
Eschelon / Qwest Arbitration

3/19/2007

T-03406A-06-0572, etc.

Vol. I

Page 1 to Page 167

PREPARED BY:

AZRS
Arizona Reporting Service, Inc.
AZRS
Court Reporting & Videoconferencing Center

2627 N. 3rd Street, Suite Three
Phoenix, Arizona 85004-1126

Phone: (602) 274-9944

Fax: (602) 277-4264

Website: www.az-reporting.com

email: azrs@az-reporting.com

Page 18

1 language regarding Qwest's obligation to tag the
 2 demarcation point between the Qwest network and the
 3 customer's network; is that right?
 4 A. Yes. Now, I really testified on that in a very
 5 limited basis. The details of tagging at the demarc were
 6 handled by a network witness.
 7 Q. And the testimony, the limited testimony that you
 8 made concerning that issue was that Eschelon's language
 9 would set certain processes in stone?
 10 A. Yes. It would require us to get an amendment
 11 from Eschelon before any change to that process could be
 12 made through the CMP.
 13 Q. In fact, I think you use the phrase in your
 14 testimony, "set in stone." Do you recall that?
 15 A. On that topic, I don't know if I did. It
 16 wouldn't surprise me if I did.
 17 Q. And you also said that Eschelon's proposal,
 18 because it would require Qwest to handle requests for
 19 tagging in a certain way, would create a one-off process.
 20 Do you recall that?
 21 A. I'm not so sure. It depends on if the proposal
 22 was different from our current process, and I don't recall
 23 if that one was.
 24 Q. Was it not part of your objection that Eschelon
 25 was trying to get some kind of special deal with respect

Page 19

1 to tagging at the demarc?
 2 A. I don't recall the details of that issue. Since
 3 it was closed, I'm not really prepared to discuss that.
 4 Q. You are aware that since you filed your testimony
 5 in Minnesota that issue has closed?
 6 A. Right.
 7 Q. And it has closed with the procedures and
 8 processes that Eschelon had proposed regarding tagging at
 9 the demarc; is that right?
 10 A. I believe that's correct, yes.
 11 Q. Now, do you believe that that resolution sets
 12 processes in stone?
 13 A. I do. I believe that if a change is proposed in
 14 the CMP counter to what was agreed to in that language, we
 15 will not be able to make that change in the CMP without
 16 first obtaining an amendment to the interconnection
 17 agreement. So yes, that's true.
 18 Q. That was something that was acceptable to Qwest
 19 with respect to that issue; correct?
 20 A. The management at Qwest decided that it was
 21 reasonable to settle that issue.
 22 Q. And was it your view that that process that was
 23 agreed to created a one-off process for Eschelon?
 24 A. Again, I don't believe that's the case, unless
 25 what Eschelon asked for is different than what we do

Page 20

1 today, and I don't recall that being the case with that
 2 particular issue. But, again, since it's settled, I did
 3 not go back and review that.
 4 Q. Well, let's talk about service order
 5 notifications. You're familiar with those? Pending
 6 service order notifications?
 7 A. Yes.
 8 Q. Sometimes referred to as PSONs?
 9 A. Yes.
 10 Q. That was an issue that you did address in your
 11 direct testimony; is that correct?
 12 A. Yes.
 13 Q. That's issue 12-70. Do you recall that?
 14 A. I assume that's the correct number.
 15 Q. Your testimony with respect to PSONs -- well, let
 16 me take a step back. Eschelon proposed that contract
 17 language be included in the interconnection agreement that
 18 would describe certain information that had to be
 19 contained in the PSON. Do you recall that?
 20 A. Right.
 21 Q. And your objection to Eschelon's proposal was
 22 that that language would set in stone what had to be
 23 contained in the PSON; is that right?
 24 A. That's correct.
 25 Q. And that is another issue that has since settled;

Page 21

1 is that right?
 2 A. That's correct.
 3 Q. And it is settled with Qwest agreeing to the
 4 language proposed by Eschelon; is that correct?
 5 A. I believe the language was modified some from its
 6 original proposal which went beyond what was contained in
 7 the PSON. Eschelon made a modification to the language,
 8 and ultimately we decided that we would agree to put that
 9 language in the contract. But, again, if a change comes
 10 into the CMP that is contrary to that language, we will
 11 not be able to make a change to the PSON now without
 12 Eschelon first amending its agreement.
 13 Q. So you still have the set in stone concern?
 14 A. Oh, yes.
 15 Q. But that was a concern that Qwest was apparently
 16 willing to put in the background in order to resolve that
 17 issue; correct?
 18 A. I don't know if I would phrase it that way, but
 19 it was settled, yes.
 20 Q. And it was settled with an agreement that certain
 21 language would be included in the contract that would
 22 require information to be contained in the PSON?
 23 A. Yes.
 24 Q. Now, fatal rejection notices is another systems
 25 notice that was at issue in this case; is that correct?

Page 22

1 A. Yes, it was.
 2 Q. You filed direct testimony on that issue; is that
 3 right?
 4 A. Yes, I did.
 5 Q. And it was your direct testimony that the
 6 language that Eschelon was proposing was objectionable
 7 because it would set in stone what had to be contained in
 8 the fatal rejection notices; is that right?
 9 A. I believe this was more about the procedures for
 10 fatal rejection notices rather than the contents of the
 11 notices, but yes. That was one of the issues, yes.
 12 Q. You recall that Eschelon proposed language
 13 relating to fatal rejection notices that described what
 14 had to be contained in those notices?
 15 A. I recall that the language was about procedures
 16 for fatal rejection notices.
 17 Q. In all events, the issue has settled?
 18 A. Yes, it has.
 19 Q. Now, did that settlement set in stone those
 20 processes and procedures?
 21 A. Yes, it does.
 22 Q. And that was something that was acceptable to
 23 Qwest?
 24 A. For settlement purposes it was. But we are still
 25 now going to have to pass any CMP changes through, compare

Page 23

1 to Eschelon's language, and if it is not consistent with
 2 Eschelon's contract, we would have to seek an amendment
 3 for that before that change could go through the CMP.
 4 Q. I'm going to ask you now about loss and
 5 completion reports. Do you recall that issue?
 6 A. Yes, I do.
 7 Q. And your direct testimony regarding loss and
 8 completion reports was that Eschelon's language was
 9 unacceptable because it would set in stone certain
 10 processes relating to those reports; is that right?
 11 A. In that case it set the fields to be contained in
 12 the loss and completion reports, yes.
 13 Q. And that issue has since been settled; correct?
 14 A. Yes, it has.
 15 Q. It's been settled with Qwest agreeing to
 16 Eschelon's language?
 17 A. Yes, it has.
 18 Q. Closing trouble reports is another issue that you
 19 discussed in your direct testimony; is that right?
 20 A. Yes.
 21 Q. And Qwest's proposal with respect to closing
 22 trouble reports was that there should just be in the
 23 contract a reference to Qwest's product catalog its PCAT;
 24 is that right?
 25 A. Yes.

Page 24

1 Q. And Eschelon actually had substantive language
 2 that it had proposed for that provision?
 3 A. Again, the detailed procedures for closing
 4 trouble reports.
 5 Q. And your concern as it was expressed in your
 6 direct testimony was that the Eschelon language would set
 7 in stone the processes that were described in Eschelon's
 8 language?
 9 A. Yes. And again, now, because that language has
 10 been settled, if a change comes to the change management
 11 process asking to change those processes and procedures,
 12 we will not be able to without first going to Eschelon for
 13 an amendment.
 14 Q. Qwest agreed to Eschelon's language to resolve
 15 that issue, closing trouble reports?
 16 A. Yes, we did.
 17 Q. If you turn to your surrebuttal.
 18 A. Okay.
 19 Q. At Page 12.
 20 A. Now I need a copy.
 21 That would be No. 4. I have it.
 22 Q. Okay. I'm looking at Page 12, Lines 8 through
 23 12. Actually, just 8 through 10.
 24 A. Okay.
 25 Q. You talk there about Eschelon talking about a few

Page 25

1 isolated examples and holding them out as the rule in the
 2 CMP rather than the exception; is that right?
 3 A. Yes. In Mr. Starkey's testimony, yes.
 4 Q. Those are the examples you're talking about, the
 5 ones in Mr. Starkey's testimony?
 6 A. Yes.
 7 Q. Now, you are familiar with the Minnesota ALJs'
 8 report in the arbitration; correct?
 9 A. Yes.
 10 Q. And that report is something that you rely on
 11 throughout your testimony in places where you believe that
 12 report supports Qwest's position; correct?
 13 A. Yes. I have quotes from that, yes.
 14 MR. MERZ: And, Your Honor, this is already part
 15 of Mr. Starkey's testimony, but I did have a couple of
 16 questions I wanted to ask Ms. Albersheim, and I just have
 17 a copy of the report if I could give that to her.
 18 ARBITRATOR RODDA: Okay.
 19 Q. (BY MR. MERZ) Ms. Albersheim, would you go to
 20 Paragraph 22 of the arbitrator's report, please.
 21 A. Okay.
 22 Q. Paragraph 22. Are you there?
 23 A. Yes.
 24 Q. The conclusion of the Minnesota ALJs in
 25 Paragraph 22 was that Eschelon has provided convincing

Page 26

1 evidence that the CMP process does not always provide
 2 CLECs with adequate protection from Qwest making important
 3 unilateral changes in the terms and conditions of
 4 interconnection. Do you see that?
 5 A. Yes.
 6 Q. And that conclusion was one that was based on the
 7 same, what you have characterized as isolated examples
 8 described by Mr. Starkey; is that right?
 9 A. Presumably, yes.
 10 Q. Now, Qwest did not file any exceptions in the
 11 Minnesota case to that conclusion of the Minnesota ALJs;
 12 is that right?
 13 A. We did file exceptions. I don't know that our
 14 attorneys made an exception to this paragraph, but we did
 15 file exceptions to this report.
 16 Q. You don't know if those exceptions addressed this
 17 particular conclusion of the Minnesota ALJs?
 18 A. I don't know, but I would not agree with this
 19 conclusion.
 20 Q. I want to talk with you now about intervals,
 21 which is Issue 1-1 and its subparts. That's an issue that
 22 you talk about in your testimony; right?
 23 A. Yes.
 24 Q. An issue here is whether changes in provisioning
 25 intervals should be reflected in an amendment to the ICA

Page 27

1 as Eschelon has proposed, or whether Qwest should be able
 2 to change intervals through CMP without making any changes
 3 in the contract.
 4 A. Which is our current process.
 5 Q. And I have generally described the issue
 6 correctly?
 7 A. Yes.
 8 Q. Now, intervals are how long it takes for a CLEC
 9 to get a particular product and service; is that right?
 10 A. Generally, yes.
 11 Q. And you would agree with me that an interval is
 12 something that is particularly important to a CLEC in
 13 terms of its ability to provide prompt service to its
 14 customers?
 15 A. Well, I would agree that it's important for CLECs
 16 to know how much time it will take to provision a product,
 17 yes.
 18 Q. And you would agree with me that if an interval
 19 is lengthened, that means that the CLEC's customer would
 20 end up waiting longer for service; is that right?
 21 A. That's correct. And we have the process through
 22 the CMP which has been used once to lengthen an interval,
 23 and that was done with no objection from any CLECs.
 24 Q. I would like you to go to your surrebuttal at
 25 Page 15. And then going over to Page 16, Page 15 begins

Page 28

1 at Line 23 through Page 16, Line 2. Just tell me when
 2 you're there.
 3 A. I'm there.
 4 Q. And you say in your testimony there, "When
 5 evaluating this issue..." And there you're referring to
 6 the intervals issue; correct?
 7 A. Yes.
 8 Q. When evaluating this issue, the Commission should
 9 weigh the relative benefits of locking intervals in place
 10 as part of a proceeding involving Qwest and Eschelon
 11 versus the value of having service intervals resolved
 12 through the CMP. Do you see that?
 13 A. Yes.
 14 Q. Okay. Now, this is another issue where you're
 15 making the set in stone and one-off arguments, as I
 16 understand it; is that right?
 17 A. Yes.
 18 Q. Now, Eschelon has made two different proposals
 19 relating to intervals. You're aware of that?
 20 A. Yes.
 21 Q. Now, one of Eschelon's proposals would allow
 22 Qwest to shorten intervals through the CMP process;
 23 correct?
 24 A. Right. Without allowing Qwest to lengthen them,
 25 so it's certainly to Eschelon's advantage.

Page 29

1 Q. Qwest has, since getting 271 approval, changed
 2 intervals 40 times; is that right?
 3 A. I think that's right, yes.
 4 Q. And 39 times --
 5 A. It shortened the interval.
 6 Q. -- it shortened the interval; correct?
 7 A. Yes. Through the industry forum, that is the
 8 CMP, yes.
 9 Q. And Eschelon's proposed language, the first
 10 proposal that Eschelon has made with respect to intervals
 11 would not have interfered with Qwest to shorten any of
 12 those 39 intervals; is that right?
 13 A. Not really. Because the way Eschelon proposes to
 14 do this, we would have to have Eschelon's agreement first
 15 essentially through this amendment that Eschelon proposes
 16 to use.
 17 Q. To shorten intervals?
 18 A. To shorten intervals. That is in part of the
 19 process today through the CMP.
 20 MR. MERZ: And, Your Honor, I just had actually a
 21 question of Ms. Albersheim about that issue, and if I
 22 could just hand her the contract here.
 23 Q. (BY MR. MERZ) And if you could refer, ma'am, to
 24 Section 1.7.2.
 25 A. Yeah, I'm there. Oh, you're speaking of the

Page 30

1 proposal where Eschelon would not have to do its advice
2 adoption letter if it was a shortened interval.
3 Q. Let's look at what is labeled as Eschelon
4 Proposal No. 1. Do you see that?
5 A. Yes.
6 Q. And do you see and we're looking at the Arizona
7 language? Do you have that there?
8 A. Yeah. Arizona, Colorado, Utah, Oregon,
9 Washington, okay.
10 Q. And then if you look at Section 1.7.2.1. Do you
11 have that?
12 A. Yes.
13 Q. And it says there, notwithstanding any other
14 provision in this agreement, the intervals in Exhibit C
15 those are the intervals we're talking about; right?
16 A. Right.
17 Q. The intervals in Exhibit C may be shortened
18 pursuant to the change management process, paren, CMP,
19 without requiring the execution or filing of any amendment
20 to the agreement. Do you see that?
21 A. That's right. Right, yes, I see that.
22 Q. And that's your understanding of Eschelon's
23 proposal; right?
24 A. Yes. So we still have to use the advice adoption
25 letters to increase an interval, yes.

Page 31

1 Q. But off of the 39 or 40 interval changes that
2 Eschelon has or that Qwest has implemented since getting
3 271 approval, if the Commission adopted this language at
4 1.7.2.1, all of those changes could have gone through just
5 as they did?
6 A. Yes. Which makes the language from Eschelon in
7 their contract unnecessary, because the change management
8 process is working effectively.
9 Q. Without that language, there's no -- well,
10 actually let me talk about lengthening intervals.
11 A. Yes.
12 Q. You have talked about this advice adoption
13 process.
14 A. Eschelon's Exhibits N and O.
15 Q. Yes. Now, one of the things that you say in your
16 testimony, and I'm looking at your rebuttal, Page 35, Line
17 6 through 9.
18 A. The public or confidential?
19 Q. You know, I don't know that it matters. Why
20 don't you look at the confidential.
21 A. Oh, okay. I need a copy of No. 2 or No. 3.
22 Which page?
23 Q. I'm looking at Page 35 of your rebuttal beginning
24 at Line 6. The sentence that begins there.
25 A. Okay.

Page 32

1 Q. You say there: But in addition to requiring the
2 party to execute time and resource consuming amendments,
3 Eschelon wants to require Qwest to use specific forms
4 attached as Exhibit N and O to the ICA to implement
5 service interval changes. Do you see that?
6 A. Yes.
7 Q. You understand, do you not, that those Exhibits N
8 and O are to be used in lieu of a formal amendment, not in
9 addition; correct?
10 A. Yes.
11 Q. So when you say that in addition, to require the
12 parties to execute time and resource consuming amendments,
13 Eschelon wants to also use these other exhibits?
14 A. This presumes that Eschelon is going to agree to
15 the interval change.
16 Q. And if Eschelon doesn't agree, would it be
17 Qwest's position that it ought to be able to just go to
18 CMP and increase the interval without -- over Eschelon's
19 objection?
20 A. Eschelon should object through the standard
21 process we've established in the CMP to allow input on
22 interval changes. This intervenes in that process.
23 Q. The Exhibits N and O are modeled on another
24 couple of exhibits that are actually agreed upon as part
25 of the contract; is that right?

Page 33

1 A. That is Eschelon's position.
2 Q. You disagree with that?
3 A. I agree they're modelled on them. I don't
4 believe they function in the same way.
5 Q. I mean, the language is almost identical between
6 Exhibits L and N and M and O; isn't that right?
7 A. And L and M are for allowing Eschelon to take
8 advantage of new products offered by Qwest that were not
9 available when the original contract was agreed to. And I
10 believe that's a different function than whether or not a
11 service interval should change.
12 Q. Exhibits L and M are something called advice
13 adoption letters; is that right?
14 A. That sounds right, yes.
15 Q. And that's a process that Qwest uses regularly to
16 allow CLECs to obtain new products without formally
17 amending their contract; is that right?
18 A. That's correct.
19 Q. Those are documents that Qwest came up with;
20 isn't that right?
21 A. I don't know their origin. I don't know if they
22 were negotiated or completely established by Qwest.
23 Q. Would you agree with me that the mechanisms that
24 use those advice adoption letters were developed for the
25 purpose of streamlining the process by which CLECs could

Page 34

1 obtain new products?
 2 A. Yes. I agree.
 3 Q. And?
 4 A. But I don't agree that the same can be said if
 5 you interject an additional process into the CMP for the
 6 management for changing intervals.
 7 Q. What additional process are you talking about?
 8 A. This adoption letter which we would have to have
 9 from Eschelon in order to proceed in the CMP with an
 10 interval change. And the presumption is we would have
 11 to -- you would have to presume that Eschelon would agree,
 12 and if they do not, we have a contract issue impeding the
 13 process of the CMP to make interval changes.
 14 MR. TOPP: Your Honor, I have Exhibits N and O to
 15 the contract. I wonder if I could just have them marked
 16 as an exhibit, please.
 17 ARBITRATOR RODDA: Okay. Did you have any
 18 premarked so -- I don't know where we were.
 19 MR. MERZ: This would be Eschelon 1.
 20 ARBITRATOR RODDA: Okay.
 21 Q. (BY MR. MERZ) Ms. Albersheim, you have there
 22 what's been marked as Eschelon Exhibit 1; correct?
 23 A. Yes.
 24 Q. And what Eschelon Exhibit 1 is Exhibits N and
 25 O to the proposed interconnection agreement; correct?

Page 35

1 A. Yes.
 2 Q. And these are the things that Qwest is objecting
 3 to as creating an unreasonable burden; is that right?
 4 A. It creates interference with the normal operation
 5 of the CMP. Without this signed letter from Eschelon, the
 6 CMP cannot proceed, because then Qwest has the issue of
 7 dealing with being in violation of Eschelon's contract.
 8 Q. You mentioned there were 39 times when Qwest
 9 shortened intervals?
 10 A. Yes.
 11 Q. There was one time when Qwest lengthened
 12 intervals; correct?
 13 A. Yes.
 14 Q. And in that one time where Qwest lengthened
 15 intervals, no CLEC apparently objected to that; is that
 16 right?
 17 A. That's correct.
 18 Q. Would you agree about with me that if Eschelon
 19 didn't object to lengthening an interval, it would sign
 20 Exhibit N and it would adopt that lengthened interval?
 21 A. If Eschelon did not object. But if Eschelon
 22 objects, then we have an additional impediment to the
 23 normal process of the CMP.
 24 Q. But in the case of the one interval that was
 25 lengthened Eschelon didn't object?

Page 36

1 A. No. Nobody objected.
 2 Q. Okay. And presumably Eschelon would have signed
 3 Exhibit N, and that would have been the end of the story;
 4 right?
 5 A. Possibly. I don't know for sure that that would
 6 have happened, but we would have had to have that step
 7 first.
 8 Q. And the one time, there was one time when Qwest
 9 proposed lengthening an interval that CLECs did object to;
 10 correct?
 11 A. Right. And the interval was not lengthened.
 12 Q. Would you agree with me that it is generally in
 13 the CLECs' interest to have shorter intervals rather than
 14 longer ones?
 15 A. That's probably true.
 16 Q. Are you aware of any time when any CLEC has
 17 requested a longer interval?
 18 A. No, I'm not.
 19 Q. Then go back to the ALJs' report, the Minnesota
 20 report, paragraph 22 again.
 21 A. I'm there.
 22 Q. And looking at the middle of that paragraph, the
 23 Minnesota ALJs concluded that Qwest has identified no
 24 compelling reason why inclusion of the current intervals
 25 in the ICA would harm the effectiveness of the CMP process

Page 37

1 or impair Qwest's ability to respond to industry changes.
 2 Do you see that?
 3 A. Yes, I see that.
 4 Q. And do you know whether Qwest took an exception
 5 to that conclusion by the Minnesota ALJs?
 6 A. I don't recall if that was in our exceptions or
 7 not.
 8 Q. Do you know what the Minnesota Commission did
 9 with this issue?
 10 A. I haven't seen the Commission written order.
 11 I've only heard there were oral arguments, so I don't know
 12 the final conclusion on this.
 13 Q. I want to talk with you now about the issue of
 14 acknowledgement of mistakes and root cause analysis.
 15 A. Okay.
 16 Q. Those are Issues 12-64 and its subparts. Do you
 17 recall that?
 18 A. Yes.
 19 Q. Now, the issue here is contract language
 20 regarding Qwest's obligations to investigate and
 21 acknowledge mistakes; is that right?
 22 A. Yes.
 23 Q. Now, this is another issue that the Minnesota
 24 ALJs addressed; is that right?
 25 A. I believe so.

