavez - DOC
Julia Anderson - OAG
Curt Nelson - OAG

Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 30 day of

March, 2007

Mary E. Reid
Notary Public

MARY E REID
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2010