Page 38	Page 40
<p>1 Q. And in your surrebuttal testimony at Page 20, 2 Line 1 -- 3 A. Okay. 4 Q. -- you criticized Mr. Starkey for inaccurately 5 reflecting the conclusion of the ALJs; is that right? 6 A. Yes. 7 Q. And so you have there in your testimony a quote 8 from the ALJs' conclusions; is that right? 9 A. Yes. I do. 10 Q. And that quote begins at Line 6 of Page 20 and 11 goes through Line 11; is that right? 12 A. Yes. 13 Q. And that is a quote, a partial quote from 14 Paragraph 208 of the order; is that right? 15 A. Yes. 16 Q. Would you turn to Paragraph 208. 17 A. Yes. 18 Q. Now, you begin your quote with the second 19 sentence of Paragraph 208; is that right? 20 A. Yes, I do. 21 Q. Your quote begins, "Eschelon's language," and 22 then you've got three ellipses. And then you go on to say 23 "does expand the scope from mistakes in processing 24 wholesale orders to mistakes relating to the products and 25 services provided under this agreement." Is that right?</p>	<p>1 Q. Now, focusing on the words that those three 2 ellipses stand for, is it your view that your partial 3 quote of the ALJs' report at Paragraph 208 accurately 4 reflects the sense of what the ALJs held? 5 A. I was responding to Mr. Starkey's testimony which 6 claimed that the result was completely consistent, and I 7 was pointing out that even the ALJ felt that Eschelon's 8 language expanded the original intent of the order. 9 Q. You characterize Mr. Starkey as inaccurately 10 reflecting the ALJs' decision; is that right? 11 A. I believe so on that account, too, because 12 Mr. Starkey went to the ALJs' first language, that is 13 Eschelon's language, and not his recommended language 14 which limited the scope to wholesale orders. 15 Q. Would you agree with me that one might also 16 criticize your testimony here at Line 6 through 11, 17 Page 20 of your surrebuttal as inaccurately characterizing 18 the ALJs' report? 19 A. I wasn't trying to accurately characterize the 20 entire ALJ report. I was pointing out that Mr. Starkey 21 did not acknowledge that the ALJ saw that Eschelon's 22 language went beyond the original order. That was my 23 whole intent. 24 Q. And you believe that your quotation then 25 accurately reflects the average's holding at Paragraph</p>
Page 39	Page 41
<p>1 A. Yes. 2 Q. I want to talk now about what is not in this 3 quote, what those ellipses stand for. 4 A. Uh-huh. 5 Q. The full quote says: Eschelon's language is not 6 vague or burdensome, parentheses, to acknowledge a mistake 7 Qwest has to determine that one was made and why, close 8 parentheses, and it is more consistent with the 9 Commission's order. 10 A. Yes. 11 Q. But it does expand the scope, and then it goes 12 on. 13 A. Yes. 14 Q. So the language I just read was the language that 15 you left out of your quote; is that right? 16 A. Yes. 17 Q. And the ALJs also conclude that either the 18 alternative proposed by Eschelon or one that focused 19 specifically on wholesale orders, either of those would be 20 consistent with the record in the public interest; is that 21 right? 22 A. Yes. 23 Q. And you leave that out of your quote as well; is 24 that right? 25 A. I believe I discuss that later, but --</p>	<p>1 208; is that right? 2 A. It accurately reflects that even the ALJ 3 acknowledged that Eschelon's language went beyond 4 wholesale orders. 5 Q. Okay. Now, one of your criticisms of Eschelon's 6 language is that it's based on a decision by the Minnesota 7 Public Utilities Commission in a complaint case brought by 8 Eschelon. Do you recall that? 9 A. Well, that's a bit generalizing my position a 10 bit. 11 Q. Well, maybe we'll get to it. That case I'll just 12 refer to as the 616 case. Is that the way you refer to 13 it? 14 A. I can. 15 Q. Okay. Now, one of your criticisms is that 16 Eschelon's language goes beyond what the Commission 17 intended in the 616 case; isn't that right? 18 A. Yes. 19 Q. And what you believe is that it goes beyond what 20 the Commission intended, because it goes beyond mistakes 21 that are made when relating to orders; is that right? 22 A. There's part of it yes. 23 Q. And you say at your rebuttal testimony Page 37 -- 24 A. My rebuttal? 25 Q. Yes. I think the public version will be just</p>

Page 42	Page 44
<p>1 fine. Will you look at Page 37? 2 A. Page 37. Okay. I'm there. 3 Q. And I'm looking at Lines 11 through 14. 4 A. Okay. 5 Q. You say there that Eschelon's proposed language 6 expands the scope of the Minnesota Commission's orders to 7 include mistakes in all circumstances, not just the 8 processing of wholesale orders and to require root cause 9 analyses in all circumstances; is that right? 10 A. Yes, that's what it says. 11 Q. You are aware, are you not, that the Minnesota 12 Commission documented Eschelon's position with respect to 13 these issues? 14 A. Well, again, we don't have a written order, so it 15 is not clear to me whether our acceptance of the ALJs' 16 alternative language was considered or not. I don't know. 17 Q. And I think that you answered my question, but I 18 just want to make sure. Are you aware of that the 19 Minnesota Commission has adopted Eschelon's proposed 20 language on this issue? 21 A. I'm not clear on that because we don't have a 22 written order. 23 Q. Do you know whether the Minnesota Commission has 24 defined the phrase "processing wholesale orders" to 25 include preorder, ordering, provisioning, maintenance or</p>	<p>1 MR. MERZ: That was a complaint case actually 2 brought by Eschelon relating to a mistake that Qwest had 3 made in the handling of an order. 4 ARBITRATOR RODDA: Thank you. 5 Q. (BY MR. MERZ) now, you say in your surrebuttal 6 testimony well let me ask you this. You talk about the 7 616 case as a case involving a settlement; right? 8 A. Yes. The Commission accepted the compliance 9 filing as a settlement of the case. It closed the case. 10 Q. Well, are you saying that it was a settlement 11 because Qwest agreed to comply with what the Commission 12 ordered? Is that what made it a settlement? 13 A. Well, I think we're using a term of art that 14 could be interpreted in a different way. The point was 15 that the case was closed because of the Commission's 16 acceptance of Qwest's third compliance filing. 17 Q. Well, you're a lawyer; correct, ma'am? 18 A. Yes, I am a lawyer. 19 Q. And you know what a settlement is; correct? 20 A. Yes. 21 Q. Okay. In what sense did the Commission's orders 22 in the Minnesota 616 case reflect a settlement? How, in 23 what way was that a settlement? 24 A. The Commission was satisfied based on the 25 compliance filing that the situation was resolved and</p>
Page 43	Page 45
<p>1 repair, and billing? 2 A. That I don't know. 3 Q. Now, you refer in your testimony in a number of 4 places to the 616 case as a settlement. Do you recall 5 that? 6 A. Well, ultimately it was essentially settled based 7 on compliance filings. 8 Q. So you refer to it as a settlement; is that 9 right? 10 A. Yes. 11 Q. You understand that -- well, let me ask you this: 12 The compliance filings were filings that Qwest made to 13 comply with the Commission's order that Qwest change 14 certain processes and procedures relating to root cause 15 analysis and acknowledgement of mistakes? 16 A. Right. Which Qwest did do. 17 Q. And it actually made three separate compliance 18 filings; isn't that right? 19 A. I think it's right, yes. 20 Q. The reason it did that is the first two were 21 rejected by the Minnesota Commission as inadequate; 22 correct? 23 A. Yes. 24 ARBITRATOR RODDA: I'm sorry, can you remind me 25 what the 616 case is?</p>	<p>1 there were not going to be further issues of this kind. 2 Now, this wouldn't be like a settlement between 3 the parties, which is normally how you would use this 4 term, say, between Qwest and Eschelon. It was Qwest 5 settling with the Commission. 6 Q. Well, you know, that's a good point. Go to your 7 rebuttal testimony at Page 37, Lines 15 through 17. 8 A. Rebuttal, Page 37. 9 Line? 10 Q. 15 through 17. Yes. 11 The question there is: Are there other ways in 12 which Eschelon attempts to expand the settlement terms 13 beyond what was agreed to by the parties in the Minnesota 14 case? 15 A. Yes. 16 Q. And what I understood you to just tell me was 17 that this was not a settlement between the parties; 18 correct? 19 A. Well, actually, it was, if you think about it, 20 because not only did the Commission accept the compliance 21 filing, but Eschelon did not object. It agreed to the 22 compliance filing as resolving the case. This did not 23 continue. So it really was. 24 Q. If you go to Page 18 of your surrebuttal. 25 A. Page 18, surrebuttal. Okay.</p>

Page 46

1 Q. You say there, Page 18, Lines 20 through 21. You
 2 say: This process is not one that requires Qwest to alter
 3 its procedures overall, nor does it apply to all CLECs.
 4 Do you see that?
 5 A. Yes.
 6 Q. Now, this process is the process that Qwest was
 7 ordered to implement by the Minnesota Commission in the
 8 616 case. That's the process that you're talked about
 9 there; correct?
 10 A. I'm talking about the requirement of a letter to
 11 Eschelon's customer if Qwest makes a mistake, yes.
 12 Q. And I think you answered a question that's
 13 different than the one I asked. When you talk about this
 14 process, you are referring, are you not, to the process
 15 that the Minnesota Commission ordered Qwest to put in
 16 place as a result of the 616 case?
 17 A. Well, actually there were several different
 18 things that were done as a result of the Commission order.
 19 Several processes and procedures that were undertaken by
 20 Qwest. Here I'm speaking of Eschelon's defining of the
 21 process for preparing a letter for its customers, so that
 22 it's a little bit different.
 23 Q. So you're talking about the process by which
 24 Qwest would prepare a later that acknowledged its
 25 mistakes?

Page 47

1 A. And this is defined in Eschelon's proposed
 2 language for the contract. So I'm not talking about all
 3 of the processes and procedures that Qwest undertook in
 4 response to the Commission order. Those were different.
 5 Q. But the process for acknowledging Qwest's
 6 mistakes is the one that you're referring to in the
 7 language that we just looked at; correct?
 8 A. I'm referring to Eschelon's proposed language.
 9 Q. Well, you say this process is not one that
 10 requires Qwest to alter its procedures overall, nor does
 11 it apply to all CLECs. Do you see that?
 12 A. Right.
 13 Q. I'm just trying to understand what do you mean by
 14 the phrase, this process?
 15 A. The requirement that we must provide a letter to
 16 Eschelon's customer if we make a mistake and acknowledge
 17 that we made the mistake.
 18 Q. All right.
 19 A. That.
 20 Q. So that's the process that you're talking about?
 21 A. Yes.
 22 Q. What is the basis, then, for the statement that
 23 we just read? This process is not one that requires Qwest
 24 to alter its procedures overall, nor does it apply to all
 25 CLECs?

Page 48

1 A. Because this order was specific to Eschelon and
 2 it impacts Eschelon's service manager, as I said in my
 3 testimony above. It's what you would call a one-off, but
 4 it was not required of us for all CLECs. It was only
 5 required in Eschelon.
 6 Q. Did it you look at Qwest's compliance filing
 7 either before or after you made that statement that we've
 8 been talking about in your testimony?
 9 A. Which compliance filing?
 10 Q. The compliance filing that Qwest made in order to
 11 comply with the Commission's order in the Minnesota 616
 12 case.
 13 A. I haven't looked at it in awhile, no. I have
 14 looked at it before.
 15 MR. MERZ: Your Honor, I would I want the mark
 16 the compliance filing as an exhibit. So this would be
 17 Eschelon 2.
 18 Before I get to Eschelon 2, I think I forgot to
 19 offer Eschelon 1, so I will do that at this time.
 20 MR. TOPP: No objection.
 21 ARBITRATOR RODDA: Then Eschelon-1 is admitted.
 22 (Exhibit No. Eschelon-1 was admitted into
 23 evidence.)
 24 Q. (BY MR. MERZ) You have now what has been marked
 25 as Eschelon Exhibit 2; correct?

Page 49

1 A. Yes.
 2 Q. And you recognize Eschelon Exhibit No. 2 as at
 3 least one of Qwest's compliance filings in the Minnesota
 4 616 case; correct?
 5 A. Yes.
 6 MR. MERZ: Your Honor, Eschelon offers Eschelon
 7 Exhibit No. 2.
 8 ARBITRATOR RODDA: Any objection to Eschelon 2?
 9 MR. TOPP: No objection.
 10 ARBITRATOR RODDA: All right. Then Eschelon 2 is
 11 admitted.
 12 Q. (BY MR. MERZ) I would like you to refer now to
 13 Page 3 of the compliance filing, Eschelon Exhibit No. 2.
 14 A. Yes.
 15 Q. Page 3, and I'm looking at the heading:
 16 Procedures for extending the error acknowledgement
 17 procedures set forth in Part E to all Qwest errors in
 18 processing wholesale orders.
 19 Do you see that?
 20 A. Yes.
 21 Q. And underneath there Qwest describes the error
 22 acknowledgement process that it's going to implement in
 23 order to comply with the Minnesota Commission's order;
 24 correct?
 25 A. Right.

Page 50

1 Q. And this process that's described here is the
2 process by which Qwest is going to prepare a letter to
3 acknowledge its mistakes.
4 A. And actually, I believe Qwest has documented that
5 process in the service manager's PCAT.
6 Q. The process that's described in the Minnesota
7 compliance filing that you have here is not a process
8 that's limited to Eschelon?
9 A. No. You're correct. And as I said, that is
10 documented in the service manager's PCAT.
11 Q. And it's not a process -- it is a process that
12 requires Qwest to alter its procedures overall?
13 A. That's already been done.
14 Q. It has been done?
15 A. That's already been done.
16 Q. And this is what did it?
17 A. Right.
18 Q. This compliance filing is what altered Qwest's
19 procedures overall relating to the acknowledgement of
20 mistakes?
21 A. Yes. And as I said, that was all done as a part
22 of the compliance with the Minnesota order, yes. We
23 changed quite a number of procedures.
24 Q. Just to focus, though, the discussion that we're
25 talking about on Page 3 under the heading F that we read,

Page 51

1 is the process by which Qwest is going to provide
2 acknowledgement of error letters?
3 A. And I think our confusion here that's -- yes.
4 And I think our confusion here is that we're talking, I
5 talked in my testimony about language in Eschelon's
6 contract which Eschelon is requiring in its contract for
7 itself.
8 Q. Well, and I understood when we were talking about
9 Page 18, Lines 20 through 21 of your surrebuttal testimony
10 that the process that you were referring to is the process
11 by which Qwest acknowledges its errors. Isn't that what
12 you just told me?
13 A. This is -- again, I was referring to the language
14 proposed by Eschelon for inclusion in its contract.
15 Q. And so your criticism is that Eschelon's language
16 for its contract relates only to Eschelon? Is that what
17 you're saying here in your testimony?
18 A. Well, that is part of it. Again, what we're --
19 what Eschelon is asking us to do is set in stone, if you
20 will, in its contract, procedures we already have in our
21 service manager PCATs, in our maintenance and repair
22 PCATS, for dealing with mistakes, but asks for more than
23 we already do, which we established in response to the
24 Minnesota 616 case.
25 Q. And I guess what I'm struggling with is, again,

Page 52

1 the sentence: This process is not one that requires Qwest
2 to alter its procedures overall, nor does it apply to all
3 CLECs.
4 In what sense is that sentence accurate?
5 A. It doesn't apply to all CLECs, because what
6 Eschelon is proposing applies to Eschelon in its contract
7 and then anybody who opts in, but not all other CLECs.
8 Q. Well, aren't you talking about the Minnesota 616
9 order when you're talking about this process?
10 A. No. I'm talking about Eschelon's proposed
11 language.
12 Q. Well, I'm looking at two sentences before that
13 beginning at Line 16. You say the settlement was between
14 Qwest and Eschelon. So we're talking about the Minnesota
15 616 case; right?
16 A. Uh-huh.
17 Q. Right?
18 A. Yes. And it concerned one error in one order in
19 one state.
20 Q. And then you say -- and so all of that discussion
21 is about the Minnesota 616 case?
22 A. Uh-huh.
23 Q. Yes?
24 A. Yes.
25 Q. And what Qwest had to do in order to comply with

Page 53

1 the Commission's order in the Minnesota 616 case?
2 A. In terms of the settlement, yes.
3 Q. Okay. And then the sentence that starts, "This
4 process," you're no longer talking about the Minnesota 616
5 case. You're talking about Eschelon's contract proposal.
6 Is that your testimony?
7 A. You're actually skipping a sentence here.
8 Eschelon is the only CLEC to request this process, and it
9 should have been expanded via contract language. And the
10 account manager at Eschelon is charged with responding to
11 a request from Eschelon to acknowledge a mistake. So
12 Eschelon is taking the process we established, putting its
13 language in its contract. That's my point. It could have
14 been better phrased, certainly.
15 Q. I mean, it seems to me that the way to better
16 phrase it is to say this process is one that requires
17 Qwest to alter its procedures overall and does apply to
18 all CLECs. Would that be a better phrasing?
19 A. No. I would not agree with that, because we
20 already did. In response to the 616 case, we already did.
21 Q. I'm going to talk with you now about expedites.
22 So we'll change gears here.
23 This is issue 12-67 and its subparts; is that
24 right?
25 A. That sounds right.

Page 54

1 Q. Expedites are when Qwest provides Eschelon with
2 service more quickly than would otherwise be the case; is
3 that right?
4 A. Not just Eschelon, but any provider.
5 Q. Okay. Now, one of the issues relating to --
6 there are a lot of issues related to expedites; right?
7 A. Yes.
8 Q. One of the issues is whether Qwest is required to
9 provide expedites at cost-based rates as Eschelon
10 proposes, or a tariffed rate which is what Qwest has
11 proposed; is that right?
12 A. That's one of the issues.
13 Q. And the reason why Qwest believes that it's not
14 required to provide expedites at TELRIC rates is because
15 Qwest believes that expedites are a superior service; is
16 that right?
17 A. Yes.
18 Q. Now, in your rebuttal at Page 49, Lines 10
19 through 12 --
20 ARBITRATOR RODDA: I'm sorry. I missed the page
21 number.
22 MR. MERZ: It's rebuttal Page 49, Lines 10
23 through 12.
24 THE WITNESS: I'm there.
25 Q. (BY MR. MERZ) You say there that providing a

Page 55

1 service in a shorter time frame than that set forth in a
2 standard interval is a premium service. Do you see that?
3 A. Yes.
4 Q. Are you using premium there as synonymous with
5 superior?
6 A. Yes.
7 Q. And so as I understand it, that's the basis for
8 your claim that this is a superior service, that Eschelon
9 is asking to be provided with service more quickly than
10 the standard interval?
11 A. That's part of it. There are two reasons we
12 believe that this is a superior service. First of all,
13 Qwest is measured on its performance based on standard
14 intervals, and the standard intervals are whether or not
15 Qwest provides service that allows a CLEC a meaningful
16 opportunity to compete. And so when we're asked to
17 provide the service faster than the standard interval,
18 that is superior.
19 Also, in some of our situations our standard
20 intervals for retail customers are actually longer than
21 the standard intervals for our wholesale customers. And I
22 believe there it was an example that was in my testimony.
23 Q. Okay. And that arises because a state commission
24 has ordered that that interval be established in the way
25 it is; correct?

Page 56

1 A. Either it was ordered or agreed to.
2 ARBITRATOR RODDA: And when you say that, you
3 meant the retail?
4 THE WITNESS: Not wholesale.
5 MR. MERZ: There's a discrepancy between the
6 retail interval and the wholesale interval.
7 ARBITRATOR RODDA: Right. I understood that
8 part. And then you said and that interval, or I can't
9 remember the words she used, and I didn't know which one
10 you were referring to.
11 MR. MERZ: The wholesale interval.
12 Q. (BY MR. MERZ) Some commission has said to Qwest
13 the wholesale interval needs to be shorter in order to
14 give Eschelon a meaningful opportunity to compete. Is
15 that your understanding?
16 A. I don't know if all of them were ordered or if
17 some of them were agreed to.
18 Q. You would agree with me that whether a service is
19 a superior is determined based on whether the ILEC
20 provides that service to itself; is that right?
21 A. I'm not sure I would phrase it quite that way.
22 One of the measures is whether Qwest provides service to
23 its CLEC customers in the manner, equivalent manner that
24 it provides service to itself. Is that what you're
25 saying?

Page 57

1 Q. Well, I'm not sure. The Eighth Circuit talked
2 about superior service; is that right?
3 A. I believe they did, yes.
4 Q. And you talk about the Eighth Circuit's order, in
5 fact, in your testimony?
6 A. Yes.
7 Q. And what the Eighth Circuit said is ILECs are not
8 required to provide superior service.
9 A. Correct.
10 Q. What the Eighth Circuit said is ILECs are not
11 required to provide service that is superior to the
12 service they provide themselves?
13 A. Yes.
14 Q. And so the way you decide whether or not a
15 service is superior is you have to figure out is that a
16 service that the ILEC provides to itself. Fair enough?
17 A. That is part of it, yes.
18 Q. Well, that's the Eighth Circuit's definition of
19 superior. Is that your understanding?
20 A. Yeah, but I don't believe they were talking about
21 intervals completely there. I think that that was whether
22 or not we were required to provide services beyond
23 services we already provide to ourselves. And part of my
24 argument is that if we're being asked to provide service
25 at an interval shorter than we even provide to our retail

Page 58

1 customers, that is superior.
 2 Q. Go to your surrebuttal testimony, Page 20.
 3 A. 20.
 4 Q. And I'm looking at Line 19 right at the end of
 5 that line where you say expedites are not UNEs. Do you
 6 see that?
 7 A. Line -- we're on Page 20?
 8 Q. Page 20, Line 19 of your surrebuttal testimony.
 9 A. Oh, yes, I see that.
 10 Q. Expedites are not UNEs. Then you go on to say:
 11 The United States Court of Appeals for the Eighth Circuit
 12 made it clear that the Telecommunications Act does not
 13 require ILECs to provide services superior in quality to
 14 that which it provides itself?
 15 A. Correct.
 16 Q. Then you have a footnote and you cite the Iowa
 17 Utilities Board decision of the Eighth Circuit; right?
 18 A. Yes.
 19 Q. Now, you would agree with me that Qwest provides
 20 itself with expedites; correct?
 21 A. Yes.
 22 Q. It provides them to its customers; correct?
 23 A. Yes.
 24 Q. And it does that as a regular part of its
 25 business; correct?

Page 59

1 A. When it is feasible, yes.
 2 Q. You also testified in Eschelon's Arizona
 3 expedites complaint case; correct?
 4 A. Yes.
 5 Q. And one of the issues in that case that the
 6 Arizona Staff addressed was whether or not expedites are
 7 required to be provided on a cost-based rates; correct?
 8 A. That's one of the issues in the case.
 9 Q. And you recall that this was the conclusion of
 10 the Arizona Staff, that yes, in fact, Qwest is required to
 11 provide expedites at cost-based rates?
 12 A. There's one of their conclusions yes. The case
 13 is still pending.
 14 Q. Shifting gears now to jeopardies, and jeopardies
 15 is Issues 12-71, 12-72 and 12-73; is that right?
 16 A. Yes.
 17 ARBITRATOR RODDA: This might be a good time for
 18 a break.
 19 MR. MERZ: Sure.
 20 ARBITRATOR RODDA: Let's take 10 minutes.
 21 (A recess was taken from 11:25 a.m. to
 22 11:35 a.m.)
 23 ARBITRATOR RODDA: Okay. Let's go back on the
 24 record. And I forget what topic you were on.
 25 MR. MERZ: We were going to start with

Page 60

1 jeopardies, which is Issues 12-71, 72 and 73.
 2 Q. (BY MR. MERZ) And just to kind of get on the
 3 same page with some terminology, Qwest gives a jeopardy
 4 notice when a due date for an order is in danger of being
 5 missed; is that right?
 6 A. That's correct.
 7 Q. The due date is the date that the CLEC is
 8 supposed to expect delivery of the circuit; correct?
 9 A. Correct.
 10 Q. A jeopardy that is caused by Qwest is a Qwest
 11 jeopardy; right?
 12 A. Yes.
 13 Q. And one kind of Qwest jeopardy might be a Qwest
 14 facilities jeopardy; correct?
 15 A. Yes.
 16 Q. A Qwest facilities jeopardy is when there aren't
 17 facilities sufficient there to provide the service that
 18 the CLEC has ordered on the date that it's to be
 19 delivered; is that correct?
 20 A. Correct. There may not be -- the jeopardy isn't
 21 a certainty from a miss. It is a warning that a miss is
 22 possible.
 23 Q. A jeopardy that is caused by a CLEC or the CLEC's
 24 customers is classified as a customer-not-ready jeopardy;
 25 is that right?

Page 61

1 A. Yes. On the due date for the order, if the CLEC
 2 is not able to receive the circuit, that is considered a
 3 customer-not-ready jeopardy.
 4 Q. And a customer-not-ready jeopardy is sometimes
 5 referred to as a CNR jeopardy; is that right?
 6 A. Yes.
 7 Q. Now, if the jeopardy is a CNR jeopardy, the CLEC
 8 has to implement its order and request a new due date?
 9 A. That's the normal procedure.
 10 Q. And for a loop order, the earliest new due date
 11 that the CLEC can get is three days from the date that the
 12 supplemental order is placed; is that right?
 13 A. As a result of the supplement, yes.
 14 Q. And what that all means is that the CLEC is going
 15 to be delayed in its ability to provide service to the
 16 customer; is that right?
 17 A. That is the potential. But Qwest still attempts
 18 to deliver the service on the original due date, even in
 19 the case of an order put in jeopardy.
 20 Q. And with respect to the jeopardies issue, you
 21 again are making your set-in-stone argument; correct?
 22 A. That is part of it, but also we are objecting to
 23 Eschelon's language because it does not reflect our
 24 current jeopardy process.
 25 Q. You're also making the one-off argument then;

Page 62

1 correct?

2 A. That is the potential. We either have to -- if

3 the language is adopted, we either have to handle

4 jeopardies for Eschelon differently, or potentially change

5 our jeopardy process for everybody.

6 Q. Qwest's proposal for these provisions that are

7 covered by issues 12-71, 72 and 73 is just to refer to

8 Qwest's website; is that right?

9 A. To our PCAT where the procedures are laid out,

10 yes.

11 Q. But Qwest's view is that the contract itself

12 shouldn't contain any substantive provisions; is that

13 right?

14 A. It should not contain the jeopardy procedures,

15 no.

16 Q. Now, look at your direct testimony, Page 73.

17 A. I'm going to need a copy of my direct. That

18 would be No. 1. Which page?

19 Q. Page 73.

20 A. I'm there.

21 Q. At Page 73 you set out there the language that

22 Eschelon has proposed for this provision with one

23 adjustment; is that right?

24 A. With one adjustment being that -- what do you

25 mean with one adjustment?

Page 63

1 Q. Well, what I was going to say is with respect to

2 12.2.7.2.4.4.1, where it says for these two types of

3 jeopardies, Qwest will not characterize a jeopardy as a

4 CNR or send -- I've got to get closer -- for these two

5 types of jeopardies. Qwest will not characterize the

6 jeopardies as CNR or send a CNR jeopardy to CLEC if a

7 Qwest jeopardy exists, Qwest attempts to deliver the

8 service, and Qwest has not sent an FOC to the CLEC at

9 least a day -- oh, here, I'm -- I have got to start over.

10 I apologize.

11 Let's pick up where it says Qwest will not

12 characterize a jeopardy as a CNR or send a CNR jeopardy to

13 CLEC if a Qwest jeopardy exists, Qwest attempts to deliver

14 the service, Qwest has not sent an FOC notice to CLEC

15 after the jeopardy occurs, but at least a day before Qwest

16 attempts to deliver the service.

17 A. Yes. And that should be in there now. I know

18 that there were some exchanges of language at this time

19 that the testimony was being prepared, and I did not have

20 the "at least the day before" language at that time.

21 Q. And I'm not necessarily faulting you for not

22 having that in your testimony. The point I just wanted to

23 make is you understand that "at least a day" is Eschelon's

24 proposal?

25 A. That's right. And that is not our current

Page 64

1 process.

2 Q. Let's look at the section that comes right before

3 that 12.2.7.2.4.4; is that right?

4 A. Yes.

5 Q. Eschelon's proposal there is a jeopardy caused by

6 Qwest will be classified as a Qwest jeopardy, and a

7 jeopardy caused by CLEC will be classified as customer not

8 ready, paren, CNR, close parens. Is that right?

9 A. Yes.

10 Q. That's Qwest's process; correct?

11 A. I believe that is.

12 Q. And can you imagine any circumstances under which

13 a CLEC might want something different than that?

14 A. No.

15 Q. Then go to -- let's skip the middle section

16 because we'll talk about that separately. But section

17 12.2.7.2.4.4.2. Do you have that?

18 A. Yes.

19 Q. Eschelon's proposal there is if CLEC establishes

20 to Qwest that a jeopardy was not caused by CLEC, Qwest

21 will correct the erroneous CNR classification and treat

22 the jeopardy as a Qwest jeopardy. Do you see that?

23 A. Yes.

24 Q. That's Qwest's process as well; correct?

25 A. Yes.

Page 65

1 Q. And can you imagine a circumstance under which a

2 CLEC might not want to have that?

3 A. No. And that is defined in our PCAT where our

4 jeopardy procedures are outlined.

5 Q. Let's go to your surrebuttal now at Page 28.

6 Okay?

7 A. Okay.

8 Q. There you set out a hypothetical series of facts;

9 correct?

10 A. A sequence of events.

11 Q. First, second, third, fourth, fifth, sixth;

12 correct?

13 A. Yes.

14 Q. Now I'm going to -- actually, before I get to

15 that, let's talk about the Section 12.2.7.2.4.4.1. As I

16 understand it, the triggering circumstances for the

17 language that Eschelon's proposed for that section are

18 there's a Qwest jeopardy, Qwest attempts to deliver

19 service, Qwest hasn't sent an FOC after the jeopardy

20 occurs, but at least a day before Qwest attempts to

21 deliver service. Those are the triggering events for

22 Eschelon's proposed language; correct?

23 A. I believe that's correct.

24 Q. Okay. Now, with that in mind, what I want to do

25 is change your hypothetical series of events just a little

Page 66

1 bit. So imagine a series of events where first Qwest --
 2 first, Eschelon places an order for service; second, Qwest
 3 sent an FOC indicating the due date for the order; third,
 4 Qwest sends a jeopardy notice indicating a Qwest jeopardy
 5 lack of facilities; fourth, Qwest clears the jeopardy and
 6 tries to deliver the circuit but doesn't send an FOC;
 7 fifth, Eschelon's not ready and can't accept delivery of
 8 the circuit.
 9 Would you agree that under those circumstances
 10 that should not be treated as a CNR jeopardy?
 11 A. Okay. I'm going to -- I'm presuming I have
 12 remembered all of your steps here. I don't believe that
 13 is completely true. The FOC is the formal system notice
 14 that you get with a new due date after a jeopardy. The
 15 original due date is still what everyone shoots for, and
 16 Qwest technicians are in contact with Eschelon's
 17 technicians at this time.
 18 So if it is possible to deliver the service on
 19 the original due date, which is what all of the parties
 20 want, that is what should be accomplished whether or not
 21 the FOC has been sent.
 22 Q. Isn't it true that there are certain kinds of --
 23 let me ask it this way. There are a number of different
 24 types of jeopardies; correct?
 25 A. Yes.

Page 67

1 Q. And those types are different causes for the
 2 jeopardy; right?
 3 A. Yes.
 4 Q. And there are certain kinds of jeopardies that
 5 Qwest has told CLECs if you get this kind of jeopardy
 6 notice, don't expect us to be there on the due date
 7 because we're not likely to do it?
 8 A. Our jeopardies never say that you cannot expect
 9 the service. They say that the due date is in jeopardy,
 10 but they don't say absolutely that the service will not be
 11 delivered the original due date.
 12 Q. All right. And I'm asking a different question.
 13 A. Okay.
 14 Q. Isn't it the case that Qwest has told Eschelon
 15 and other CLECs if you get certain kind of jeopardies, you
 16 shouldn't expect that the circuit will be delivered on the
 17 due date?
 18 A. I don't believe that's how we have explained the
 19 jeopardies, that you shouldn't expect. We always attempt
 20 to deliver on the original due date whenever possible.
 21 Sometimes jeopardies will prevent that.
 22 Q. So if Eschelon gets a Qwest facilities jeopardy,
 23 isn't it the case that what that jeopardy is telling
 24 Eschelon is that don't expect us to be there for the due
 25 date, don't schedule, don't plan to accept the circuit

Page 68

1 because we're likely miss that due date?
 2 A. I wouldn't phrase it that way. I would say that
 3 there is a potential for us to miss the due date. That's
 4 what the purpose of jeopardies is. It isn't absolutely
 5 we're not going to be there, no.
 6 Q. So is the case that if Eschelon receives a Qwest
 7 facilities jeopardy, it should expect Qwest to deliver the
 8 circuit on that due date?
 9 A. It should expect Qwest to try, yes.
 10 Q. And so Eschelon --
 11 A. But it has to understand that the potential is
 12 there that the due date will be missed. That's the point
 13 of jeopardies.
 14 Q. But Eschelon should have personnel standing by
 15 and available. It should complete everything it needs to
 16 complete in order to accept the circuit, even though it
 17 has received a Qwest facilities jeopardy?
 18 A. I believe it should complete everything it needs
 19 to complete by the due date. I don't know that its
 20 personnel has to be standing by. That would depend on
 21 what's been communicated from Qwest technicians. I do
 22 believe that they should be ready to accept the circuit on
 23 the original due date in case Qwest is able to provide the
 24 circuit on the original due date.
 25 Q. Well, you should assume that what's been

Page 69

1 communicated by the Qwest technicians is a Qwest facility
 2 jeopardy.
 3 A. And the Qwest technicians are trying to resolve
 4 that jeopardy as quickly as possible. Yes.
 5 Q. And so if Eschelon receives a Qwest facilities
 6 jeopardy, does it need to have personnel standing by to
 7 accept the circuit on the due date?
 8 A. By personnel standing by, if you mean there at
 9 the circuit, not necessarily. But the potential is still
 10 there that Eschelon could receive the circuit on the
 11 original due date, because that is what Qwest's goal is
 12 all along. We have not said we won't provide it. We've
 13 said it may not be provided.
 14 Q. Well, I guess I'm trying to quantify, if it's
 15 possible, what the level of likelihood is that a circuit
 16 is going to be provided on the due date when a Qwest
 17 facilities jeopardy has been provided.
 18 A. Well, all right. Let's look at the data that was
 19 in your exhibit BJJ-23. That was 100 orders with Qwest
 20 facility jeopardies. 76 percent of those orders were
 21 delivered on the original due date and accepted by
 22 Eschelon on the original due date.
 23 Q. And then on your hypothetical series of events,
 24 just to make sure that I understand what you're talking
 25 about here, you have a number of steps. And the fifth

Page 70

1 step is Qwest is supposed to send an FOC with a new due
2 date?
3 A. Yes.
4 Q. Does that assume this Qwest has sent the FOC with
5 a new due date or that it hasn't?
6 A. Qwest is supposed to.
7 Q. And let's assume that it doesn't.
8 A. The formality is that Qwest is supposed to, but
9 the technicians are in touch with each other. If it's
10 possible to get the circuit in place on the service date,
11 that is what should happen. It should not be dependent on
12 whether or not that system notice has been sent.
13 Q. The contract requires the FOC; correct?
14 A. The PCAT requires the FOC. Your contract
15 proposal requires the FOC.
16 Q. And Qwest's current process is to provide the
17 FOC?
18 A. That is the process.
19 Q. And that FOC is to be provided in advance of the
20 due date; correct?
21 A. In advance of delivery of the circuit.
22 Q. Not in advance of the due date?
23 A. Not in advance of the due date.
24 Q. Is there any amount of time in advance of
25 delivery of the circuit that you think is reasonable for

Page 71

1 Eschelon to expect?
2 A. We have not set a specific time. I don't want to
3 speculate on what that time should be.
4 Q. The purpose of the FOC is to give the CLEC
5 advanced notice; correct?
6 A. The purpose of the FOC is a formal system notice.
7 The CLEC also gets notice via communication with the Qwest
8 technician who's installing the circuit.
9 Q. The formal notice that Eschelon is supposed to
10 rely on is the FOC; correct?
11 A. It is the formal notice. I don't think it should
12 be the only thing that Eschelon relies on, because there
13 is communication between the technicians going on at the
14 same time.
15 Q. Do you know who within Eschelon receives the FOC?
16 A. No, I don't.
17 Q. You say that Eschelon's proposed language would
18 prevent Qwest from -- I'm sorry -- that Eschelon's
19 proposed language forces extra time into the process; is
20 that right?
21 A. If we adhere to the provision requiring an FOC at
22 least a day before it can do that, yes.
23 Q. Now, isn't it the case that Eschelon's language
24 would provide that even when Qwest hasn't provided an FOC
25 at least a day before delivery, that it will still use its

Page 72

1 best effort to accept the service when Qwest attempts to
2 deliver?
3 A. That's what the language says.
4 Q. And you would agree with me that that language
5 does not force additional time into the process; correct?
6 A. That part of the language, no.
7 Q. And you would agree with me that Eschelon's
8 language doesn't say that if Qwest doesn't provide the
9 FOC, what it should do is delay delivery in order to
10 provide the FOC before delivery. That's not what Eschelon
11 has proposed, is it?
12 A. No. What it does do, though, is eliminate the
13 categorization of a subsequent jeopardy on the basis of a
14 customer not ready.
15 Q. And Eschelon's language also provides that if
16 necessary the parties will attempt to set a new
17 appointment time on the same day; correct?
18 A. Eschelon -- I think it says that. Yes, it does
19 say that.
20 Q. Again, that language would not force additional
21 time into the process?
22 A. No. That's not what your language does. That
23 language simply says they will still try and meet the due
24 date.
25 Q. So what you're saying is Qwest always tries to

Page 73

1 make the due date if it can?
2 A. It does.
3 Q. And Eschelon's language is saying the parties
4 should try to make the due date if they can; correct?
5 A. It does.
6 Q. And it also describes what will happen if that
7 doesn't happen, notwithstanding the parties' best efforts,
8 and Eschelon hasn't received the advanced notice that's
9 provided by an FOC?
10 A. And that's where we have a problem with the
11 language. Because it is basing the requirement on an FOC,
12 which isn't the only means of communications between the
13 parties. And so it takes away one of the options for
14 clarification of jeopardies as a result, when really FOCs
15 and classification of jeopardies are not related topics.
16 Q. Why have the FOCs if you can just rely on the
17 technicians to be talking to one another and work this all
18 out among themselves?
19 A. I believe it's a recordkeeping device.
20 Q. It doesn't serve any notice function?
21 A. Well, that depends on how it's used.
22 Q. Are you saying it shouldn't serve a notice
23 function?
24 A. I don't believe it should be the sole notice
25 function, because it isn't. The technicians are calling

Page 74

1 each other.
 2 Q. Let's talk a little bit about control
 3 production --
 4 A. Okay.
 5 Q. -- which is issue 12-87. What control production
 6 is is the testing of electronic interfaces that Eschelon
 7 uses to order products and services from Qwest by placing
 8 actual orders; is that right?
 9 A. In parallel with Qwest's monitoring of those
 10 orders, yes.
 11 Q. You would agree with me that Eschelon has a
 12 strong interest in having the electronic interfaces that
 13 it uses to place orders work correctly?
 14 A. Yes. As does Qwest.
 15 Q. You would agree with me that Eschelon's proposed
 16 language provides that control production is not required
 17 for recertification unless the parties agree otherwise;
 18 correct?
 19 A. Correct.
 20 Q. Recertification involves updating existing
 21 systems; is that right?
 22 A. Recertification involves a circumstance in
 23 testing where the CLEC has already certified given product
 24 and activity types, and they're moving to a new release
 25 where Qwest has determined that control production testing

Page 75

1 is not required?
 2 Q. Eschelon's proposed language defines
 3 recertification as not including new implementations such
 4 as new products and/or activity types; correct?
 5 A. That's right.
 6 Q. Now, Eschelon is not saying that it shouldn't
 7 participate in recertification testing, is it?
 8 A. No.
 9 Q. There's a separate section of the contract that
 10 specifically governs recertification testing; right?
 11 A. Well, recertification is -- I think we're mixing
 12 pieces of this language. Because recertification is a
 13 type of testing, whereas control production is a phase of
 14 testing. So it's confusing.
 15 Q. Fair enough. Recertification is a type of
 16 testing?
 17 A. Yes.
 18 Q. And the parties have agreed on language regarding
 19 Eschelon's participation in recertification testing;
 20 correct?
 21 A. Yes.
 22 Q. And what that language provides is that new
 23 releases of the EDI interface may require recertification;
 24 correct?
 25 A. Yes.

Page 76

1 MR. MERZ: I don't have anything further.
 2 ARBITRATOR RODDA: Okay. Let's go back to the
 3 topic right before this which was -- I don't know.
 4 THE WITNESS: Jeopardies.
 5 ARBITRATOR RODDA: Jeopardies.
 6
 7 EXAMINATION
 8
 9 Q. (BY ARBITRATOR RODDA) So just so I'm clear, the
 10 problem -- what is the problem that you have with
 11 Eschelon's proposal? It had something to do with it takes
 12 away the technician communications or it relies too much
 13 on the FOC or --
 14 A. Yes. They put in a stipulation on when the FOC
 15 should be provided in a jeopardy situation that is not
 16 consistent with our current process today in that it
 17 requires the FOC be provided at least a day before. And
 18 if it is not provided at least a day before, then we're
 19 not able to perform a subsequent jeopardy if the customer
 20 is not ready. That is their -- the consequence that they
 21 establish there.
 22 Q. Okay. And so going back to the change management
 23 and the interval issue, can Qwest -- under the change
 24 management process can Qwest increase intervals over CLEC
 25 objections?

Page 77

1 A. A CLEC can object to an interval increase. Qwest
 2 might decide to go forward, but the CMP process allows a
 3 lot of mechanisms for objection. And with the one
 4 increase where CLECs did object, Qwest did not go forward.
 5 It would not be incumbent upon Qwest to ignore CLEC
 6 objections to an interval increase.
 7 Q. With the multitude of interconnection agreements
 8 you must have existing in this world, are there different
 9 intervals for different CLECs, or does it all sort of come
 10 down to the smallest common denominator because that's
 11 easier for Qwest?
 12 A. I don't believe there are different intervals for
 13 different CLECs because we established the service
 14 interval guide as the common document, and it is an
 15 exhibit to the interconnection agreements. And so it is
 16 managed -- changes to that are managed through the CMP, so
 17 I don't believe that we have different intervals for
 18 different CLECs anymore. It probably did exist in the
 19 past, but we have attempted standardize that process.
 20 Q. So in an interconnection agreement could a CLEC
 21 negotiate a specific interval or --
 22 A. I believe we would object to that as inconsistent
 23 with our service interval guide.
 24 ARBITRATOR RODDA: Okay. All right. Did you
 25 have any redirect?

Page 86	Page 88
<p>1 RECCROSS-EXAMINATION</p> <p>2</p> <p>3 Q. (BY MR. MERZ) We were talking about tagging at</p> <p>4 the demarc. My recollection is that was an issue that was</p> <p>5 settled during the hearing itself. Is that not your</p> <p>6 recollection?</p> <p>7 A. Honestly, I can't recall.</p> <p>8 Q. And it was issue 12-75, and 12-75 isn't in the</p> <p>9 ALJs' --</p> <p>10 A. Several issues were settled during the course of</p> <p>11 the hearing, yes.</p> <p>12 Q. And if that issue was settled during the course</p> <p>13 of the hearing, you would agree with me, obviously, that</p> <p>14 Qwest didn't make its decision about whether to set in</p> <p>15 stone that process as a result of the ALJs' order?</p> <p>16 A. In that case, if it was settled during the</p> <p>17 hearing, Qwest came to that determination independently of</p> <p>18 the arbitrator's report.</p> <p>19 Q. Now, you have described Qwest's desire to have</p> <p>20 uniform processes from state to state; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And as I understand it, however, Qwest does</p> <p>23 not -- is not willing to implement the root cause analysis</p> <p>24 requirement that's in place in Minnesota in Arizona, or in</p> <p>25 any of the other states outside of the Minnesota; isn't</p>	<p>1 Q. And in that complaint, Eschelon would be asking</p> <p>2 the Commission to undo a longer interval than Qwest has</p> <p>3 already implemented; correct?</p> <p>4 A. That would presume that they bring the complaint</p> <p>5 after the change has been implemented, but yes.</p> <p>6 Q. If Qwest wanted to implement the change, there</p> <p>7 would be nothing stopping it unless it got an order from</p> <p>8 the Arizona Commission; correct?</p> <p>9 A. I don't believe Qwest would behave in that manner</p> <p>10 if there was sufficient objection to the increase in</p> <p>11 interval. So Qwest would be making that decision</p> <p>12 unwisely, I think, given, presumably, that the CLECs have</p> <p>13 objected to the interval increase.</p> <p>14 Q. And what I'm really focusing on is what Qwest</p> <p>15 could do under the CMP process as it exists. Qwest could</p> <p>16 implement that change, and then it would be Eschelon's</p> <p>17 problem to go to the Commission to get that change undone;</p> <p>18 correct?</p> <p>19 A. That is the potential.</p> <p>20 Q. We've talked about jeopardies, and I think you</p> <p>21 have told us that the process as described by Eschelon's</p> <p>22 proposed language is the same as Qwest's existing process</p> <p>23 but with one exception, and that is it is, as I understand</p> <p>24 your testimony, not Qwest's process to provide the FOC at</p> <p>25 least a day before delivery?</p>
Page 87	Page 89
<p>1 that right?</p> <p>2 A. That's correct. Because we believe we have</p> <p>3 processes in place that cover these situations.</p> <p>4 Q. And Qwest is also not willing to implement the</p> <p>5 process in place in Minnesota for acknowledging errors in</p> <p>6 any other state; correct?</p> <p>7 A. Correct. We don't want that language in the</p> <p>8 contract. Again, we already have processes in place</p> <p>9 through our PCATs for dealing with errors.</p> <p>10 Q. You had some questions from Mr. Topp regarding</p> <p>11 intervals and what Qwest could or could not do. And as I</p> <p>12 understand what you said is as the CMP document exists,</p> <p>13 Qwest could implement an interval change over objections</p> <p>14 from Qwest or, I'm sorry, from Eschelon and other CLECs;</p> <p>15 correct?</p> <p>16 A. What I said was we could. It would not be</p> <p>17 incumbent on us to do so.</p> <p>18 Q. The CMP document in all events would allow for</p> <p>19 that to happen?</p> <p>20 A. Ultimately. But there is recourse if we do that</p> <p>21 for the CLECs.</p> <p>22 Q. And as I understand it, one avenue of recourse is</p> <p>23 Eschelon could bring a complaint to the Arizona</p> <p>24 Commission?</p> <p>25 A. Yes.</p>	<p>1 A. That's correct.</p> <p>2 Q. Now, Qwest's existing process, then, doesn't rely</p> <p>3 on these informal communications between technicians;</p> <p>4 correct?</p> <p>5 A. No. I would say it does.</p> <p>6 Q. Well, if Qwest has a process that requires</p> <p>7 providing the FOC, then that's a process that doesn't rely</p> <p>8 on informal communications between technicians; correct?</p> <p>9 A. The provisioning of the FOC is not dependent on</p> <p>10 the communication between the technicians, but really</p> <p>11 they're not related.</p> <p>12 Q. You had answered some questions about your</p> <p>13 Exhibit RAR-6. And if you just look at the first example,</p> <p>14 the due date was January 11, 2005, and the circuit was</p> <p>15 installed January 17, 2005; correct?</p> <p>16 A. No. It was installed on January 12th.</p> <p>17 Q. Oh, I'm sorry. I see it, yes.</p> <p>18 Then, if you go to the next example, the due date</p> <p>19 was February 9th, and Qwest installed on the 14th.</p> <p>20 A. Correct.</p> <p>21 Q. And we could look -- I'm not going to go through</p> <p>22 each one, but we could look at each of these and figure</p> <p>23 out when the circuit should have been installed according</p> <p>24 to the original due date and when was it actually</p> <p>25 installed?</p>

Page 102

1 drain of the CLECs are. And even if we did know it,
2 that's not how the rate is set up, and that's not how it's
3 been ordered to be charged. And the usage that
4 Mr. Starkey claims Eschelon wants to be charged on is not
5 even a List 1 drain, which he claims is how we should
6 build our power plant.
7 And I think that sort of sums it up.
8 MR. TOPP: Thank you. With that, we would make
9 Mr. Ashton available for cross-examination.
10 ARBITRATOR RODDA: Okay, Mr. Merz.
11 MR. MERZ: Thank you, Your Honor.
12
13 CROSS-EXAMINATION
14
15 Q. (BY MR. MERZ) Good afternoon, Mr. Ashton.
16 A. Good afternoon.
17 Q. You have talked about this difference between
18 power usage and power plant. It's your understanding that
19 the parties have agreed upon language that would allow
20 Eschelon to elect to be charged for power usage based on
21 the measurement of its actual usage of power; correct?
22 A. For orders of power larger than 60 amps, that's
23 correct.
24 Q. And under that option what happens is Qwest
25 measures the power usage a maximum of four times a year

Page 103

1 and charges based on those measurements; is that right?
2 A. Charges for electric usage, yes.
3 Q. And so it's not like my electric meter at home
4 which is always spinning. You're just measuring snapshots
5 in time four times a year?
6 A. That's correct. So from the point that we take
7 the measurement until the next measurement, that's the
8 amount that is used as the basis for the charges.
9 Q. Okay. Now, the issue that we're grappling with
10 here, which is issue 8-1 and its subparts, is whether
11 there should be a similar measured charge option for the
12 power plant charge; correct?
13 A. That's the issue.
14 Q. Now, you mention in your summary some
15 terminology, List 1 drain, List 2 drain. I want to talk
16 with you a little bit about that.
17 List 1 drain is the amount of power drawn by the
18 equipment during the busiest hour of the busiest day of
19 the year; is that right?
20 A. List 1 drain is specific to individual shelves of
21 equipment that are fully carded during the busiest hour of
22 the busiest day of the year at normal operating voltages.
23 Q. Okay. And so that's sometimes referred to as the
24 peak drain?
25 A. Mr. Starkey referred to it as the peak drain. I

Page 104

1 would never refer to it as the peak drain, because the
2 peak drain is the List 2 drain.
3 Q. Okay. Fair enough.
4 Usage under normal operating conditions
5 fluctuates, and some days it's going to be higher and some
6 days it's going to be lower.
7 A. That's correct.
8 Q. And that fluctuation may vary depending on the
9 carrier; correct?
10 A. That's correct.
11 Q. And I think one of the things that you mention in
12 your testimony is that Eschelon serves businesses, and so
13 it may not have the same usage pattern as a company like
14 Qwest that serves residential customers. Fair enough?
15 A. That's fair.
16 Q. Now, List 2 drain is the amount of power drawn by
17 the equipment under worst case operating conditions; is
18 that right?
19 A. That's correct.
20 Q. And List 2 drain is significantly higher than
21 List 1 drain; isn't that right?
22 A. Generally.
23 Q. And because of manufacturers' requirements,
24 cables that carry power to the collocated equipment are
25 engineered to List 2 drain; is that right?

Page 105

1 A. At the minimum, yes.
2 Q. Now, I want you to refer to your rebuttal
3 testimony at Page 9.
4 A. Okay.
5 Q. And I'm looking at Line 17 through 21.
6 A. Is that the one that starts with the question?
7 Q. I'm looking at your -- let's see here, your
8 rebuttal, Page 9, List 17, or Line 17, there's the
9 sentence: Qwest designs and engineers power plant
10 capacity.
11 A. Maybe our page numbers don't match up.
12 Q. I have a question. How does Qwest determine when
13 to augment power plant at a central office? I have that
14 question on Page 9 at Line 14.
15 A. Okay. That's on my Page 10.
16 Q. Okay.
17 A. I'm with you.
18 Q. Do you see the sentence then that says: Qwest
19 designs and engineers power plant capacity sufficient to
20 meet the total busy hour load of all equipment present in
21 the central office, plus all CLEC ordered amounts of
22 power, plus the anticipated busy hour drain of expected
23 future Qwest equipment additions.
24 Do you see that testimony?
25 A. Yes, I do.

Page 106

1 Q. Now, when you're talking about the busy hour load
2 of all of the equipment present in the central office,
3 you're talking about both CLEC equipment and Qwest
4 equipment; is that right?
5 A. That's correct.
6 Q. And is that the List 1 drain that we've been
7 talking about?
8 A. It's not. It's actually going to be somewhat
9 less than the List 1 drain, because the List 1 drain is
10 measured on an individual equipment shelf basis. Assuming
11 the shelf is fully carded, which a lot of shelves in a
12 building are not, or even in a CLEC cage.
13 So it serves as a reasonable underestimate proxy
14 of the List 1 drain, but it's not the List 1 drain.
15 Because it would be nearly impossible to find out the
16 List 1 drain for every shelf that's been put in over the
17 last 100 years, it serves as a proxy.
18 Q. You're talking about the busy hour load for the
19 office in the aggregate?
20 A. Yes.
21 Q. And so for any particular office, there is an
22 hour on a particular day when that busy load is expected;
23 correct?
24 A. I wouldn't say expected, because we don't
25 necessarily know when to expect it. It might happen to be

Page 107

1 Mother's Day, depending on the usage profile of the
2 office, it might not.
3 Q. On that busy hour for that office, not all of the
4 CLECs will be at their highest drain for that year. Do
5 you understand what I mean?
6 A. That's correct.
7 Q. So if the busy hour for a particular office is
8 10:00 a.m. on Mother's Day, for example, but that isn't
9 the busy hour for Eschelon, then Eschelon's List 1 drain
10 isn't really part of this calculation, is it?
11 A. Eschelon's List 1 drain is never a part of the
12 calculation for power plant capacity.
13 Q. Let me ask it a different way. If the busy hour
14 for a particular office is 10:00 a.m. on Mother's Day, and
15 that isn't the busy hour for Eschelon, then Eschelon's
16 peak drain, the highest drain they would experience during
17 that year, wouldn't be part of that calculation?
18 A. A portion of it would because they're still
19 drawing power, but the overall peak that they would draw
20 would not, no. However, what is part of the calculation
21 is the amount that they've ordered so that we make sure
22 that we have enough power.
23 Q. I'm going to come to that in a second. What is
24 used for purposes of engineering the size of the power
25 plant -- I'm sorry. Let me ask this a different way.

Page 108

1 What is used for purposes of determining the size
2 of the power plant is the draw by Eschelon's equipment on
3 the busy hour for that office; right?
4 A. No.
5 Q. No. Why not?
6 A. Because for a CLEC we have no idea what their
7 List 1 drain is. We have no idea what their anticipated
8 usage is. And because we want to be able to provide them
9 with the power that they've ordered, we use the power that
10 they've ordered that -- the ordered amount as the amount
11 of capacity in the power plant that we provision.
12 Q. But isn't it the case that you know how much your
13 central office -- each of your central offices is drawing
14 on that office's busy hour? I mean, that's something that
15 you're able to measure; correct?
16 A. Yes, but then I have to -- because I can't grow
17 power plant as quickly as load can grow. Load can grow
18 minute to minute as cards are added. I can't grow a power
19 plant that quickly. I have to add rectifiers and
20 batteries, which takes months and months, and engines and
21 so forth. So I have to be ahead of the curve.
22 Q. And that's why you add in the CLEC ordered
23 amounts of power; is that correct?
24 A. Correct.
25 Q. And when you're talking about the CLEC ordered

Page 109

1 amounts of power, what you're really referring to is the
2 size of the power cables that the CLEC orders. Is that
3 how the amount of power is determined?
4 A. No. It's the number that they put on their order
5 form is the amount of power they want.
6 Q. And what blank are they filling in when they put
7 that down on their order form? What is the question
8 they're answering?
9 A. I don't have the order form in front of me, but I
10 believe it's how much power do you want or what size
11 feeders do you want. I don't know the exact wording.
12 Q. Well, is it what size feeders or how much power,
13 or do you not know?
14 A. I don't know without the order form.
15 Q. If the question were what size feeders do you
16 want, what would that mean to you? The size of the power
17 cables; correct?
18 A. Yeah. But I doubt that we ask the question that
19 way because we size the cables. So without looking at the
20 order form, I couldn't say exactly how we ask the
21 question.
22 Q. And that's not something that you have attached
23 to your testimony, the order form?
24 A. I don't believe I have attached it to my
25 testimony, no.

Page 110

1 Q. Now, if you're counting the busy hour load, which
2 would include the drain of all of the CLECs, and you're
3 also counting the List 2 drain of the CLEC equipment,
4 aren't you counting that CLEC's drain twice?
5 A. We're counting a small portion of the CLEC's
6 drain twice. It's not all of the CLEC's drain twice.
7 Q. Okay. And what do you mean by a small portion?
8 A. Well, I mean, whatever the CLEC is drawing at the
9 minute we take the busy hour reading, that portion, that
10 is added, obviously, along as part of the aggregate along
11 with their order.
12 Q. And it could happen that the CLEC's busy hour
13 drain happens at the same time as the central office's
14 busy hour drain.
15 A. That's theoretically possible.
16 Q. And if that were the case, you would be counting
17 all of the CLEC's busy hour drain twice, because the busy
18 hour drain plus the List 2 drain is actually more than
19 twice the busy hour drain; correct?
20 A. Probably, depending on how the CLEC uses it.
21 There are CLECs who actually use more power than what
22 they've ordered.
23 Q. Explain to me how that happens.
24 A. Okay. There's -- in any order there's an -- and
25 it states so right on the order form that if you order the

Page 111

1 quantify of one feeder set, you're going to get an A
2 feeder set and a B feeder set. So if a CLEC orders 100
3 amps, Qwest is going to use its sizing rules and the same
4 rules that are you used in the National Electric Code to
5 size the feed at least 125 percent of the order. That's
6 the A feed. The B feed then becomes the redundant backup
7 feed, so to speak, even though they normally share power.
8 So in reality on a 100 amp order, the CLEC has the
9 capability to draw at least 250 amps before they blow
10 their fuses.
11 Q. So the CLEC, at least in theory, can draw on both
12 the A feed and the B feed simultaneously?
13 A. Correct.
14 Q. Up to the maximum of the size of the cable?
15 A. Of the fuse.
16 Q. Of the fuse.
17 A. The cable is usually going to be much larger in
18 terms of ampacity than the fuse size.
19 Q. List 2 drain for Qwest equipment is not part of
20 the calculation for sizing the power plant of a central
21 office; is that right?
22 A. Not for the power plant, no.
23 Q. Why not?
24 A. Because Qwest knows its List 1 drain for each
25 piece of equipment that we're going to add to the office.

Page 112

1 Q. Does Qwest as part of its power ordering
2 requirements ask CLECs to state what their List 1 drain
3 is?
4 A. No, we don't. Because even if we did, we would
5 have no way of knowing how correct it is.
6 Q. Well -- I'm sorry. I don't mean to cut you off.
7 A. Even with our own equipment, we don't just take a
8 manufacturer's word as to what the List 1 drain is. We
9 have lab experience and field experience with it that
10 shows us here is what the List 1 drain is, here is what it
11 normally draws.
12 Q. Well, do you assume that CLECs are not as able as
13 Qwest to determine what their List 1 drain is?
14 A. In my experience, most CLECs, yes, they're not as
15 able.
16 Q. Why do you say that?
17 A. Because most CLECs don't have the power
18 engineering expertise that Qwest does.
19 Q. Going to your rebuttal at Page 3.
20 A. Under which question is it? So I make I'm on the
21 right page.
22 Q. Sure. Good question. Let's see here. Page 3.
23 How does Qwest design a power plant?
24 A. Okay.
25 Q. I'm looking at -- let's see here. For example,

Page 113

1 when a CLEC provides.
2 A. Yes.
3 Q. For example, when a CLEC provides Qwest with an
4 order for power feed, paren, sometimes referred to as
5 power distribution or power cables, Qwest provisions the
6 feed at the requested amount and insures the power plant
7 has sufficient spare capacity to provide that ordered
8 amount of power.
9 Do you see that?
10 A. Yes.
11 Q. And I had interpreted that to mean that what the
12 CLEC is ordering is power cables, the size of the power
13 cables. That's not what you intended, I take it?
14 A. It's not really the size of the power cables,
15 because the size of the power cables is not only amperage
16 dependent, it's distance dependent. And so that's due to
17 the low voltages at which telecommunications equipment
18 operates.
19 Q. Under what circumstances would CLEC equipment be
20 expected to draw List 2 drain?
21 A. Assuming that they actually sized based on List 1
22 and List 2 drain, the List 2 event is going to occur after
23 batteries have been fully discharged to the lowest
24 possible voltage, operating voltage of each piece of
25 equipment. As the equipment restarts, as power is brought

<p style="text-align: right;">Page 114</p> <p>1 back, as the equipment restarts, fans are going to start 2 up, capacitors are going to draw extra power. So not only 3 will the equipment be drawing its normal power, it will be 4 drawing its normal power at a low voltage, which means 5 higher current. And it will also be having start-up 6 currents for capacitors and fans and things like that. 7 Q. Under what circumstances are batteries fully 8 discharged? 9 A. Typically there's two different circumstances. 10 And I've been involved with many, many outages. Although 11 it doesn't happen that often, it happens. 12 The two major circumstances in which it happens 13 are, let's say, for example, a major natural disaster 14 where I can't get fuel to a generator. AC power is out 15 for days, my generator runs out of fuel, and the batteries 16 eventually run out of voltage, so to speak. 17 Q. And just to interrupt you a second, that's a 18 circumstance that you're aware of having happened? 19 A. Oh, yeah. Yes. 20 Q. All right. 21 A. The other circumstance that happens is there are 22 times when accidents happen. Let's say, for example, that 23 an electrician is putting some new lights and they have a 24 run of conduit, metallic aluminum conduit, and they happen 25 to get it across ground and a hot bus. The entire office</p>	<p style="text-align: right;">Page 116</p> <p>1 peak usage; is that correct? 2 A. It's unlikely to capture the busy hour usage. 3 Q. That's because the measurement is just a snapshot 4 in time? 5 A. Correct. 6 Q. Now, is the concern that the measurement might 7 result in Qwest being undercompensated? 8 A. I would say the primary concern is that we would 9 not have enough power available to serve the CLEC as well 10 as ourselves. Because the power plant, as Mr. Starkey 11 pointed out, is a shared resource. So if I run out of 12 capacity, everybody goes down. Not just the CLEC, but 13 Qwest as well. 14 Q. I'm not sure if you answered my question. I'm 15 going to try it again. 16 A. Okay. 17 Q. When you talk about not measuring based on a 18 snapshot in time, what I would assume is at least part of 19 the issue was that if the measurement turns out to be less 20 than average use during the period that that measurement 21 is going to apply, Qwest ends up not being fully 22 compensated. I thought you were going to say that was 23 part of the issue. Is it not part of the issue? 24 A. That's not really part of the issue, because if I 25 take random measurements in time over time, randomly,</p>
<p style="text-align: right;">Page 115</p> <p>1 at that point is going to go to zero volts, and it's going 2 to take down most of the equipment, if not all. And as 3 that equipment -- I still have power to the office, but 4 because I had a temporary short, the equipment stopped 5 working. The equipment is going to come back up with a 6 List 2 drain. 7 Q. How frequently does a List 2 drain happen? I 8 mean, it's an unlikely event, is that fair to say? 9 A. It is. I would say on average across, you know, 10 a couple of thousand central offices, maybe five times a 11 year. 12 Q. Would you agree with me that it would be 13 impossible for a CLEC's equipment to simultaneously draw 14 List 1 drain and List 2 drain? 15 A. Yes. They're mutually exclusive of each other. 16 List 2 drain is -- List 1 drain is part of the List 2 17 drain. The List 2 drain is just more. 18 Q. Now, your rebuttal, Page 13 maybe. I'm looking 19 at the question that says: Why can't Qwest just measure 20 Eschelon's peak usage and bill for power plant on that 21 basis? 22 A. Okay. 23 Q. And what I understand you to be saying is you 24 can't charge for power plant based on measurement, because 25 measurement at random times is unlikely to capture the</p>	<p style="text-align: right;">Page 117</p> <p>1 they're going to average out. So yes, I may be 2 undercompensated for a three-month or six-month period, 3 but I may be slightly overcompensated for the next three- 4 or six-month period. 5 Q. The measured usage charge options available for 6 power usage is one that happens based on a snapshot in 7 time? 8 A. That's correct. 9 Q. And what I understand you to be saying is the 10 concern is different, because here you're concerned with 11 whether -- when you're talking about power plant, you're 12 concerned whether the power plant is going to be 13 adequately sized? 14 A. Well, I was speaking -- in my previous answer I 15 was speaking specifically of usage in terms of recovering 16 costs for electricity. The power plant, we want to make 17 sure that there's enough power plant there so if the CLEC 18 ever draws the amount of power that they ordered, it would 19 be available to them 24 hours a day, seven days a week. 20 MR. MERZ: I don't have anything further. 21 ARBITRATOR RODDA: Okay. I don't have any 22 questions. 23 MR. ROSELLI: Just very briefly. 24 25</p>

Page 126

1 the cost docket, those steps were all laid out and
 2 averages were given for all of those steps without regard
 3 to which of the types of design changes were occurring.
 4 And so I guess to answer your question, when we
 5 proposed the rate for that, as I said before, it was
 6 intended to address all of the different circumstances.
 7 It's an average time for a task, receiving an order,
 8 processing an order for a design change, or reinitializing
 9 the information for the order that's already in process if
 10 the design change happens during the days of provisioning,
 11 and the average times for those tasks regardless of what
 12 kind of design change comes through.
 13 Q. The cost study that you are referring to has not
 14 been filed in this case; is that right?
 15 A. It hasn't been filed in this case. It's based on
 16 an approved rate from the cost docket, the 0194 docket. I
 17 can only remember the last four numbers, but it was the
 18 generic cost case in this state.
 19 MR. MERZ: Your Honor, I have an exhibit actually
 20 for Mr. Denney's testimony that I wanted to ask
 21 Ms. Million about. I don't need to number it separate
 22 since it's already part of his testimony, but if it's all
 23 right with you I'll just hand a copy to her.
 24 ARBITRATOR RODDA: That's okay.
 25 Q. (BY MR. MERZ) Ms. Million, I have handed you

Page 127

1 there Exhibit DD-23 to the surrebuttal testimony of
 2 Douglas Denney. Do you recognize that document?
 3 A. Well, I can identify it as steps out of an,
 4 evidently, Washington study that was conducted. It looks
 5 to me as though it was a compliance study that was done in
 6 Part D of the Washington case. This is one of hundreds
 7 and hundreds of pages, so I don't -- I can't say that -- I
 8 mean, I recognize what it is. I can't say that I
 9 recognize --
 10 Q. These two pages --
 11 A. -- the document.
 12 Q. -- concern cost studies for design changes; is
 13 that right?
 14 A. This is a piece of a study, yes. It's not the
 15 entire thing, because it only identifies the direct costs.
 16 It doesn't provide for any of the loaded -- loadings on
 17 that. So you can't look at this and see what the final
 18 cost or -- excuse me. Well, yeah, the final cost or rate
 19 is for this element. You can only see what the direct
 20 costs are in this instance based on this compliance
 21 filing.
 22 Q. Now, when you say there are hundreds of pages,
 23 are you saying that there are hundreds of pages relating
 24 to design changes or --
 25 A. No. I'm saying that a nonrecurring cost study

Page 128

1 can have many hundreds of elements in it, and each element
 2 has several pages associated with it, and so a
 3 nonrecurring cost study can be size of this binder here.
 4 And what we've got is two pages that don't represent the
 5 entire cost for either one of these identified services.
 6 It's just a part of the cost.
 7 Q. The first page says design change mechanized;
 8 correct?
 9 A. Yes, it does.
 10 Q. Let me ask you this. Are these two pages similar
 11 to part of what would have been the cost study that was
 12 submitted in Arizona? Do you know?
 13 A. The assumptions in this would be different,
 14 because this is a compliance filing based on what we were
 15 ordered to do by the State of Washington, the commission
 16 in the State of Washington. So it includes assumptions
 17 that they have imposed on us as a result of their order.
 18 Q. The assumption that they have imposed is found in
 19 Probability No. 4; is that right?
 20 A. Yes. It's the .7 probability reflects a
 21 30 percent reduction to work time estimates.
 22 Q. And so what the Washington Commission was saying
 23 is we're going to reduce the amount of time that you have
 24 estimated by 30 percent, and the way you get to that is
 25 this .7 adjustment; is that right?

Page 129

1 A. Yes, that's correct.
 2 Q. The second page of the document is design change
 3 manual; is that right?
 4 A. Yes, it is.
 5 Q. What do those two things mean, design change
 6 manual and design change mechanized?
 7 A. In Washington they make a distinction between
 8 orders that will processed mechanically via some sort of
 9 computer interface versus orders that they presume are
 10 processed manually. In other words, they come to Qwest in
 11 a fax format or something of that nature.
 12 And they've made -- in that state they've made a
 13 distinction between those to things. In the beginning
 14 when we -- and you have to remember this is -- I think the
 15 date on this study is 2001.
 16 In the beginning when we first started receiving
 17 orders from CLECs, we had a tremendous number of CLECs
 18 that were still sending fax orders to us, and we were
 19 calculating an average time. And in Washington they said
 20 we would like to split this out between those you receive
 21 manually and those you receive in a mechanized fashion.
 22 That is true in Washington, New Mexico. I don't know that
 23 there's any other state that's made that distinction, and
 24 it certainly was not a part of the distinction that
 25 determined the rate for design changes here in Arizona.

Page 134

1 on processing these for the CLECs as in the UNE world.
 2 Q. And just to now finally bring this back to this
 3 case. Was the same template used for the Washington study
 4 and the study that was filed with the Arizona Commission?
 5 A. It could well have been, yes. I would have to
 6 look at that study to know for sure, but I would presume
 7 that it probably was. Because I think the Arizona study
 8 was developed at about the same time and would have been
 9 based on that same assumption that we were going to use
 10 the existing template for a design change and simply put
 11 in the correct times for UNEs.
 12 Q. When you say existing template, what do you mean
 13 by that exactly?
 14 A. Well, as I explained, these are a couple of pages
 15 out of a normal nonrecurring study that can be as thick as
 16 this binder or that binder, so many, many pages.
 17 And this was a template of -- in other words, for
 18 every single element that we do a nonrecurring study for,
 19 the same process is gone through. You determine which of
 20 the centers are going to be involved, you lay out times,
 21 you lay out probabilities, and the costs, the labor rate
 22 for that, and you determine a cost. And then there's
 23 another part that's missing from here that gets you to a
 24 final cost or a final rate that also includes the loadings
 25 on that.

Page 135

1 And we already had this set of steps and
 2 processes laid out for an existing design change charge
 3 that we had on the private line side, and so that's what I
 4 mean by template. It was simply already laid out in
 5 another nonrecurring study someplace, and we pulled it
 6 over to make use of it in the nonrecurring for the UNEs.
 7 Q. Under service delivery coordinator, you have got
 8 a bunch of lines: Validate exact, validate TIRKS, assign
 9 new TSC, TGMR. Do you see those?
 10 A. Uh-huh.
 11 Q. Yes?
 12 A. Excuse me. Yes.
 13 Q. Those are the tasks, I take it, that the service
 14 delivery coordinator performs when he or she does a design
 15 change?
 16 A. Yes. That's correct.
 17 Q. Who identified these tasks?
 18 A. The service delivery coordinator subject matter
 19 expert, who is an employee in Qwest who works in this area
 20 and has responsibility for the interconnect service center
 21 or the service delivery coordinators, and who is someone
 22 who's got a great deal of experience in the area.
 23 Q. What was the question that person was asked?
 24 A. Estimate the times for -- first of all, lay out
 25 the tasks for us. When they were originally asked this,

Page 136

1 lay out the tasks for us that are involved in processing a
 2 design change, and estimate the times for us that those
 3 tasks take when any of those tasks have to be processed
 4 manually, and estimate for us the probability that those
 5 tasks are going to happen on a manual basis.
 6 Q. And was that person at the time this study was
 7 done asked to estimate design changes for what? Design
 8 changes for what? I'll just leave it at that.
 9 A. For UNEs. Design changes for any UNEs that were
 10 going to require design changes, and under the various
 11 circumstances of a design change.
 12 I think if you read in the nonrecurring cost
 13 study -- and I believe that I have information about that
 14 perhaps in my rebuttal testimony -- what the executive
 15 summary of the nonrecurring study says is design changes
 16 of service that happens in these, and these, and these
 17 circumstances. And it lists out several different things,
 18 and it talks about the end user premises, and it talks
 19 about channel terminations which are related to CFA
 20 change, and it talks about transport circumstances.
 21 And it lays out all of the different types of
 22 design changes that were contemplated when these time
 23 estimates were put together. And that was a part of the
 24 record in the cost case where the rate for design changes
 25 was ordered by the Commission.

Page 137

1 Q. How do we know that?
 2 A. Well, because I tell you that in my testimony,
 3 and I promise I'm not lying. And number two, you can go
 4 to the cost docket and the record in the cost docket, and
 5 you can see it it's all on file as part of the cost case
 6 in this state.
 7 Q. Is there anything on this piece of paper, either
 8 of these pieces of paper that we have in front of us that
 9 we can look at to conclude that this sort of averaging
 10 that you have discussed actually happened?
 11 A. There isn't anything that indicates that on the
 12 paper itself, but that's why I have pointed out that I
 13 believe that if there's concern about rates, that they
 14 need to be discussed in a cost proceeding where you can go
 15 through the studies and see the detail and discuss what
 16 goes into them and understand all of that. And I have
 17 certainly suggested that with respect to the unapproved
 18 rates.
 19 But this rate went through all of that process
 20 and the rate for design change in Arizona has already been
 21 through that process in a contested case where all of
 22 those questions got asked and answered.
 23 Q. These tasks that are under service delivery
 24 coordinator all look to me like administrative kinds of
 25 functions. Would that be a fair characterization?

Page 142

1 made for this, and that's the way the study was presented
 2 and that's the way it was approved. And I'm presuming
 3 that the person that made that average estimate was asked
 4 to take into effect all of the different circumstances
 5 under which a design change might occur, and these are the
 6 numbers that they came up with.
 7 Q. Now, you have talked about this study that I
 8 assume was quite a lot of work to put together. Would
 9 that be fair?
 10 A. Yes.
 11 Q. And at least in Arizona, the rate that was
 12 developed for design changes took effect on June 12th of
 13 2002. That's your rebuttal testimony; correct?
 14 A. That's correct.
 15 Q. And Qwest began charging the design change rate
 16 for unbundled transport as soon as it was approved in June
 17 of 2002; correct?
 18 A. I don't know when they began charging for it.
 19 Q. Well, you would expect that Qwest, as soon as it
 20 got a rate approved, would then go about implementing that
 21 rate so it could charge CLECs; correct?
 22 A. You would presume that, but that does not always
 23 happen. Sometimes Qwest has rates approved and they
 24 don't, for whatever reason, get implemented right away.
 25 Q. And, in fact, in this particular case, Qwest

Page 143

1 didn't begin charging for design changes for loops until
 2 more than three years later, October 1, 2005; is that
 3 right?
 4 A. I believe that's what I have seen in the
 5 testimony, yes.
 6 Q. And so it's your testimony that even though Qwest
 7 went to all of the trouble to do a cost study calculating
 8 an average, getting a rate, getting the rate approved, it
 9 just decided not to apply that rate to loops for, let's
 10 see, three years?
 11 A. It doesn't just decide not to charge a rate, but
 12 there are circumstances under which because of our own
 13 internal difficulties with billing processes and that sort
 14 of thing, we don't always implement rates right away.
 15 And I can give you an example that I'm intimately
 16 familiar with, because I fought for this for several years
 17 internally to get the OSS rates implemented. We had
 18 approved rates dating back to 2001 and before in both
 19 Washington and New Mexico, New Mexico's on an interim
 20 basis. And it took several years to get the funds
 21 internally.
 22 You know, we can't -- we're like anybody else.
 23 We have budgets and we have constraints. We can't do
 24 everything that we want to do every single time it comes
 25 across the desk for OSS kinds of updates, and billing

Page 144

1 updates are included in that. And for the OSS, it took us
 2 four or five years of Ms. Albersheim and myself fighting
 3 tooth and nail with the people internally to get them to
 4 actually implement that rate, even though we had an
 5 approved rate.
 6 So I guess what I'm telling you is that there are
 7 a number of different circumstances, including some like
 8 that, where rates are approved and we don't begin charging
 9 them because either we can't or because we've made a
 10 determination internally not to charge for something.
 11 And so I don't know what the circumstances are,
 12 but I do know that we did not charge for the loops in the
 13 CFA changes initially.
 14 Q. And all of those things that you have described
 15 relating to OSS and relating to fighting tooth and nail
 16 and all of those things that you just talked about, you
 17 don't know that any of those things have anything at all
 18 to do with design changes; correct?
 19 A. I do not. I just am giving you an example of why
 20 sometimes a rate is approved and we don't implement it
 21 right away.
 22 Q. And you don't know why Qwest didn't begin
 23 charging for design changes for loops?
 24 A. I believe I just said I don't have any idea why
 25 we didn't charge the design change for loop in CFA, but we

Page 145

1 did have an approved rate for those.
 2 Q. Now, you have also testified that you believe
 3 it's not necessary to develop separate charges for various
 4 types of design changes; correct?
 5 A. That's correct.
 6 Q. And so what you're saying is it's okay to have an
 7 average for loop transport and CFAs?
 8 A. That's my belief. If we tried to have separate
 9 rate elements for every single different nuance of every
 10 single different thing that we provide the CLECs in terms
 11 of provisioning, that hundreds of rates would expand to
 12 probably more than a thousand rates.
 13 So there are -- I'm sorry. There are averages
 14 that are necessarily, then, a part of our provisioning
 15 charges.
 16 Q. Qwest has five different loop installation
 17 options; correct?
 18 A. That's correct.
 19 Q. Each of those options has a separate rate?
 20 A. Yes. That's correct.
 21 Q. You don't have an average rate for all of your
 22 installation options?
 23 A. That's true.
 24 Q. Qwest has still another installation rate for
 25 UDIT; correct?

Page 146

1 A. Yes. That's correct.
 2 ARBITRATOR RODDA: I'm sorry, what was that?
 3 MR. MERZ: UDIT. Unbundled dedicated interoffice
 4 transport.
 5 ARBITRATOR RODDA: Thank you.
 6 THE WITNESS: I've said there are several hundred
 7 nonrecurring rates that we provide.
 8 Q. (BY MR. MERZ) In your surrebuttal at Page 20,
 9 Lines 1 through 4 -- actually, that's not the right place.
 10 I'm sorry. I'm looking at your rebuttal, not your
 11 surrebuttal. Page 20.
 12 A. Give me just a moment to find that.
 13 Q. Sure.
 14 A. I have that.
 15 Q. You say there beginning at Line 1: Nor would it
 16 be appropriate to micromanage Qwest's product offerings by
 17 requiring it to provide costs and processes to address
 18 every possible "flavor" of provisioning activity in an
 19 increasingly competitive environment.
 20 Do you see that?
 21 A. That's correct.
 22 Q. Now, for unbundled loops and unbundled transport,
 23 there is not competition; correct?
 24 A. I wouldn't agree with you. We have the TRRO
 25 proceedings that are determining right now that for some

Page 147

1 unbundled loops and some unbundled transport there's a
 2 great deal of competition.
 3 Q. For loops and transports for which Qwest is
 4 required to provide those elements on an unbundled basis,
 5 the FCC has made a determination that there's not
 6 competition; correct?
 7 A. That's correct.
 8 Q. And that's the reason why Qwest is required to
 9 provide unbundled loops and transport at cost-based rates;
 10 correct?
 11 A. That's correct.
 12 Q. I want to talk with you now about collocation
 13 availability inventory, which is issues 8-20 and 8-20(a).
 14 A. Okay.
 15 Q. And the issue here is whether Qwest should have
 16 to pay a quote preparation -- I'm sorry. Whether Eschelon
 17 should have to pay a quote preparation fee when it
 18 requests a collocation available inventory site. Are you
 19 familiar with that issue?
 20 A. Yes.
 21 Q. And just to get the terminology straight, a
 22 collocation available inventory site is a site that's been
 23 returned by a CLEC to Qwest, and it is then posted on
 24 Qwest's website and is available for another CLEC to
 25 purchase; correct?

Page 148

1 A. Yes. That's correct.
 2 Q. Now, in those instances when Qwest gets back a
 3 collocation site, a quote preparation fee has already been
 4 paid in connection with the site at the time it was quoted
 5 to the first CLEC; is that right?
 6 A. For the collocation effort that that CLEC would
 7 like to have Qwest undertake, yes.
 8 Q. And it's Eschelon's position that Qwest has
 9 already been paid, and so Qwest shouldn't be allowed to
 10 recover another fee; is that right?
 11 A. Well, that's Eschelon's position. Qwest's
 12 position is that now a new CLEC is coming in, and it may
 13 or may not have the same needs or different needs. And so
 14 Qwest needs to manage the new collocation project and find
 15 out what that CLEC needs and do the engineering and the
 16 processing that are entailed in getting that CLEC into
 17 that collocation space.
 18 Q. At Page 19 of your surrebuttal, Lines 15 through
 19 20, you describe a number of activities associated with
 20 the QPF.
 21 A. Could you tell me what lines you're talking about
 22 again?
 23 Q. I can. It's Page 19 of your surrebuttal,
 24 beginning at Line 15 and following through the end of
 25 Line 20.

Page 149

1 A. Yes. I have that.
 2 Q. Okay. And my question is, those activities there
 3 are activities that you say are associated with the QPF
 4 for available inventory; correct?
 5 A. Yes. That's correct. In this instance, you have
 6 a new order coming in from the CLEC that's going to take
 7 over the available inventory. And there is project
 8 management and verification and inventory of the reusable
 9 elements and so forth, a new design that may need to take
 10 place as a part of provisioning that collocation site for
 11 the new CLEC.
 12 Q. The purpose of all of the activities that are
 13 described there in your testimony is to verify space and
 14 to develop a quote; isn't that right?
 15 A. Well, there are a number of steps that I have
 16 laid out here that are a part of that process.
 17 Q. Those are the steps, but the purpose overall is
 18 to verify space and to develop a quote; isn't that right?
 19 A. Well, it's -- no. It also includes the project
 20 management of bringing the new collocator into the space,
 21 and all of that goes along with processing the order. And
 22 I mean, it's the same -- it's not just developing a quote
 23 and checking on the site. It's also the order processing
 24 and everything that goes along with bringing a new
 25 collocator into that space.

Page 162

1 charge, it's Qwest's position that that is an approved
2 rate from the Commission?
3 A. Oh, absolutely.
4 Q. And in your testimony on Page 19, you give the
5 specific cost study that supports Qwest's position?
6 A. Yes, I do.
7 Q. And in your testimony you describe some aspects
8 of that cost study and the resulting rate that would lead
9 one to conclude that that rate encompasses the issue we're
10 dealing with here?
11 A. Yes.
12 Q. And you filed this testimony on February 9th of
13 2007?
14 A. Yes, I did.
15 Q. Were you ever asked to provide this study to
16 Eschelon between February 9th and now?
17 A. No.
18 Q. Were you ever advised -- well, no further
19 questions on that.
20 Changing to the collocation available issue,
21 which is 8-20 and 8-20(a), you were asked a few questions
22 about, you know, the relationship between a quote
23 preparation fee for a new site as well as a quote
24 preparation fee for an already existing site.
25 Are there examples where there could be more work

Page 163

1 in a used site versus a new site?
2 A. Well, as I explained to Mr. Merz, I'm certainly
3 not an engineer and so I'm not involved in those, but I
4 would certainly imagine that there are circumstances where
5 there's more work involved. I know that there are changes
6 that are made to the site: Old equipment that's taken
7 out, new equipment that's needed, power that's different.
8 But I don't know the specifics of any of that. But I
9 would certainly think that there are circumstances where
10 it could actually be more work to identify in an available
11 inventory than in a new.
12 MR. TOPP: Okay. No further questions.
13 ARBITRATOR RODDA: Okay. Did you have anything
14 further, Mr. Merz?
15 MR. MERZ: Maybe just a couple.
16
17 **RE-CROSS-EXAMINATION**
18
19 Q. (BY MR. MERZ) You were aware, Ms. Million, when
20 you filed your testimony in this case that there was an
21 issue regarding design changes for loops and CFA changes;
22 right?
23 A. Yes. I was aware of that.
24 Q. And you were aware that it was Eschelon's
25 position that the rate that the Arizona Commission had

Page 164

1 approved did not cover loops and design changes?
2 A. Yes. And that's why I filed the testimony that I
3 did explaining that it was clearly laid out in what we
4 filed in the cost docket, that it was, in fact,
5 anticipated.
6 Q. And because I misspoke, I actually have to ask
7 the question again.
8 You were aware that it was Eschelon's position
9 that loops and CFA changes were not covered by the design
10 change rate that had been previously approved by the
11 Arizona Commission?
12 A. Yes, that was Eschelon's position. And my
13 position is that it is covered, and that's what my
14 testimony says.
15 MR. MERZ: Okay. Nothing further.
16 ARBITRATOR RODDA: Okay. That's --
17 MR. TOPP: Nothing further.
18 ARBITRATOR RODDA: Okay. Just so you get the
19 last shot at it, so you can beat that horse. All right.
20 Thank you, Ms. Million.
21 MR. TOPP: Your Honor, our next witness would be
22 Karen Stewart. But as we talked at the beginning of the
23 day, if we could start with her tomorrow morning, that
24 would be ideal.
25 ARBITRATOR RODDA: Okay. And that's your last

Page 165

1 witness; right?
2 MR. TOPP: Yes.
3 ARBITRATOR RODDA: So Mr. Merz, do you want
4 to -- it's 4:00. I mean, we could stop for the day.
5 MR. MERZ: I think that makes more sense.
6 Mr. Starkey is our first witness, and he'll be here
7 tomorrow to begin whenever we're done with Ms. Stewart. I
8 mean, I think that we're going to be fine on time, so I
9 don't think that would be a problem.
10 ARBITRATOR RODDA: I am impressed with the time.
11 I have to say, I was worried coming in, but you all have
12 surprised me.
13 All right. So we'll break for the day and pick
14 up tomorrow with Ms. Stewart; right?
15 MR. MERZ: This doesn't necessarily have to be on
16 the record, or it could be, but I only shipped two copies
17 of our witness testimony from Minnesota. They end up
18 being two pretty big boxes. So I had one for the witness
19 and one for me. I didn't necessarily anticipate that you
20 would need another one.
21 ARBITRATOR RODDA: I don't need one. So the
22 witness one can be the one that we mark for the court
23 reporter.
24 MR. MERZ: Yeah. That's what I had in mind. I
25 just wanted to make sure that you got what you needed.

Eschelon / Qwest Arbitration

3/20/2007

T-03406A-06-0572, etc.

Vol. II

Page 168 to Page 396

PREPARED BY:

AZRS
Arizona Reporting Service, Inc.
AZRS
Court Reporting & Videoconferencing Center

2627 N. 3rd Street, Suite Three
Phoenix, Arizona 85004-1126

Phone: (602) 274-9944

Fax: (602) 277-4264

Website: www.az-reporting.com

email: azrs@az-reporting.com

Page 177	Page 179
<p>1 have some type of copper T1 where a single loop is 2 channelized up to 24 channels. Again, we would need to 3 MUX down and turn off a single channel to an end user 4 customer.</p> <p>5 Once again, now, to the extent that the OC3 are 6 no longer unbundled loops, when they were and multiplexing 7 was required, you have got that -- you have got the remote 8 terminal here, and so the end user customer isn't using 9 this full capacity. The end user customer is just using 10 one single loop. So at the RT we're basically deMUXing 11 down to give them one loop. It's then going across high 12 frequency bandwidth to a multiplexer which then is 13 demultiplexing down to provide an unbundled loop or 14 equivalent. Eventually, then, we would provide that 15 unbundled loop into the CLEC's collocation.</p> <p>16 So this, again, is just describing that 17 multiplexing function that when we MUX up to go high 18 capacity in the loop, we need to MUX back down and hand 19 off to the CLEC exactly what they ordered. And they can 20 order a variety of loops, DS1, DSO, two-wire, four-wire, 21 whatever. We need to take all of the steps necessary on 22 this side to hand that loop off to them.</p> <p>23 The multiplexing that's involved with the 24 loop-MUX combination is multiplexing that is beyond the 25 MDF. And this is a multiplexing that would typically be</p>	<p>1 those two types of facilities together, that's a 2 commingled arrangement, and, therefore, it does not belong 3 in the UNE section of the ICA, Section 9. It belongs in 4 Section 24, the commingled section, that in negotiations 5 with Eschelon we agreed to include in the ICA.</p> <p>6 Q. (BY MR. DEVANEY) Does that conclude your 7 summary, Ms. Stewart? 8 A. Yes, it does.</p> <p>9 MR. DEVANEY: Your Honor, Ms. Stewart is 10 available for cross.</p> <p>11 ARBITRATOR RODDA: Mr. Merz. 12 MR. MERZ: Thank you, Your Honor.</p> <p>13 14 CROSS-EXAMINATION</p> <p>15 16 Q. (BY MR. MERZ) Good morning, Ms. Stewart. 17 A. Good morning.</p> <p>18 Q. I'm going to start this morning talking with you 19 a little bit about design changes, which is issue 4-5. 20 And I would refer you to your surrebuttal testimony 21 beginning at Page 4, Lines 21 through 22. 22 Do you have it there? 23 A. Yes, I do.</p> <p>24 Q. You say there Eschelon should not be permitted to 25 obtain the benefits of design changes without paying for</p>
Page 178	Page 180
<p>1 seen as a transport multiplexer. So in this case, all of 2 the unbundled loops have totally been completed, 3 delivered, and handed off as a complete channelized loop. 4 The loops are then connected to the MUX, which then at 5 that point connect the MUX into the CLEC collocation.</p> <p>6 So in this example, transport is not part of the 7 service offering or what we think of as traditional 8 transport. It's just the multiplexer. However, the 9 multiplexer as recognized in the Virginia arbitration, and 10 is not on any list as an unbundled network element with 11 the FCC, is that we are not required to provide a 12 stand-alone multiplexer as a UNE. So we have no 13 obligation to do this stand-alone multiplexer as a UNE. 14 And I think that's pretty clear that this is not an 15 unbundled network element when it's stand-alone with no 16 transport.</p> <p>17 Because this is not a UNE, just because a UNE 18 loop is terminating into it, it does not make a UNE 19 combination. To have a UNE combination you have to put 20 two UNEs together, and in this case there's only one UNE. 21 So we believe it's very clear that an order for 22 stand-alone multiplexing would have to come out of Qwest's 23 access or private line tariff.</p> <p>24 Therefore, the multiplexer is out of the access 25 private line tariff, and this is a UNE. When you put</p>	<p>1 them, which is what Mr. Denney is effectively seeking 2 through his testimony. Do you see that? 3 A. Yes, I do.</p> <p>4 Q. Now, you understand that Eschelon has proposed in 5 this case interim rates for design changes for loops and 6 for CFA changes; correct? 7 A. Yes. They have offered rates that are 8 substantially lower than the rates that have already been 9 approved in the Arizona cost docket.</p> <p>10 Q. And Qwest believes that the rates that Eschelon 11 has proposed for design changes for loops and CFA changes 12 is too low? 13 A. Would not cover Qwest's costs. Correct.</p> <p>14 Q. It's not the case, then, that Eschelon is asking 15 for design changes without paying for them, is it? 16 A. Qwest believes that the proposed rates that 17 Eschelon has put out -- and, again, we have existing 18 approved rates as Ms. Million has discussed in her 19 testimony -- that it would be inappropriate and Qwest 20 would not be recovering its costs for design changes.</p> <p>21 Q. And my question is a different one. My question 22 is you understand that Eschelon is not proposing in this 23 case that Qwest provide it with design changes for loops 24 and CFA changes without charge. That's not Eschelon's 25 proposal in this case, is it?</p>

Page 181

1 A. It is Eschelon's proposal that they would have
2 the below cost rate of \$5 and \$30.
3 Q. Now, you say -- again looking at your surrebuttal
4 testimony at Page 6, Lines 3 through 4. Do you have that
5 there?
6 A. Yes, I do.
7 Q. You say that any denial of cost recovery even for
8 a limited period is unlawful and improper; correct?
9 A. Yes.
10 Q. And that is your view?
11 A. Yes.
12 Q. Would you also agree that to require Eschelon to
13 pay a rate that exceeds Qwest's TELRIC costs even for a
14 limited period of time is unlawful and improper?
15 A. Qwest is not asking that Eschelon pay costs that
16 exceed the TELRIC rate. A TELRIC rate for design changes
17 has been established in an Arizona cost docket, as
18 Ms. Million has testified. Therefore, that would not be
19 the situation in design changes.
20 Q. And Ms. Stewart, I really need you to focus on my
21 questions. And I know that Mr. Devaney will have an
22 opportunity to ask you questions.
23 My question is would you agree with me that to
24 require Eschelon to pay a rate that exceeds Qwest's TELRIC
25 costs even for a limited period of time would be unlawful

Page 182

1 and improper? Would you agree with that statement?
2 A. I do not believe so in Arizona where my
3 understanding is that when there is -- if there was a rate
4 dispute, which, arguably, we don't agree that there is one
5 here -- that in Arizona that if there is a rate that
6 there's some question or concern or an interim rate, that
7 the rate is to be the Qwest rate and not to exceed the
8 Qwest rate, and then that rate is interim subject to
9 refund.
10 So in Arizona, potentially it would be
11 appropriate to have a rate that subsequently a lower rate
12 would be established and a refund would be given back to
13 the CLEC. So I do not believe it would be improper.
14 Q. Okay. So as I understand your testimony, it
15 would be improper for Qwest to be paid less than its costs
16 for even a limited period of time, but it would be proper
17 for Qwest to be paid for more than its costs?
18 A. Well, you're putting a big assumption in there
19 that the rate exceeds the TELRIC cost of doing the work.
20 Q. And that's my assumption. My question is just
21 would you agree with me that it's not proper for Qwest to
22 be paid more than its TELRIC costs for doing the work?
23 A. I think it's appropriate in Arizona, as I just
24 discussed, that the Qwest rates be used to establish a
25 rate subject to refund.

Page 183

1 Q. And you would agree with me as well that an
2 interim rate might possibly remain in effect for an
3 indefinite period of time?
4 A. There's always that potential, yes.
5 Q. And, in fact, that's a potential that you
6 describe in your own testimony; isn't that right?
7 A. Yes.
8 Q. But you believe that even for an unlimited period
9 of time it would be appropriate for Eschelon to pay a rate
10 that exceeds TELRIC costs for design changes?
11 A. I do not believe that the rate that Qwest is
12 proposing for design changes exceeds the TELRIC cost.
13 Q. But if it does, it would not be appropriate for
14 Eschelon to have to pay that rate for an unlimited period
15 of time?
16 A. At this point in time, there is an approved rate
17 for design changes of, I believe, approximately \$72.79.
18 It is appropriate for Eschelon to pay that rate.
19 Q. And that's true even if that rate exceeds Qwest's
20 costs in your opinion?
21 MR. DEVANEY: Your Honor, I think it's been asked
22 and answered.
23 ARBITRATOR RODDA: You can answer it. Did you
24 answer it? I didn't hear it.
25 THE WITNESS: I answered that I do not believe

Page 184

1 that the rate that Qwest is charging for design changes
2 for unbundled loops and CFA changes exceeds our TELRIC
3 costs because it's already been established in a cost
4 docket.
5 ARBITRATOR RODDA: I understood that. But then
6 he asked -- I can't even remember what the question was.
7 It wasn't quite that question.
8 Q. (BY MR. MERZ) No. My question is it's
9 Eschelon's position that that rate is not a cost-based
10 rate for design changes for loops and CFA changes. You're
11 aware of that?
12 A. Yes.
13 Q. Assuming that Eschelon is right and that that \$72
14 rate is not a cost-based rate but is, in fact, well in
15 excess of Qwest's cost for loop design changes and CFA
16 changes, would you agree with me that it's not proper for
17 Eschelon to have to pay that rate that is above Qwest's
18 cost?
19 A. When the Commission has established an order rate
20 of the \$72.79, even if subsequent cost work should
21 determine that the rate should be something different,
22 it's appropriate for you to pay the rate that's been
23 approved in a cost docket in this state.
24 Q. Go to your rebuttal testimony. And I'm going to
25 shift gears a little bit, and we're going to talk about

Page 185

1 connecting facility assignment changes, CFA changes. So
 2 if you go to your rebuttal testimony at Page 4, and I'm
 3 looking at the sentence that begins on Line 15 and ends on
 4 Line 19.
 5 A. Yes.
 6 Q. And it says there in some cases the ICDF
 7 locations that Eschelon gives Qwest are incorrect, which
 8 require a Qwest technician to remove the loop from one
 9 location on the ICDF and reconnect the loop to another
 10 location on the ICDF or to another frame in the central
 11 office; correct?
 12 A. Yes.
 13 Q. And you're describing there what a CFA change is;
 14 correct?
 15 A. It's one part of the work involved with the CFA
 16 change. Correct.
 17 Q. And the ICDF is the place where the loop is
 18 connected. The connecting facility assignment is on the
 19 ICDF; is that right?
 20 A. That's my understanding, yes.
 21 Q. Now, you understand that the CFA change charge
 22 that Eschelon has proposed would only apply when there's a
 23 coordinated cutover; correct?
 24 A. Yes.
 25 Q. And Eschelon pays a rate, a particular rate for a

Page 186

1 coordinated cutover; correct?
 2 A. Yes.
 3 Q. What Eschelon is paying for when it pays that
 4 rate for a coordinated cutover is it's paying to have
 5 Qwest working in a coordinated fashion with Eschelon
 6 personnel, either physically present or on the phone at
 7 the time of the loop installation; isn't that right?
 8 A. Yes.
 9 Q. So Eschelon is present, and the idea is that
 10 working together the parties can fix any problems that
 11 arise rather than, you know, the installation is done and
 12 then it turns out that there's some problem that has to be
 13 fixed later; is that right?
 14 A. My understanding is that the goal of a
 15 coordinated cut would be both parties would be there, you
 16 would be able to test, and then right at that point in
 17 time it would be known whether the circuit was working or
 18 not, yes.
 19 Q. And what might happen if you didn't have a
 20 coordinated cutover is that in the case of a basic
 21 installation, for example, the cutover might happen and
 22 then it turns out that there's no dial tone, and that's
 23 not discovered until some later point and it has to be
 24 addressed then; correct?
 25 A. In a noncoordinated cut, then there's a due date.

Page 187

1 And typically my understanding is then the due date would
 2 be any time within that business day. For example, if
 3 Qwest could cut it over at 8:00 in the morning, or Qwest
 4 could turn it over or turn it up at 5:00 p.m. So in a
 5 noncoordinated cut it's a large window of time in which
 6 the cutover may occur.
 7 MR. MERZ: Could you mark this as Eschelon
 8 Exhibit 3.
 9 Q. (BY MR. MERZ) Ms. Stewart, you have in front of
 10 you there what has been marked as Eschelon Exhibit 3; is
 11 that right?
 12 ARBITRATOR RODDA: Do you have an extra copy?
 13 MR. MERZ: I do. I'm sorry. I have all of these
 14 copies and I forgot to hand you one.
 15 ARBITRATOR RODDA: I know. It's so hard to get
 16 over here, too.
 17 Q. (BY MR. MERZ) You have Eschelon Exhibit 3 there?
 18 A. Yes, I do.
 19 Q. And you recognize Eschelon Exhibit 3 as Exhibit A
 20 to the proposed ICA; correct?
 21 A. Yes.
 22 MR. MERZ: Eschelon offers Eschelon Exhibit 3.
 23 ARBITRATOR RODDA: Any objection?
 24 MR. DEVANEY: No objection.
 25 ARBITRATOR RODDA: Then Eschelon-3 is admitted.

Page 188

1 (Exhibit No. Eschelon-3 was received into
 2 evidence.)
 3 Q. (BY MR. MERZ) Now, Exhibit A to the ICA sets out
 4 the various rates; correct?
 5 A. Yes.
 6 Q. If you would look at the part of Exhibit A that
 7 starts at 9.2.4.
 8 A. Yes.
 9 Q. And 9.2.4, 9.2.5, and 9.2.6 all involve different
 10 installation options for different types of loops;
 11 correct?
 12 A. Yes.
 13 Q. Now I would like you to look at 9.2.4.4.1. That
 14 is the coordinated installation rate for an analog loop;
 15 correct?
 16 A. I'm sorry. 9.2.4.1?
 17 Q. 9.2.4.4.1.
 18 A. Excuse me. I see it.
 19 Q. Okay. And so if you had one analog loop being
 20 installed with the coordinated installation option, the
 21 rate would be \$58.18; correct?
 22 A. Yes.
 23 Q. And additional loops installed as part of the
 24 same installation would be then \$50.73 per loop; correct?
 25 A. Yes.

Page 189

1 Q. Now, the design change rate that Qwest believes
2 it ought to be able to charge for a CFA change is \$72.79;
3 is that correct?
4 A. Yes.
5 Q. And so it's your testimony that the additional
6 work to perform a CFA change charge costs Qwest more than
7 it costs to perform the coordinated installation of a
8 basic loop; is that right?
9 A. The charge for design change covers several
10 products, both UDIT and different --
11 Q. Are you able to answer my question, ma'am?
12 A. Yes. I am able to answer your question.
13 Q. Do you have my question in mind?
14 A. Yes. I have your question in mind.
15 Q. All right.
16 A. Your question was does the rate exceed the
17 installation rate for loops. I was just pointing out that
18 there are a variety of loops that have different
19 installation intervals, and the design change covers
20 those, plus UDIT and other products and services. And,
21 again, Ms. Million is the expert on the cost aspect.
22 Q. And my question wasn't whether the rate for
23 design changes is higher than the rate for coordinated
24 installation. My question is, is it your testimony that
25 the additional work to perform a CFA change costs Qwest

Page 190

1 more than it costs Qwest to perform the coordinated
2 installation of an analog loop?
3 A. Once again, Ms. Million is the cost expert. And
4 yes, when it was looked at as an entirety of all of the
5 services that are covered with design changes, the rate
6 was \$72.79, I believe.
7 Q. So it's your testimony that it does cost more to
8 do a CFA change than a coordinated installation of a basic
9 -- a coordinated installation of an analog loop?
10 A. That \$72.79 was what was determined in the cost
11 docket, yes.
12 Q. Now I want to ask you about your rebuttal,
13 Page 7. I'm looking at Lines 8 through 10. And you say
14 there there's no factual basis for Mr. Denney's assertion
15 that the presence of a Qwest technician during a
16 coordinated cutover reduces the costs of CFA changes.
17 Do you see that?
18 A. Yes, I do.
19 Q. Now, what I understood a part of the work to
20 perform a CFA change is taking the loop off of one CFA and
21 putting it on another.
22 A. I'm going to be stepping a little bit out here on
23 a limb because, once again, Ms. Million is our cost
24 expert. But my understanding is design change does not
25 include the installation work of a technician actually

Page 191

1 doing the install piece.
2 The work of a design change is the call that
3 needs to be made back to the system design center to say
4 there's going to be a change. If we go to this different
5 location for the CFA, is that going to change the design
6 of the circuit? Is it going to work? Oh, by the way, we
7 need to update our downstream systems for purposes of
8 repair and billing that there is a different tie-down
9 location.
10 So design change is really covering all of those
11 work and activities, not the actual technician time of
12 doing the install.
13 Q. When we first started talking this morning, I had
14 asked you whether the work of doing a design change
15 involved a technician removing the loop from one location
16 on the ICDF and reconnecting it to another location. And
17 I understood you to be saying, yes, indeed, that was part
18 of the work, at least, involved in a CFA change.
19 Did I get that wrong?
20 A. I may have misunderstood your question, and if I
21 do I apologize. I was thinking you were asking whether
22 doing a CFA change, which is the activity piece of it, is
23 moving or putting it on a different termination, is that
24 part of design changes? So I do apologize if I
25 misunderstood your question.

Page 192

1 Q. And so I guess my point is that any time there's
2 a CFA change there has to be a technician physically
3 located at the ICDF; right?
4 A. Yes. If you're going to do a change on an
5 install, there would be a technician there.
6 Q. So when you say there's no factual basis for
7 Mr. Denney's assertion that the presence of a Qwest
8 technician during a coordinated cutover reduces the cost
9 of a CFA change, there's always a Qwest technician there
10 if a CFA change is being done; isn't that right?
11 A. Yes. But even if the technician is there, the
12 technician still needs to go through all of the steps that
13 I just described about going back to the design center,
14 making sure that it's okay, it doesn't change the design,
15 or something doesn't need to be done within the circuit,
16 and then changing all the downstream systems.
17 So whether the technician is there and an
18 Eschelon technician is there or not, it doesn't change how
19 much work is involved for the Qwest technician in
20 confirming whether there needs to be any change to the
21 design and, again, updating our downstream systems.
22 Q. The charge that Eschelon is proposing for CFA
23 changes is a charge that would be paid in addition to the
24 coordinated installation charge; correct?
25 A. Yes.

Page 193

1 Q. The coordinated installation charge pays for the
2 Qwest technician to be there; correct?
3 A. It pays for the Qwest technician to be there and
4 to install the service as ordered.
5 Q. And it also pays for the Qwest technician to
6 interface with Eschelon either, you know, physically
7 present or on the phone; correct?
8 A. Yes.
9 Q. And the Qwest technician, I assume the
10 interfacing with the downstream systems that you have
11 talked about, that's something that the technician would
12 do by way of a phone call; is that right?
13 A. Typically, my understanding is that it begins
14 with a phone call if it occurs at the time of the cutover.
15 Q. Now, would you agree with me that the tasks to
16 complete a CFA change are different from the tasks
17 necessary to perform a loop design change?
18 A. There are different tasks involved, but perhaps a
19 CFA change could lead to a complete redesign of the loop.
20 And I'm thinking more on the higher bandwidth facilities
21 such as a DS1 or DS3. Maybe a change means a redesign or
22 sending the equipment to a different multiplexer or
23 distribution fiber panel within the office.
24 Q. Your understanding -- you understand, don't you,
25 that Eschelon's proposal with respect to CFA change

Page 194

1 charges only is for two- and four-wire loops?
2 A. I did not -- was not aware of that. I thought it
3 was listed in Exhibit A as a CFA change for all loops.
4 Q. And, I mean, if that's the case -- well, assume
5 that that's the case. Would you then agree with me that a
6 CFA change would be different -- relating to a two- or
7 four-wire loop would be different than the tasks necessary
8 to do a loop design change?
9 A. There are various tasks depending on the
10 products. Once again, the design change is covering a
11 variety of products, including high capacity loops and
12 two-wire and four-wire loops. Yes, the work is different
13 depending on exactly what service, but again, as
14 Ms. Million discussed, the design change covers all of
15 these various products and work.
16 Q. I think you have the ICA in front of you there?
17 A. Yes, I do.
18 Q. If you would go to Section 9.2.3.9.
19 A. I'm sorry.
20 ARBITRATOR RODDA: Again, do you have a page
21 number?
22 MR. MERZ: I do. It's Page 234, Section 9.2.3.9.
23 Q. (BY MR. MERZ) And I'm looking at the state
24 specific language for Arizona, Colorado, Oregon, Utah, and
25 Washington.

Page 195

1 A. Yes.
2 Q. And you see there Eschelon's proposal for Section
3 9.2.3.9?
4 A. Yes, I do.
5 Q. And you see that that talks specifically about
6 CFA changes for coordinated installation options for
7 two-wire and four-wire analog loops; correct?
8 A. Yes, it does.
9 Q. CFA changes are something that Qwest has been
10 providing to CLECs for as long as Qwest has been providing
11 unbundled loops; isn't that right?
12 A. I believe so.
13 Q. Qwest didn't begin charging for CFA changes until
14 October of 2004; correct? I'm sorry. October of 2005.
15 A. That is my understanding, yes.
16 Q. And so up until October of 2005, there was no
17 separate charge for a CFA change; correct?
18 A. I believe there was a separate charge, but the
19 processes were not in place to charge the charge.
20 Q. Qwest didn't charge a separate charge for CFA
21 changes before October of 2005?
22 A. There was a design change in place in Exhibit A,
23 but the processes were not in place to charge it for that
24 activity.
25 Q. I want to talk with you now about access to UNEs.

Page 196

1 And I'm looking at your surrebuttal testimony beginning at
2 Page 16, Lines 18 through 23.
3 A. I know 23 was the last line. What was the first?
4 Q. You know, I think it's actually your rebuttal
5 testimony. I better -- yeah. I'm sorry. I misspoke.
6 I'm talking about your rebuttal testimony at Page 16,
7 Lines 1 through 23.
8 A. Yes.
9 Q. Do you have that there?
10 A. Yes, I do.
11 Q. What you have set out here are Eschelon's
12 proposal and Qwest's proposal with respect to Section
13 9.1.2, which concerns access to UNEs, issue 9-31; is that
14 right?
15 A. Yes.
16 Q. And just to make sure we understand what you have
17 written here, it's Qwest's proposal that this section
18 should read, "Additional activities available for
19 unbundled network elements includes moving, adding to,
20 repairing and changing the UNE," and then through the end;
21 correct?
22 A. Yes.
23 Q. And then it also includes the phrase at the very
24 end there, "at the applicable rate." Correct?
25 A. Yes.

Page 197

1 Q. Eschelon's proposal is that rather than
2 additional activities available for unbundled network
3 elements that the section should read, "access to
4 unbundled network elements." Correct?
5 A. Yes.
6 Q. And then Eschelon doesn't add the last phrase "at
7 the applicable rate" in its proposal; correct?
8 A. Yes.
9 Q. Now, you have in your testimony here underlined
10 the phrase "moving, adding to, repairing and." Correct?
11 A. Yes.
12 Q. That language actually is not in dispute between
13 the parties; correct?
14 A. No. It is not.
15 Q. Now, in your rebuttal at Page 15, Lines 7 through
16 9, you say that Eschelon's language implies that access to
17 or use of UNEs entitles it to moves, adds, and changes at
18 no additional charge; is that right?
19 A. Yes.
20 Q. And then you also say that result would violate
21 Qwest's right of cost recovery; correct?
22 A. Correct.
23 Q. Now, the right of cost recovery you're referring
24 to there is the right that is provided under
25 Section 252(d) of the Telecommunications Act; is that

Page 198

1 right?
2 A. Yes.
3 Q. So that the right of cost recovery you're
4 referring to is the right for Qwest to recover its TELRIC
5 costs for these activities, moving, adding to, repairing
6 and changing the UNE; correct?
7 A. It's whatever the appropriate rate is to recover
8 the cost depending on the actual activity that is
9 requested.
10 Q. And if that's an activity that's governed by
11 Section 252(d,) that would be a TELRIC rate; correct?
12 A. If that activity is covered by that. But if the
13 activity is covered by a different requirement, then
14 whatever costs are appropriate in that scenario is the
15 cost that would be recovered.
16 Q. And I understood you to be saying that the right
17 of cost recovery that you're referring to is the right
18 that arises under Section 252(d) of the Act. Is that not
19 correct?
20 MR. DEVANEY: Your Honor, I think that
21 misconstrues the testimony. She said that 252 can apply
22 depending on the activity, but there's another -- but
23 there's a different activity that might be outside of 252.
24 So I object to the characterization of the testimony.
25 ARBITRATOR RODDA: Okay. Could you either

Page 199

1 restate your question or have it read back?
2 MR. MERZ: Sure.
3 Q. (BY MR. MERZ) What I understood you to be
4 telling me when we first started this line of questioning,
5 that the right of cost recovery that you're referring to
6 in your rebuttal testimony at Page 15, Line 9 is a right
7 that arises under Section 252(d) of the Telecommunications
8 Act.
9 A. That is one of the areas. So, for example, in
10 your scenario here, you have adding to a UNE. If you were
11 saying that you wanted to add an additional identical UNE
12 and put in a second UNE install, then yes, that's what
13 would be covered.
14 However, one of our concerns is this was so
15 open-ended, and particularly the e.g., meaning that this
16 is an example, not the definitive list, that what if what
17 you asked for is we add to the UNE a private line? In
18 that commingled arrangement, the private line rates would
19 apply. Therefore, the applicable rate would be a private
20 line rate.
21 Q. The e.g. here that we have is also agreed upon
22 language; correct?
23 A. It is agreed upon language with the addition of
24 "at applicable rates" as Qwest has proposed.
25 Q. I mean, is it what -- is Qwest's goal here with

Page 200

1 this language, additional activities available for UNEs,
2 to hold open the option to charge tariffed rates for
3 moving, adding to, repairing and changing UNEs?
4 A. In the example I just gave, it was a tariff rate,
5 yes.
6 Q. In your surrebuttal Page 14, and I'm looking at
7 Lines 11 through 14 where you say "nor does he," and
8 you're referring there to Mr. Denney; is that correct?
9 I'm sorry. Mr. Starkey; is that correct?
10 A. It appears to be Mr. Starkey, yes.
11 Q. Nor does he show Eschelon's language would permit
12 Qwest to charge TELRIC rates for these activities separate
13 and apart from the monthly recurring rate for UNEs;
14 correct?
15 A. Yes.
16 Q. Now, you agree with me that in order for Qwest to
17 charge a separate rate, Qwest has to prove that the cost
18 to perform that activity is not already recovered in
19 another rate; correct?
20 A. Generally, I think that's a true statement.
21 Q. I want to shift gears now and talk about network
22 modernization and maintenance, which is issues 9-33, 9-33a
23 and 9-34. And I want to focus first on issue 9-33, and
24 you understand that that issue involves modernizations
25 that Qwest makes to its network that may result in minor

Page 201

1 changes to transmission parameters; correct?
 2 A. Yes.
 3 Q. And Eschelon has proposed language that would
 4 apply if a modification has an adverse impact on service
 5 to one of Eschelon's customers; correct?
 6 A. Yes.
 7 Q. And it's Qwest's position that so long as the
 8 transmission parameters of the UNE fall within industry
 9 standards, then the impact of the service on the customer
 10 is irrelevant; is that right?
 11 A. That's part of the Qwest position, yes.
 12 Q. In your rebuttal, Page 22, Lines 5 through 10,
 13 you have there language based on language that was ordered
 14 in Minnesota by the Administrative Law Judges that says:
 15 If such changes result in the CLEC's end user customer
 16 experiencing unacceptable changes in the transmission of
 17 voice or data, Qwest will assist the CLEC in determining
 18 the source and will take the necessary corrective action
 19 to restore the transmission quality to an acceptable level
 20 if it was caused by the network changes.
 21 Do you see that language?
 22 A. Yes, I do.
 23 Q. You understand that that is language that
 24 Eschelon is proposing in this case?
 25 A. Yes. That's my understanding.

Page 202

1 Q. That's language that was initially suggested by
 2 the Minnesota Department of Commerce?
 3 A. Yes.
 4 Q. And recommended to be adopted by the Minnesota
 5 ALJs?
 6 A. Yes.
 7 Q. Now, that language provides a consequence if a
 8 change causes unacceptable changes in transmission
 9 parameters; right?
 10 A. Yes.
 11 Q. That consequence is that Qwest will determine the
 12 source and take necessary corrective action to restore the
 13 transmission quality to its previous -- to an acceptable
 14 level; correct?
 15 A. Yes.
 16 Q. Now, this proposal that we've been talking about
 17 doesn't prohibit Qwest from making changes, does it?
 18 A. No. It does not.
 19 Q. And what it does is it establishes a remedy if
 20 customers are adversely impacted; correct?
 21 A. It does establish a remedy, but it's a situation
 22 where Qwest may be put into a box where it's unable to
 23 remedy it for the end user customer. And that is an issue
 24 we'll have to deal with if this is actually ordered in the
 25 state of Minnesota, because there can be network changes

Page 203

1 that are made.
 2 Part of it is that it talks about the service
 3 Eschelon is giving to its end user. Qwest doesn't know
 4 exactly or typically what service Eschelon is providing to
 5 the end user. Qwest is providing a service to the CLEC,
 6 and Qwest believes the proper standard is between Qwest
 7 and the CLEC. That Qwest should not have some
 8 responsibility for whatever promises that Eschelon is
 9 providing to its end user.
 10 So, for example, and I think this example is in
 11 the testimony, if the CLEC uses an analog to wire copper
 12 facility to provide a digital service to the customer, it
 13 will probably work. However, they're ordering an analog
 14 loop. When Qwest modernizes its network, Qwest can put in
 15 some type of hybrid loop, which is a combination of
 16 electronics and copper.
 17 And in that hybrid loop scenario, an analog loop
 18 is still going to work and it's going to work within the
 19 parameters, but because the CLEC -- not necessarily
 20 Eschelon -- this hypothetical CLEC is giving the end user
 21 a data service over it, the data service is not going to
 22 work. And Qwest is really not in a position that it is
 23 somehow going to remove all of the electronics which
 24 typically have been put in for growth. When you have an
 25 area and there's a higher demand for loops than was

Page 204

1 anticipated when the plant was put in maybe up to, you
 2 know, 75, 100 years ago, and we've got to provide growth,
 3 we're going to put those electronics in.
 4 If the CLEC -- if the relationship on what
 5 happened was between Qwest and the CLEC, then we would be
 6 able to say, yes, you have ordered X service. Yes, it
 7 still works.
 8 Because we don't know that they inappropriately
 9 used the wrong loop to deliver service to the end user
 10 customer, it's going to put Qwest in a box, and I'm not
 11 sure what the result of that would be. Once again, it
 12 would become situational specific, and that's what Qwest
 13 is trying to avoid by its language.
 14 ARBITRATOR RODDA: Can I just ask under that
 15 example you just gave, they were providing services --
 16 they must have been providing services that worked over
 17 that analog loop, and then when you modernized in the
 18 hypothetical --
 19 THE WITNESS: Correct. DSL would be the example.
 20 They had a customer loop. It was all copper for whatever
 21 reason, analog perhaps, and they knew it was going to work
 22 because they're able to see the loop makeup tool, then
 23 they would provide this digital service over the analog
 24 loop.
 25 But at the time Qwest goes to modernize its

Page 221

1 Q. Now, if there are adverse affects to the
2 transmission parameters of the facility, that means that
3 something unexpected has happened; correct?
4 A. Either unexpected happened in the cut, or for
5 whatever reason the prem equipment was not capable of
6 working within the parameter, the true parameters of the
7 technical publications.
8 Q. I'm going to actually switch gears now to ask you
9 some questions about subloop cross-connects, which is
10 issue 9-50. The issue here is whether Qwest should be
11 required by the ICA to perform subloop cross-connects for
12 Eschelon; correct?
13 A. Yes.
14 Q. And as I understand it, it's Qwest's position
15 that it never had any obligation to provide this service;
16 correct?
17 A. Yes.
18 Q. That is a service that Qwest currently offers
19 under its ICAs with certain other CLECs; correct?
20 A. There are older ICAs that have that option in
21 them, yes.
22 Q. And it's also a service that Qwest offers under
23 its SGAT; correct?
24 A. I believe it is in the Arizona SGAT, yes.
25 Q. But it's Qwest's position that it doesn't want to

Page 222

1 include subloop cross-connects in Eschelon's ICA because
2 you're in the process of phasing that service out; is that
3 right?
4 A. Yes. And it's not just for Eschelon. At a
5 certain point in time when Qwest made the decision to
6 phase out the offering because there was no legal
7 requirement, plus there was no demand, ever since it's
8 been there no one has ever ordered the service, it isn't
9 prudent to try to continue to maintain processes and
10 procedures and billing arrangements for a service that no
11 one has ordered that Qwest is phasing it out for all CLECs
12 after a certain point in time.
13 MR. MERZ: Could you mark this as Eschelon-4,
14 please.
15 Q. (BY MR. MERZ) You recognize Eschelon Exhibit
16 No. 4 as Exhibit A to Qwest's Arizona SGAT; correct?
17 A. Yes.
18 Q. Now, would you look at 9.3, which is on Page 7.
19 A. Yes.
20 Q. 9.3 is titled subloops; is that right?
21 A. Yes.
22 Q. And 9.3.3 is intrabuilding cable loop per pair;
23 is that right?
24 A. Yes.
25 Q. There are two no-dispatch options and two

Page 223

1 dispatch options; is that right?
2 A. Yes.
3 Q. And this intrabuilding cable loop, that's what
4 we're talking about when we talk about the subloops that
5 are part of the 9-50 dispute; right?
6 A. Yes.
7 Q. The dispatch option is the option under which
8 Qwest goes out to do the cross-connect on the CLEC's
9 behalf; is that right?
10 A. Yes.
11 Q. That's the service that Qwest wants to
12 discontinue because it says there's no CLEC demand for
13 that service?
14 A. Yes.
15 Q. Now, I see there's a note under NRC-5. And if
16 you look at the next to the last page of the document,
17 Footnote 5 indicates that rates are being proposed in the
18 Arizona cost docket Phase III.
19 Do you see that?
20 A. Yes, I do.
21 Q. Has Qwest proposed rates for this element as part
22 of the Phase III cost docket?
23 A. I do not know.
24 Q. Do you know whether Qwest intends to?
25 A. I do not know. I would guess not since we're

Page 224

1 phasing out the product, but I don't know. I don't know
2 the timing on that cost docket.
3 MR. MERZ: Mark this as Eschelon-5, please.
4 Q. (BY MR. MERZ) You have in front of you there
5 Eschelon Exhibit No. 5; is that right?
6 A. Yes.
7 Q. Is this a document that you have seen before?
8 A. I don't know. I am aware of the Cox Arizona
9 issue, but, you know, I don't know that I have seen this
10 document or not.
11 Q. Go to Paragraph 2. There's a reference there to
12 on premises wire subloops, which is the issue that we're
13 talking about here, the 9-50 issue; is that right?
14 A. Yes.
15 Q. A reference as well to dispatch and no dispatch
16 circumstances; correct?
17 A. Yes.
18 Q. The dispatch circumstances would be when the CLEC
19 is asking Qwest to go out and do the cross-connects for
20 it?
21 MR. DEVANEY: Your Honor, I'm going to object at
22 this point. This is a brief filed by Cox Telecom.
23 Ms. Stewart is not sure she's seen it before, and counsel
24 is asking her substantive questions about the meaning of
25 statements in Cox's brief. I don't think it's a fair

Page 225

1 question and there's no foundation for it.
 2 ARBITRATOR RODDA: You know, I didn't hear your
 3 question. Could you read it back or --
 4 MR. MERZ: Sure. My question is whether
 5 Paragraph 2 references the dispatch option, which is the
 6 option to have Qwest go do the cross-connects for Cox.
 7 ARBITRATOR RODDA: Okay. I'm going to allow her
 8 to answer that question.
 9 THE WITNESS: I can just read what is here. So
 10 it is what it is.
 11 Q. (BY MR. MERZ) And what it is is a request for
 12 Cox to have the Arizona Commission establish a rate to
 13 have Qwest provide cross-connects for subloops; right?
 14 MR. DEVANEY: Same objection.
 15 ARBITRATOR RODDA: Okay. But if you can
 16 understand --
 17 THE WITNESS: I understand the question. What I
 18 don't know is, because I have not read all of the details,
 19 is I just wouldn't want to get crossways and would
 20 probably need to go back and reread the subloop section as
 21 it related to intrabuilding connections, whether this is
 22 the same component that we're attempting to not offer
 23 anymore.
 24 And the reason I have sort of a note of caution
 25 here on that is that there are subloop connections that

Page 226

1 Qwest would need to make for intrabuilding cable, and then
 2 there are connections which have never been ordered, and
 3 we believe it's because CLECs always do it themselves,
 4 and, therefore, there's no need to have a process.
 5 Because these rates don't match the other rates,
 6 I'm concerned they may be talking about a different
 7 cross-connect portion. So I don't want to -- because with
 8 an intrabuilding cable, I could draw a diagram if there
 9 would be any interest in a diagram, but there are a couple
 10 of different cross-connect scenarios with intrabuilding
 11 cable, and it just -- I just wouldn't want to get
 12 crossways when particularly the prices are so different.
 13 Q. (BY MR. MERZ) Well, let me ask you this.
 14 Exhibit A, the Arizona SGAT, if you look at 9.3.3 where it
 15 says intrabuilding cable loop per pair.
 16 A. Yes.
 17 Q. It says there there's a recurring rate of
 18 0.299 -- I'm sorry -- 2955; correct?
 19 A. Right.
 20 Q. And that's the same as the recurring rate that's
 21 referenced in Paragraph 2 of the Cox petition; correct?
 22 A. Correct.
 23 Q. And wouldn't you conclude from that that the Cox
 24 petition is talking about the same intrabuilding cable
 25 loop that is referenced at 9.3.3 of Exhibit A to the

Page 227

1 Arizona SGAT?
 2 A. But it says it did not address nonrecurring for
 3 the on premise, and these other rates are nonrecurring
 4 rates.
 5 Q. That are not rates that the Commission has
 6 established but rather are being proposed in Phase III of
 7 the cost case; isn't that right?
 8 A. That could be an explanation. I'm just saying
 9 that I saw a mismatch between this saying that there were
 10 no nonrecurring rates and then this document having
 11 numerous nonrecurring rates.
 12 ARBITRATOR RODDA: You're probably finished that
 13 line of questioning.
 14 MR. MERZ: Yeah, I have.
 15 Q. (BY MR. MERZ) I'm going to go to a different
 16 area of loop-MUX combo, which is issue 9-61.
 17 ARBITRATOR RODDA: When you say MUX, is that the
 18 same as -- did you say MUX?
 19 MR. MERZ: Loop-MUX. Maybe I'm just not saying
 20 it very well. It's a combination of both things.
 21 ARBITRATOR RODDA: Okay. Is this going to be --
 22 I think this might be a good time for a break.
 23 MR. MERZ: That would be fine.
 24 ARBITRATOR RODDA: Let's take 10.
 25 (A recess was taken from 10:20 a.m. to 10:36 a.m.)

Page 228

1 ARBITRATOR RODDA: Okay. Since everyone is here,
 2 let's go back on the record.
 3 Mr. Merz.
 4 MR. MERZ: Thank you, Your Honor. I was reminded
 5 that I have not offered Eschelon Exhibit 3, which is
 6 Exhibit A to the proposed ICA; Eschelon Exhibit 4, which
 7 is Exhibit A to the Arizona SGAT; and Eschelon Exhibit 5,
 8 which is the Cox petition. I would offer those three
 9 exhibits at this time.
 10 ARBITRATOR RODDA: Thank you. My records do show
 11 that we admitted E-3, but any objection to E-4 and 5?
 12 MR. DEVANEY: I do object to the Cox petition. I
 13 don't think there's a foundation for putting in another
 14 party's brief that's not even a party to this proceeding.
 15 ARBITRATOR RODDA: Okay. Well, it speaks to the
 16 issue of whether there's going to be a -- it says what it
 17 says, and it talks about the potential Phase III, but --
 18 so I'll admit it for what it's worth. So we'll admit E-4
 19 and E-5.
 20 (Exhibit Nos. Eschelon-4 and Eschelon-5 were
 21 received into evidence.)
 22 MR. MERZ: Thank you. When we broke, we were
 23 starting loop-MUX combinations, and I actually think I can
 24 be pretty brief about this.
 25 Q. (BY MR. MERZ) You're aware that the Minnesota

Page 249

1 in its central office and it has access to measure. To
 2 the extent that it wants to do an analysis of not only
 3 Eschelon but, let's say, CLECs in general -- because I
 4 can't imagine, frankly, that Eschelon's List 1 drain time
 5 frame, its peak usage is going to be significantly
 6 different than other sort of business-related CLECs, or
 7 for that matter Qwest's own business-related equipment
 8 that serves like customers.
 9 Q. Okay. But the contract language you just looked
 10 at and reviewed doesn't specify anything like what you're
 11 describing, an ongoing monitoring or sampling of
 12 Eschelon's power usage, does it?
 13 A. It gives Qwest full discretion to choose how it
 14 wants to measure the power.
 15 Q. Well, now it says four times a year; right?
 16 A. It says -- nothing as I understand from this
 17 contract language limits the amount of time or effort that
 18 Qwest can go to to measure power in its own central
 19 office. For purposes of billing Eschelon with respect to
 20 measurement, it limits it to four times a year such that
 21 Eschelon doesn't get a different measurement every week,
 22 or that it does not have to pay a different amount every
 23 week based on a weekly measurement, for example.
 24 Q. So what you're proposing is that Qwest could
 25 measure every day, but only choose to share with Eschelon

Page 250

1 the measurements that most work to Qwest's favor when
 2 Qwest hit a particularly high spike on Eschelon's usage?
 3 Are you proposing Qwest could then say, here is your bill
 4 for the next three months, Eschelon? Is that what you're
 5 proposing?
 6 A. If by spike you mean List 1 drain, because I
 7 don't know what you mean by spike.
 8 Q. A high moment of usage compared to -- you know,
 9 let me ask you this question. Usage is not static. It
 10 fluctuates; right?
 11 A. That's true.
 12 Q. So there's going to be peaks and valleys; right?
 13 A. Yes.
 14 Q. You're not proposing that -- let me back up and
 15 strike that.
 16 The language that you just read from the contract
 17 sets forth -- and this is agreed language in the contract
 18 -- that power measurement will happen no more than four
 19 times a year; right?
 20 A. You have to read the language again specific to
 21 my summary. When you read the language, when it talks
 22 about the maximum of four times per year, it says: Based
 23 on these readings, if the CLEC is utilizing less than the
 24 ordered amount of power, Qwest will reduce the monthly
 25 power usage rate to the CLEC's actual usage. If CLEC is

Page 251

1 utilizing more, then Qwest -- then it will bill the actual
 2 power usage request on a going-forward basis.
 3 The point of the four measurements is how is
 4 Qwest going to bill Eschelon for power consumption. It
 5 has nothing to do with limiting Qwest's ability to manage
 6 its power infrastructure and measure whatever it wants to
 7 measure.
 8 Q. But the language you just read from says that
 9 Qwest can take a maximum -- that was your word -- of four
 10 readings per year; right?
 11 A. Well, it's in the contract. It's not my word.
 12 Q. Fair enough. It's in the contract.
 13 A. Right. And then it goes on to suggest that for
 14 those four readings, it will dictate how it bills to
 15 Eschelon.
 16 If you're suggesting that something in here
 17 limits Qwest's ability to manage its power plant and
 18 measure its power in some other way for some other purpose
 19 than billing to Eschelon, I would suggest that that's not
 20 the intention.
 21 Q. Okay. But I'm not suggesting that at all, and
 22 I'm trying to get at what you're suggesting, or maybe not.
 23 So let me try to clarify.
 24 You aren't suggesting here today that it would be
 25 appropriate under the contract for Qwest to measure

Page 252

1 Eschelon's usage every single day, perhaps multiple times
 2 every single day, wait until it sees a particular peak of
 3 usage, and take that moment in time and then go to
 4 Eschelon and say, well, we took a measurement. Here is
 5 what it was. This is how you're going to be billed under
 6 the power measurement language for the next three months.
 7 Are you suggesting that Qwest can do that or
 8 should do that?
 9 A. And, again, you say spike. I'm going to refer to
 10 it as List 1 drain because I think that's really what it
 11 is. If Qwest wants -- and I have said this in my
 12 testimony. To the extent Qwest can take a reading at the
 13 point of List 1 drain and charge us those rates, I don't
 14 have a problem with that.
 15 Q. But, again, Qwest can't know when that moment in
 16 time, that snapshot in time to going to come unless it
 17 monitors on an ongoing basis Eschelon's power usage;
 18 correct?
 19 A. I wouldn't disagree with on an ongoing basis. I
 20 would disagree with sort of the instantaneous and 24/7
 21 suggestion that you threw out earlier. I think there is a
 22 process and analysis that could be done and a process that
 23 could be put in place to try to discern what the List 1
 24 drain for Eschelon is.
 25 Q. And let me come at it this way. Because you and

Page 265

1 answer to the first question is yes. Qwest should have to
 2 do it because it did it for its own retail customer, and
 3 nondiscriminatory access requires that it likewise do it
 4 for Eschelon.
 5 Now, Eschelon, unlike the customer, has rights
 6 under Section 251 and 252 of the Act which require that
 7 when it pays for these unbundled network elements, it do
 8 it at cost-based rates. And that's what we're suggesting
 9 in this language.
 10 Q. Well, then, here is my question. When we look at
 11 those words moving, adding to, repairing, changing, what
 12 specific activities -- I know you have given your
 13 nondiscrimination spiel, and I agree with your statement
 14 in law absolutely, but let's focus on activities.
 15 What activities are covered by these terms? When
 16 you say moving or adding, are we talking about digging a
 17 ditch? What are we talking about?
 18 A. Well, you raise digging a ditch, I think, for a
 19 specific reason. When we look at Paragraph 634 --
 20 Q. No, I don't. Actually, all I want to know is
 21 what activities are covered by these terms?
 22 A. Let's say we're digging a ditch, though. The FCC
 23 described when it talked about routine network
 24 modifications in the TRO, it refused, based on Verizon's
 25 suggestion, that the Commission list every activity that

Page 266

1 might fall under a routine network modification. The FCC
 2 said we're not going to do that, because what we're
 3 setting is a standard. It's nondiscriminatory access, and
 4 if you do it for your customers, do it for the person that
 5 buys unbundled network elements.
 6 So there isn't -- I mean, in fact, the FCC has
 7 suggested the right way to do this is not to list every
 8 particular activity that might accrue. The standard is
 9 what is important, which is if you do it for yourself, you
 10 do it for the UNE customer.
 11 Q. Okay. But that's with respect to routine network
 12 modifications that the FCC didn't list all of the specific
 13 activities. Here we're talking about specific contract
 14 language that is going to be imposed upon the parties, and
 15 it includes an obligation for Qwest to move, add, repair,
 16 change UNEs.
 17 And my question for you as Eschelon's
 18 representative on this issue is what activities are
 19 encompassed by those terms? Can you name the activities
 20 that are encompassed by them? That's my only question.
 21 A. Are you asking me can I name them all?
 22 Q. Just give me some idea of what your company has
 23 in mind with respect to what is covered by these
 24 activities. That's all I want to know.
 25 A. And I assume by that you mean other than design

Page 267

1 changes, maintenance of service.
 2 Q. I've already said we can exclude what is in the
 3 parens, but tell me what else is covered. That's all I
 4 want to know.
 5 A. Well, I'm hesitant to do that because the FCC
 6 said we shouldn't list them all. But I can probably think
 7 off the top of my head to give you a couple of examples if
 8 you give me a second.
 9 Let me give you an example. Additional
 10 dispatches is one of the specific activities that we list
 11 under the for example.
 12 Q. Right.
 13 A. When you go to provisional loop, and let's say
 14 we're talking about copper, from the 2001 to -- or,
 15 actually, sort of the 1999 time frame to about 2004, all
 16 across the country we had cases dealing with special
 17 construction charges. I'm sure that's a term you've heard
 18 before. And it was the Commission's -- the FCC's decision
 19 in the TRO for routine network modifications that finally
 20 decided that issue on a national basis so we didn't have
 21 to fight it state by state.
 22 The position of most of the RBOCs -- and I would
 23 admit that I wasn't in the Qwest proceedings but I was
 24 participating in the Verizon and the Ameritech and the SBC
 25 proceedings -- was that there was a very refined and very

Page 268

1 sort of limited obligation that -- let's use SBC as an
 2 example -- that SBC was undertaking for itself to
 3 provision a loop.
 4 If the loop was connected all the way through,
 5 let's say, and by that they meant you had circuit
 6 continuity all the way from the central office to the
 7 customer premise, if you had circuit continuity, they
 8 would provision the loop. But if they had to send a
 9 person out -- dispatch a person to move a jumper at the
 10 remote term from one peg to another so as to generate that
 11 circuit continuity, special construction charges, tariffed
 12 rates. All right?
 13 What the FCC said, following on the heels of many
 14 state commission decisions to the same extent, is if you
 15 would send that -- if you would dispatch that person to
 16 connect that jumper at the FTI for your retail customers,
 17 and you do, then you must also prepare and do that same
 18 activity for your unbundled network elements customers.
 19 It's part and parcel of the nondiscriminatory access.
 20 So there are a myriad of those types of issues
 21 that come into play when you're provisioning service out
 22 in the field. The FCC recognized that this isn't a
 23 onesie, twosie. It might encompass three or four things.
 24 It's a number of things.
 25 Q. So what I hear you saying is that it's not really

Page 269

1 possible to list all of the activities that might be
 2 covered by these terms; is that right?
 3 A. Oh, I don't know what's possible or not. I would
 4 say it's not practical and, in fact, that it flies in the
 5 face of the way the FCC said we should handle things.
 6 Q. But whatever activities are encompassed by these
 7 terms, and we don't know exactly what they are, it's
 8 Eschelon's position that they all have to be paid for at
 9 TELRIC rates; correct?
 10 A. Cost-based rates.
 11 Q. Right. Even though we don't know what all of the
 12 activities are?
 13 A. Well, we know that they fit within the realm of
 14 what Qwest would do for its retail customers in providing
 15 these same network elements. So they're certainly limited
 16 to that extent.
 17 Q. But if Qwest is providing that to its retail
 18 customers at tariffed rates, and it's not service within
 19 251 or 252, isn't it possible that tariff rate could apply
 20 to Eschelon?
 21 A. My understanding is that Section 9 in total
 22 applies to Qwest's obligations under Section 251 for
 23 unbundled network elements. If you're suggesting that
 24 this was some service or feature that fell outside of 251,
 25 then I think you would have a good argument to say it

Page 270

1 doesn't apply here.
 2 Q. Now, the activities that Eschelon believes are
 3 encompassed by buying access to a UNE, whatever moving,
 4 adding, and changing might include, do you have a position
 5 on whether those activities are already included in the
 6 recurring rates that Eschelon is paying for UNEs here in
 7 Arizona?
 8 A. Your question is do I have an opinion?
 9 Q. Well, what is your position? Are these
 10 activities that you have listed in your language already
 11 included in the recurring rates that CLECs pay in Arizona
 12 for UNE loops, UNE transport, other UNEs?
 13 A. I'm going to answer that question two ways.
 14 First I'm going to say moves, adds, and changes is a
 15 vernacular in the telecom industry that doesn't bring
 16 surprise to a technician's face. When you say we've got
 17 moves, adds, and changes to deal with, they know what
 18 you're talking about. That's a fairly established term in
 19 the telecommunications business. It's not defined here in
 20 the agreement. But if you ask any technician, they're
 21 going to know what you're talking about.
 22 With respect to whether those moves, adds, and
 23 changes and these other types of -- or these sort of more
 24 defined activities in the example are included in the
 25 rates in Arizona, Mr. Denney is going to be better suited

Page 271

1 to talk to you about that. I have read his testimony and
 2 heard his testimony other places and I can recount it, but
 3 I think he's probably better to discuss that.
 4 Q. So you don't know?
 5 A. He's going to be a better witness to talk to you
 6 about that.
 7 Q. Do you have in front of you Eschelon Exhibit 3,
 8 which is Exhibit A to the interconnection agreement, the
 9 pricing exhibit?
 10 A. I did not bring that to the stand with me.
 11 Q. Could you take a look, please, at Section 9.6.11,
 12 which is found on Page 16.
 13 A. Yes.
 14 Q. Do you see UDIT rearrangement?
 15 A. I do.
 16 Q. UDIT refers to transport; is that correct?
 17 A. Yes. I think it stands for unbundled dedicated
 18 interoffice transport.
 19 Q. And you'll see that the Arizona Commission has
 20 set a nonrecurring rate for various types of UDIT
 21 rearrangements as reflected by this exhibit. Would you
 22 agree with that?
 23 A. Yes.
 24 Q. Do you have an understanding of what a UDIT
 25 rearrangement is?

Page 272

1 A. Generally, yes, but I don't think it's part of my
 2 testimony.
 3 Q. Well, here is my question for you. A UDIT
 4 rearrangement is something that might fall within
 5 Eschelon's proposed language of moving, adding, or
 6 changing. Would you agree with that?
 7 A. I would say, yes, generally a rearrangement would
 8 fall within that category.
 9 Q. And would you agree with me that pursuant to the
 10 Arizona Commission's rate order from the past cost docket
 11 that UDIT rearrangement would not be covered by the
 12 monthly recurring rate, but instead Eschelon or another
 13 CLEC would have to pay a separate nonrecurring charge for
 14 that?
 15 A. Now we're certainly in Mr. Denney's territory far
 16 more than my own. I just don't know.
 17 Q. Doesn't Exhibit A sort of reflect that because it
 18 has a separate rate for UDIT rearrangements?
 19 A. The cost study underlying this particular rate is
 20 going to tell you the activities that are accounted for in
 21 undertaking this arrangement. We're talking about
 22 arrangements more generally, so I don't know whether the
 23 arrangements we're talking about would be specific to what
 24 is covered by that cost study or not. I just don't know.
 25 Mr. Denney probably does.

Page 301

1 I think it's Section 9.1.9, which is that language
2 adversely affect or unacceptable changes. I guess that's
3 in connection with network modifications or upgrades.
4 A. Yeah.
5 Q. Just so I am clear or can understand, what is
6 Eschelon intending to encompass by this adversely affect?
7 Is there a measurement? A little bit or a lot, or does it
8 matter, or --
9 A. I think it's generally -- I mean, if you think
10 about it from a practical, real-world perspective, it is
11 that Qwest goes out to the field and it does this network
12 modernization and maintenance; right? Prior to that time,
13 Eschelon had a customer who was up and running and
14 everything was good.
15 After this network maintenance and modernization,
16 Eschelon gets a call from its customer, and it either says
17 my service is down or my service is so degraded that I'm
18 not comfortable. I don't feel like I'm being provided
19 what I ordered or asked for. So that's the level of
20 unacceptable is when the customer no longer is accepted of
21 what the service quality is.
22 Q. So it's unacceptable from the end user's point of
23 view?
24 A. I think it's unacceptable from Eschelon's
25 perspective, and I think that's the way I would read this

Page 302

1 language. Because obviously, either one of those
2 circumstances, either the customer calling and saying my
3 service is down or the customer calling and saying my
4 service no longer works the way it should is unacceptable.
5 It's an unacceptable change in the quality of the UNE that
6 Eschelon is receiving from Qwest.
7 Q. And so is it the same between adversely affect
8 and unacceptable changes? There's two proposal, I guess.
9 One uses adversely affect, and one uses the words
10 unacceptable changes.
11 A. And I think this is the way I'm going to answer
12 this, and I hate to do this. I think I'm going to have to
13 kick this maybe to Ms. Johnson who is probably going to
14 describe what Eschelon really meant between those two
15 particular differences. That's something that I should
16 probably know, but I just don't.
17 Q. But she's also going to be testifying on this
18 section or --
19 A. I'm not sure she will, but she may be able to
20 answer questions about it. The only thing is, I just
21 don't want to say Eschelon was trying for a particular
22 thing here that I haven't talked with them about if,
23 indeed, that's not what they mean.
24 Q. I'm just trying to decide -- I'm just trying to
25 understand what Eschelon wants to encompass by adversely

Page 303

1 affect. Because that could -- just from me reading it,
2 that could just be a range of things. But you're talking
3 about interrupted service or they can't -- I mean, but --
4 A. Keep in mind there are other parts of the
5 contract on agreed upon language where it talks about
6 certain parameters within which -- there is a range here
7 within which -- if they are in that range. I mean, we're
8 not talking about something that is so minute that it
9 falls outside of the range -- or it's so large that it
10 falls outside of the range of these parameters of an
11 acceptable UNE by the technical documents. We're talking
12 about a customer is in service, something happens to where
13 that customer is no longer being provided the service it
14 was provided, and that service it was provided was within
15 the parameters of the UNEs that the parties have agreed
16 upon.
17 Q. So did you just tell me -- so it talks about
18 changes to transmission parameters in that same section.
19 A. Yes.
20 Q. That those transmission parameters are somewhere
21 else defined in the agreement?
22 A. There is closed language, and I would have to
23 take a minute to find it, that talks about the provision
24 of UNEs. It's probably back toward the beginning. Let me
25 find it here real quick.

Page 304

1 I can't find it off the top of my head right now,
2 but there certainly are agreed upon parameters with
3 respect to how the unbundled network elements will be
4 offered. And I guess I would point you back to an example
5 that I included. I guess actually it was in Mr. Webber's
6 testimony that I have now adopted, which is the dB loss
7 example. I don't know if you're familiar with that or
8 not. What happened was -- let me just use it as a
9 hypothetical.
10 The hypothetical was that Qwest has a parameter
11 DS1 circuit. It has electronic signals going back and
12 forth from the central office to the customer. Okay.
13 Obviously the two pieces of electronics are talking.
14 There's a range of settings by which they can still talk,
15 and you adjust those. You can set those and tune them, if
16 you will, so that they talk the best. There's a range of
17 acceptable parameters that both of them are willing to
18 accept.
19 Qwest used to -- in the example, Qwest made a
20 conscious effort to go in and tune those facilities, all
21 facilities in its network, to a given setting. I believe
22 it was 7.5 decibels. Okay. But the range is, let's say,
23 0 to 16. So anywhere within that range is acceptable with
24 respect to the parameter, but they set it at 7.5.
25 Well, the 7.5 didn't work for some of Eschelon's

Page 305

1 customers. All right? So the service couldn't be
 2 provided. Qwest came back and said we're within our
 3 range. All right? We made a change and, yes, your
 4 customer now can't get service, but we're within a range
 5 that's acceptable, so too bad. I'm sure they didn't say
 6 too bad. There's a long chronology that's in
 7 Ms. Johnson's testimony, but when I read it that's what I
 8 read is they were saying too bad.

9 So what this language is specifically getting at
 10 is it might still be within the range, but the customer's
 11 service going down because it was set at 7.5 instead of
 12 retuning it to where it would work is unacceptable.

13 That's the example from which this language
 14 really springs that they're trying to avoid. Yes, it
 15 might still be in these parameters, but they changed
 16 something such that our service went down. They should be
 17 required to fix that within the parameters.

18 ARBITRATOR RODDA: I don't have any other
 19 questions.

20 Are you going to have significant redirect?
 21 MR. MERZ: I'll have -- I mean, a few. I don't
 22 know how to -- we should take a break.

23 ARBITRATOR RODDA: Let's take a break and go to
 24 lunch. It always helps Mr. Merz.

25 MR. ROSELLI: If I might, a quick matter. I

Page 306

1 marked but neglected to have admitted Qwest Exhibit 20.
 2 And if I could do that now just to take care of it, I
 3 would move the admission of Qwest-20.

4 ARBITRATOR RODDA: And that was the excerpt from
 5 the McLeod transcript?

6 MR. ROSELLI: Correct.

7 ARBITRATOR RODDA: Any objection?
 8 MR. MERZ: No objection.

9 ARBITRATOR RODDA: So Qwest-20 is admitted.
 10 (Exhibit No. Qwest-20 was admitted into evidence.)

11 ARBITRATOR RODDA: And we're going to take a
 12 break until 1:35. No. I'll give you until 1:45.

13 (A recess was taken from 12:25 p.m. to 1:45 p.m.)

14 ARBITRATOR RODDA: Back on the record. And I
 15 think we were going to start with redirect.

16 MR. MERZ: Yes. Thank you, Your Honor.

17

18 REDIRECT EXAMINATION

19

20 Q. (BY MR. MERZ) Mr. Starkey, first I want to ask
 21 you a couple of questions about loop-transport
 22 combinations, and I want to start by referring you to
 23 Section 9.23.4 of the contract.

24 A. Okay.

25 Q. You recall this morning that Mr. Devaney asked

Page 307

1 you about the three types of loop-transport combinations
 2 that are described here?

3 A. Yes. I recall that.

4 Q. Does Eschelon's language on this issue recognize
 5 that there are, in fact, three types of loop-transport
 6 combinations?

7 A. Yes, it does. It not only recognizes that there
 8 are three distinct types of loop-transport combinations,
 9 but it also recognizes that there are differences between
 10 how they may be impacted, depending on whether they are
 11 combinations of UNEs or whether they also include a
 12 combination of UNEs and other special arrangements.

13 Q. Then I want to ask you a question -- switching
 14 gears now -- about loop-MUX combo.

15 A. Okay.

16 Q. You had mentioned this morning that you had in
 17 mind an example of a situation where something might be a
 18 feature or function of the loop, but it exists on the CO
 19 side of the frame. Do you recall that?

20 A. I do.

21 Q. Would you describe the example that you had in
 22 mind?

23 A. I will. I was going to use the picture that
 24 Ms. Stewart used earlier today. I promise not to write on
 25 it if I can point to it.

Page 308

1 ARBITRATOR RODDA: It's attached to her --
 2 THE WITNESS: It's also included in her
 3 testimony.

4 MR. MERZ: And I can give you that.

5 THE WITNESS: And I think I may have that. It's
 6 in her testimony as Exhibit KAS-R1.

7 ARBITRATOR RODDA: I can't remember. Was that
 8 her direct?

9 MR. MERZ: It's her rebuttal.

10 THE WITNESS: And when I was describing the issue
 11 with Mr. Devaney, I believe Mr. Devaney was trying to
 12 discern the extent to which, because the FCC defines an
 13 unbundled loop as a transmission facility between the main
 14 distribution frame and the central office and the
 15 demarcation point at the customer's premise, if
 16 multiplexing doesn't somehow fit between those two pieces,
 17 can it be considered a functionality of the loop?

18 And I suggested that I thought it could because
 19 it's a part of the transmission facility itself that makes
 20 the whole loop work. And one specific and very common
 21 example of that is a T1 circuit. T1 is actually the
 22 analog -- there are two types of sort of DS1 or T1
 23 circuits. T1 is generally considered to be the analog
 24 copper loop driven sort of platform on which you provide a
 25 1.544 megabit per second channel. DS1 is sort of the

Page 309

1 digital service component of that, generally considered to
2 be a fiber-based sort of product.
3 There's still a lot of copper based T1 in the
4 network. And when you provide a copper-based T1, the way
5 it works -- and maybe using Ms. Stewart's example is the
6 best way to do this. It's not depicted on here, but if
7 you look at Page 1 where you see it's sort of the
8 second -- where you sort of see a stop sign on the right
9 side, and it says DS1 from the stop sign in through the
10 main distribution frame, and then down to the CLEC collo.
11 In the middle there you'll see a DSX-1.
12 Well, she's left something off of her diagram,
13 because the DSX-1 really is nothing more than sort of
14 accepting the DS1 circuit for purposes of distributing it
15 to the rest of the central office. There's actually a
16 piece of equipment that's required to make the T1 work in
17 that circumstance. And I would say -- actually, let's --
18 if I changed her designation of a DS1 to T1 in that
19 circumstance, I would then add on the central office side
20 of the frame --
21 ARBITRATOR RODDA: But there's a T1 right below
22 it; right?
23 THE WITNESS: But if you see the RT designation
24 out there on that piece of equipment on the right side,
25 that basically means that -- she's done it on copper. It

Page 310

1 doesn't necessary have to have an RT out at that point in
2 the network. It could be straight home-run copper, which
3 is sort of the example she's made on the one above it.
4 But she's called it DS1. Let's call it T1. If
5 we did that, we would have to add a box on the central
6 office side of the frame on the CLEC collo side of the
7 frame, and in there we would put something like a D4
8 channel bank.
9 A D4 channel bank is actually the multiplexer
10 that makes that T1 work between the central office and the
11 customer's premise. And what it does is it takes that
12 copper facility and it channelizes it to 24 DS0. DS0 is a
13 voice grade channel, 64 kilobits. A T1 is 1.544. So
14 that multiplexer not only takes those DS0 circuits and
15 makes them a T1, but it also completes the circuit such
16 that it can carry transmission at all. That's just
17 another way of saying it's a fundamental part of the loop
18 itself, because without it it wouldn't work. That is
19 multiplexing, and it does exist on the CO side of the
20 frame, and it's a very common way to provide T1 service.
21 So if Mr. Devaney were right that the FCC somehow
22 meant to limit any features or functionalities to only
23 those two points between the frame and the NID, then T1
24 circuits provided over old T1 carrier, D4 channel bank
25 carrier would not fall under the definition of a loop, and

Page 311

1 we know they do.
2 So I don't agree at all with Mr. Devaney's
3 suggestion that if it isn't between the frame and the NID
4 or the frame and the demarc it can't be multiplexing as
5 defined by the FCC.
6 Q. (BY MR. MERZ) So when you talk about
7 multiplexing being on the CO side of the frame, you mean
8 to the left of the long rectangle that's marked MDF as we
9 look at this picture?
10 A. I do. And there's a specific reason for that.
11 The frame actually provides all of the electrical
12 protection. You've got a big copper wire out there in the
13 ground or on a telephone pole or somewhere else. There's
14 the potential for a lot of electrical transmission from
15 outside sources, from third party sources, on that loop.
16 The frame is your primary grounding. There are other
17 grounding sources out in the network, but your frame is
18 the primary grounding and protection source for that loop
19 to protect the equipment in the central office from surges
20 from electricity from lightning or something else.
21 So the copper loop absolutely terminates to the
22 frame and then is jumpered to the D4 channel bank for
23 purposes of providing the T1. It has to be, in fact, on
24 the CO side of the frame in order to function properly.
25 Q. I want to again switch gears and ask you some

Page 312

1 questions about network modernization and maintenance, and
2 I would have you turn in the contract to Section 9.1.9.
3 A. Okay.
4 Q. Mr. Devaney asked you a number of questions about
5 Eschelon's first proposal. Eschelon actually has two
6 proposals on this issue; correct?
7 A. That's correct.
8 Q. And I recall Devaney asking you a lot of
9 questions about the first proposal and maybe one question
10 about the second proposal.
11 My first question about the second proposal would
12 be do you know where this second proposal comes from?
13 What is its origin?
14 A. This was a proposal proffered by the Department
15 of Commerce in Minnesota when this case was before the
16 Minnesota Commission as sort of an alternative to the two
17 parties' proposals related to this topic. So this is
18 language actually proposed by the Department of Commerce,
19 which Eschelon has accepted as one of its potential
20 proposals.
21 Q. Does the second proposal address concerns that
22 Qwest has raised with respect to Eschelon's first
23 proposal?
24 A. It does, and that was the intention.
25 Q. How does it do that?

Page 313	Page 315
<p>1 A. For example, one of the things Mr. Devaney asked 2 about was what happens if this unacceptable -- this 3 unacceptable disruption occurs? You know, what is the 4 resolution of that? 5 I think if you look at the language in the second 6 proposal, it specifically says, -- and I'll just read you 7 the language that's at issue. It says: If such changes 8 result in the CLEC's end user customer -- and, again, 9 that's another issue. Maybe we should stop right there. 10 It says CLEC's end user customer. 11 One of the things Mr. Devaney talked about was 12 end user customer is defined in the agreement as being 13 either Qwest's customer or the CLEC's customer or 14 third-party customers. 15 The second proposed language makes clear that 16 what we're talking about here is the CLEC's customer. So 17 it says: If such changes result in the CLEC's end user 18 customer experiencing unacceptable changes in the 19 transmission of voice or data, Qwest will assist the CLEC 20 in determining the source and will take the necessary 21 corrective action to restore the transmission quality to 22 an acceptable level if it was caused by the network 23 changes. 24 So it provides what will then happen if this 25 unacceptable level of disruption occurs. Qwest will help</p>	<p>1 copper loop not with DSL capabilities. 2 Q. The first proposal uses the phrase there won't 3 be -- changes won't adversely affect transmission 4 parameters; correct? 5 A. Yes. 6 Q. And then the second proposal talks about 7 unacceptable changes in transmission of voice or data. 8 What is your understanding of the relationship between 9 those two concepts, adversely affect or unacceptable 10 changes? 11 A. Well, I think -- I think they're certainly 12 related. I think in the first proposal Eschelon was 13 trying to get at what I described earlier, which is the 14 adverse effect if their customer calls them and says 15 something is wrong. 16 When we look at the second proposal and we look 17 at the unacceptable changes, I think what the Department 18 of Commerce was after here was a little more discretion to 19 say, okay, something changed, but isn't it an acceptable 20 change? Is the customer -- or is Eschelon not able to 21 provide the service it was previously providing? 22 Either one of those terms, or, frankly, for that 23 matter, any word you put in here is going to be subject to 24 some amount of discretion. I think the point with this 25 proposal is that it places the obligation on Qwest to --</p>
Page 314	Page 316
<p>1 Eschelon identify it, and they'll help restore the 2 service. 3 One other thing that I might point out about this 4 language is that if you read the next sentence, the next 5 sentence that is agreed upon language, it reads as 6 follows: Network maintenance and modernization activities 7 will result in UNE transmission parameters that are within 8 transmission limits of the UNE ordered by the CLEC. 9 So I guess to another point that Mr. Devaney was 10 talking about, which is how broad could this unacceptable 11 transmission description be? I mean, could it just 12 encompass nearly anything? In fact, we heard Ms. Stewart 13 describe this morning the example of DSL, and I think her 14 point was let's say Eschelon bought a straight copper, 15 two-wire loop and used it for DSL service. Okay. What 16 they should have done is bought a digital capable loop 17 which is meant to support DSL service, but under 18 Ms. Stewart's example we bought the wrong loop and then 19 tried to make DSL work on it. And she was concerned this 20 language would require them to restore the DSL capable 21 nature of the loop even though that's not what we ordered. 22 I think that particular example and many others 23 are dispelled by the next sentence, which says: They're 24 only meant to restore it to the transmission parameters of 25 what we ordered, which in that case would be a straight</p>	<p>1 if there is a change that impacts Eschelon and its 2 customers, that it will help them research the problem and 3 restore it. 4 And as I said earlier, if the parties -- if 5 Eschelon -- in the real world, this is how it would 6 work -- I'm almost certain -- is Eschelon would come back 7 and say you did a network modernization. It impacted us; 8 it impacted our customers; it's unacceptable. The two 9 will talk about it. Right? Was it unacceptable or not? 10 And if they can't come to agreement, just like every other 11 term in the contract, then they'll follow the processes we 12 described earlier, escalation and dispute resolution. 13 The issue here is that the purpose is to provide 14 the obligation. And in the real world, sure, you're going 15 to have to put more meat around that by the two parties 16 talking, but that's true of nearly any term in this 17 contract that it isn't specifically defined. That's just 18 the way contracts work. 19 Q. And then, finally, I want to talk with you just 20 briefly about power. Are you aware of any instance where 21 an ILEC and a CLEC have agreed to some sort of usage-based 22 charge for power plant? 23 A. Yes, I am. I mean, I think that's what sort of 24 stands out about this issue in my mind in the Qwest 25 region, both in this case and then also in the McLeod</p>

Page 317

1 cases, is that ILECs other than Qwest across the country
2 have sort of gotten to the bottom of this issue and
3 settled it.
4 In fact, probably the most important in that
5 regard is SBC Texas where they've sat down with CLECs,
6 they've developed an amendment to the contract that
7 actually allows the CLECs to self-certify how much they're
8 using for power, and then SBC Texas charges the CLECs for
9 that amount of usage. And that includes both the power
10 usage and the power plant that we're talking about here.
11 The same is -- that amendment is available in
12 Texas. Something similar exists in Illinois. I mean,
13 this problem -- this is a problem. Charging the CLECs for
14 the amount of power plant consistent with the cable order
15 is a problem, and it's been recognized by commissions
16 across the country. Other ILECs are solving it with
17 amendments like this, and we're not getting it solved in
18 the Qwest region.
19 MR. MERZ: I don't have anything further. Thank
20 you, Mr. Starkey.
21 ARBITRATOR RODDA: Either one of you?
22 MR. ROSELLI: Nothing from me.
23 MR. DEVANEY: Two quick ones. Thank you.
24
25

Page 318

1 RE-CROSS-EXAMINATION
2
3 Q. (BY MR. DEVANEY) Mr. Starkey, in the
4 conversation you had with Mr. Merz, I think you said that
5 there is a D4 channel bank that would be on the CO side of
6 the MDF; is that right?
7 A. Yes.
8 Q. The FCC rule that we looked at earlier speaks of
9 the loop running from the customer premise to either a
10 distribution frame, or its equivalent is the words that
11 the FCC uses. Is the DS4 channel bank the equivalent of a
12 distribution frame in your view as used by the FCC?
13 A. No, it's not. I mean, in the circumstance that I
14 just described, it uses the frame and it uses the D4. If
15 you took the D4 out, the loop wouldn't work. It's just
16 that essential to the T1 circuit.
17 Q. What do you think the FCC had in mind with the
18 use of the word equivalent? Do you know?
19 A. I do. Well, I obviously don't know what they
20 meant, but I think I know what they mean and it's
21 generally accepted is that if you take Ms. Stewart's
22 example again and you go to -- well, what she has done in
23 this example is because she's put the CLEC collo and then
24 she has everything going to the CLEC collo, she's inserted
25 the frame, the main frame, in situations where it wouldn't

Page 319

1 be inserted if that loop were then going somewhere to a
2 Qwest location like to a multiplexer for transport.
3 So when fiber comes in -- the only thing that
4 terminates on the main distribution frame is copper. So
5 when fiber comes in, it comes in generally to a terminal
6 that takes the fiber, interprets the signaling, and then
7 puts a circuit out the back end to wherever it has to go.
8 Generally, because it's coming in fiber, it never goes to
9 copper, so it never hits the main distribution frame.
10 Instead, it comes out probably either coax or fiber out
11 the back into a MUX or a DAX, or even directly into the
12 switch in some circumstances.
13 But in that circumstance you're not going to have
14 a main frame. What you're going to have is a fiber
15 distribution panel and a central office terminal. That's
16 the situation I think the FCC is talking about when it
17 says or its equivalent, because it's talking about fiber
18 optic facilities.
19 Q. Okay. My other question for you is you testified
20 earlier that Qwest performance of network maintenance or
21 modernization activity set someone's service at 7.5 dBs
22 and it didn't work. Do you recall that?
23 A. I do.
24 Q. Are you sure that that happened as a network and
25 maintenance activity on Qwest's part?

Page 320

1 A. Well, I understand there's some dispute about
2 that issue as you look at the testimony.
3 Q. All I want to know is on that particular point,
4 was it a network maintenance activity or was it an
5 installation? Do you know?
6 A. Well, I don't think the two are mutually
7 exclusive. I don't think I can answer the question with a
8 yes or no as you would like me to. The issue, as I
9 understand it, is as follows.
10 Q. I don't want you to give a speech about this.
11 What I want to know is was the service already working, up
12 and working when the 7.5 dB change was made, or was the
13 service not yet installed and working? Do you know?
14 A. That's a different question. My understanding is
15 that the service was not up and working at that particular
16 point.
17 MR. ROSELLI: That's all I wanted to know. Thank
18 you.
19 ARBITRATOR RODDA: Mr. Merz, anything further?
20 MR. MERZ: Nothing further.
21 ARBITRATOR RODDA: All right. Well. Thank you
22 Mr. Starkey.
23 THE WITNESS: Thank you.
24
25

Page 321

1 BONNIE JOHNSON,
2 called as a witness on behalf of Eschelon, having been
3 first duly sworn by the Certified Reporter to speak the
4 truth and nothing but the truth, was examined and
5 testified as follows:
6
7 DIRECT EXAMINATION
8
9 Q. (BY MR. MERZ) Good afternoon, Ms. Johnson.
10 A. Good afternoon.
11 Q. Would you please state your name.
12 A. My name is Bonnie Johnson.
13 Q. And by whom are you employed?
14 A. Eschelon Telecom.
15 Q. Did you prepare in this case direct, rebuttal,
16 and surrebuttal testimony?
17 A. Yes, I did.
18 Q. We've marked your direct testimony as Eschelon
19 Exhibit No. 10; is that correct?
20 A. Correct.
21 Q. And your rebuttal testimony is marked as Eschelon
22 Exhibit 11?
23 A. Correct.
24 Q. And your surrebuttal testimony is marked as
25 Eschelon Exhibit 12?

Page 322

1 A. Yes.
2 Q. Is the information contained in your direct,
3 rebuttal, and surrebuttal testimony true to the best of
4 your knowledge?
5 A. Yes, it is.
6 MR. MERZ: Your Honor, Eschelon offers Eschelon
7 Exhibits 10, 11, and 12.
8 ARBITRATOR RODDA: Okay. Any objection?
9 MR. TOPP: No objection.
10 ARBITRATOR RODDA: Then Eschelon-10, 11 and 12
11 are admitted.
12 (Exhibit Nos. Eschelon-10, Eschelon-11, and
13 Eschelon-12 were admitted into evidence.)
14 Q. (BY MR. MERZ) Ms. Johnson, have you prepared a
15 summary of your testimony?
16 A. Yes, I have.
17 Q. Would you give that now, please.
18 A. Sure. My name is Bonnie Johnson. I have been
19 employed by Eschelon since July of 2000, and my current
20 position is Director of Carrier Relations, which means I
21 handle relations with other carriers, primarily Qwest. I
22 have been in telecom for over 15 years. Before I worked
23 for Eschelon, I worked at Qwest, formerly known as U S
24 WEST. I worked in Qwest wholesale and the Qwest retail
25 business office.

Page 323

1 At Eschelon I spend most of my time dealing
2 directly with Qwest or on Qwest related issues. I
3 participate on weekly conference calls with Qwest service
4 management and monthly meetings with Qwest and Eschelon to
5 discuss operational issues. I also deal with Qwest
6 service management to address day-to-day issues that may
7 require escalation to Qwest service management to resolve
8 those issues.
9 I'm a member of the Eschelon ICA negotiations
10 team, and I am Eschelon's lead representative in Qwest's
11 CMP. For example, regarding jeopardies, issues 12-71
12 through 12-73, I participated in the CMP meetings,
13 including the ones described in my exhibits. I was there
14 when Qwest told the CLECs that for Qwest facility
15 jeopardies CLECs should ignore some jeopardy notices and
16 be prepared to accept the circuit, but not for Qwest
17 facility jeopardies. For Qwest facility jeopardies, Qwest
18 told the CLECs that to -- not to prepare unless Qwest sent
19 a new FOC. Qwest also documented this in its PCAT. I was
20 also there when Qwest confirmed that its process was to
21 send the FOC the day before Qwest delivered the circuit.
22 Throughout our discussions, Qwest referred to the
23 FOC as the notice CLECs should expect to receive. Qwest
24 never referred us to some kind of informal communications
25 by the techs instead. In fact, if you review the meeting

Page 324

1 minutes from the CMP meetings and ad hoc calls in BJJ-5
2 and Qwest's provisioning and installation PCAT, informal
3 discussions between technicians was never discussed in
4 Qwest's CMP or documented by Qwest.
5 Mr. Starkey and Mr. Denney discuss facts from my
6 exhibits in their testimony.
7 MR. MERZ: Your Honor, Ms. Johnson is available
8 for cross-examination.
9 ARBITRATOR RODDA: Okay.
10 MR. TOPP: Mr. Devaney has a few, and then I have
11 a few.
12 MR. DEVANEY: I'll be fairly brief.
13
14 CROSS-EXAMINATION
15
16 Q. (BY MR. DEVANEY) Good afternoon, Ms. Johnson.
17 A. Good afternoon.
18 Q. Mr. Starkey and I just had some discussion again
19 about this incident involving the 7.5 dB setting. Do you
20 recall that?
21 A. Uh-huh.
22 Q. Even though you provided an exhibit relating to
23 that, and I just want to clarify, that particular exhibit
24 is being proposed in support of Eschelon's language in
25 9.1.9 related to no adverse affect on end users; is that

Page 325

1 correct?
 2 A. Correct.
 3 Q. And it's no adverse effect resulting from network
 4 maintenance or modernization activities; correct?
 5 A. Correct.
 6 Q. And isn't it correct that the 7.5 dB episode that
 7 you describe in your exhibit involved an installation? It
 8 did not involve a modernization or a maintenance activity?
 9 MR. MERZ: Mr. Devaney, if you could just tell us
 10 which exhibit you're referring to, that might be helpful.
 11 MR. DEVANEY: I don't have the exhibit number.
 12 THE WITNESS: If you look at my Exhibit BJJ-21.
 13 Q. (BY MR. DEVANEY) And that's attached to which?
 14 A. That's attached to my direct testimony --
 15 Q. Okay.
 16 A. -- Mr. Devaney, and Page 1 in that exhibit.
 17 And the answer to your question is the issue
 18 itself came up in relation to installation. However, if
 19 you look at BJJ-21, the first page, the third paragraph
 20 down about halfway through, Joan Peterson of Qwest, who is
 21 a senior attorney, said: In addition, techs were
 22 instructed to reset the dB at a neg 7.5 whenever they did
 23 a repair.
 24 So while the issue itself came up related to
 25 installation and circuits that we couldn't turn up, the

Page 326

1 concern is that Qwest had confirmed that they were doing
 2 modernization by resetting the dB to a 7.5 during repairs.
 3 And it would stand to reason that if it wouldn't work at
 4 7.5 at the time of installation, if they change it from
 5 what it currently is back to 7.5, it's going to impact the
 6 service.
 7 Q. Okay. My understanding is that this particular
 8 incident was resolved by a Qwest engineer going out to the
 9 site, asking, okay, what dB level would you like it set
 10 at? Eschelon told Qwest it was set at that level and
 11 those circuits have been up and working since; isn't that
 12 right?
 13 A. Eventually, yes.
 14 Q. And further, Qwest implemented a process with
 15 Eschelon to avoid further problems like this at that point
 16 in time; isn't that correct?
 17 A. There is an existing process now, yes --
 18 Q. Okay.
 19 A. -- in maintenance and repair.
 20 Q. Okay. Changing the subject. With respect to
 21 issue 9.33, there are two proposals that Eschelon has put
 22 forth. One is the no adverse affect proposal. Actually,
 23 I guess we're still on the same issue. And then the
 24 second proposal was no unacceptable changes.
 25 I think Mr. Starkey said that you would be able

Page 327

1 to address the difference between those two terms. Are
 2 you prepared to do that?
 3 A. The two terms, the intent is the same. The
 4 second proposal is what the Minnesota Department
 5 recommended.
 6 Q. What is your understanding of the meaning of no
 7 adverse affect as proposed by Eschelon?
 8 A. Well, if the customer's service was working, and
 9 then the customer is impacted and isn't able to use the
 10 service, that is adversely affecting the service.
 11 Q. Would it be more accurate, then, to change the
 12 language to say that?
 13 A. I would have to refer to Mr. Starkey on that. Or
 14 I guess my response to that would be that I'm certain that
 15 if Qwest wanted to propose some type of language that
 16 Eschelon would look at it.
 17 Q. But your understanding is --
 18 A. And consider it.
 19 Q. -- Eschelon's proposal of no adverse affect means
 20 you have a service that's working, Qwest performs a
 21 network maintenance or modernization activity, and the
 22 service stops working. That is a no adverse affect; is
 23 that correct?
 24 A. Right. The service stops -- either stops working
 25 all together or it's impacted to a point where it can't be

Page 328

1 used anymore where it's degraded or --
 2 Q. Okay. And is there any measurement that Eschelon
 3 is proposing to determine where the unacceptable degrading
 4 begins?
 5 A. Once again, I'm going to have to defer that to
 6 Mr. Starkey.
 7 MR. DEVANEY: Thank you. That's all I have.
 8 MR. TOPP: He warned me that would be quick.
 9
 10 CROSS-EXAMINATION
 11
 12 Q. (BY MR. TOPP) Ms. Johnson, I would like to speak
 13 with you a little bit about the jeopardies issues which
 14 are 12-71 to 12-73. And I would like to start by looking
 15 at the exhibit you referenced in your summary, Exhibit
 16 BJJ-5 to your direct testimony.
 17 Do you have that in front of you?
 18 A. I do.
 19 Q. If you would go inside the cover to Page 1 of
 20 that document. There's an event summary that is set forth
 21 on that first page.
 22 A. Uh-huh.
 23 Q. And that's an event summary that you prepared; is
 24 that correct?
 25 A. That is correct.

Page 333	Page 335
<p>1 If you go to Page 37 of BJJ-5 under Action Item 2 No. 1, when Qwest confirmed that it was their process to 3 send the FOC the day before. And we took that as face 4 value that that was Qwest's existing process. 5 Q. Okay. 6 A. So the compliance that I'm talking about here 7 had -- there are several key points of the jeopardy 8 process, one being whether or not Qwest provides an FOC 9 after a Qwest jeopardy. 10 Q. So one of the key points from your perspective is 11 that Qwest would provide a jeopardy the day before it 12 actually delivered the circuit. Is that what you're 13 testimony is? 14 A. My testimony is that Qwest told us that that was 15 Qwest's process. And that when we pointed out examples 16 where that didn't happen, they told us it was a Qwest 17 compliance process. 18 Q. Now, when this CR -- the notes on April 21st 19 indicate that this -- proposed that this was going to 20 close with the documentation changes that were sent out at 21 that time; is that correct? 22 MR. MERZ: What page are you referring to? 23 MR. TOPP: I'm referring to Page 20 of BJJ-5. 24 THE WITNESS: Well, the process -- let me try and 25 explain. The process isn't -- you know, the documentation</p>	<p>1 don't precisely match up, but it sure looks like if you 2 look at the CR number, that matches up with the CR number 3 that you're discussing in BJJ-5. And within the text of 4 this document, it discusses updates to the product 5 catalog, including new revised documentation for 6 provisioning and installation overview V42.0. 7 Would it be fair to characterize this document as 8 announcing the language changes that were being 9 implemented as a result of this particular change request 10 or proposing them? 11 A. Can I just review it real quickly? 12 Q. Sure. 13 A. Thank you. 14 And Mr. Topp, your question was that these 15 changes are from this notice and a part of this CR? 16 Q. Correct. 17 A. And that is correct. This is a portion or subset 18 of some of the changes that were made as a result of this 19 CR. When we first started looking at the jeopardy 20 process, Eschelon had expressed concern that in general 21 Qwest was not sending FOCs after a jeopardy. 22 And as Qwest was reviewing that process, they 23 looked at all of the Qwest jeopardy types. You know, and 24 if you look at the Qwest jeopardy codes, there are 25 multiple types of Qwest jeopardies, which include Qwest</p>
Page 334	Page 336
<p>1 is just one of the things that may happen as a result of a 2 change request. So in April, Qwest sent out updates to 3 the product catalog, and it doesn't necessarily mean that 4 there wouldn't have potentially been additional updates. 5 So at the point in time in April of 2004, there was, as a 6 result of this CR, really what equated to a complete 7 overhaul of the jeopardy process. 8 There were, you know, several changes that were 9 made. Eschelon had submitted two separate CRs, and in 10 reviewing those CRs there were -- you know, one of them 11 was titled, you know, you can't, you know, put a customer 12 not ready jep before 5:00 p.m. The other one was, you 13 know, titled you have to send us an FOC. And there were 14 multiple changes, both process and systems changes that 15 were made to the process in its entirety. 16 Q. (BY MR. TOPP) Yes, there were many changes to 17 the jeopardy system made as a part of this process. 18 That's the point that you're trying to make; correct? 19 A. Right. But, you know, the -- at issue, my 20 exhibit is directed at and limited to, you know, the 21 changes in regards to getting an FOC after a Qwest 22 jeopardy. 23 Q. Okay. Let's take a -- could you take a look at 24 what has been marked as Exhibit Qwest-22 and Exhibit 25 Qwest-23. And the Qwest-22 is -- and I notice the dates</p>	<p>1 facility jeopardies. And Qwest had told us that in review 2 of all of those Qwest jeopardy types, that for everything 3 except for a small portion, which included the Qwest 4 facility jeopardy, Qwest was always meeting the due date 5 on the jeopardies that started with B's, which were 6 workforce. 7 They had identified differences between what 8 Qwest called its critical date jeopardies versus 9 jeopardies that really impacted the due date. So the 10 first step of trying to resolve the issue of not providing 11 an FOC was for Qwest to identify which of those jeopardies 12 we should ignore. And so they had identified in their 13 jeopardy code, they had identified the types of jeopardies 14 that they were always meeting the due date on. 15 So they said for these particular jeopardies, and 16 actually it is in my BJJ-5, the redline that they provided 17 us regarding those types of jeopardies starts on Page 41 18 of BJJ-5 as we were going through this process. 19 And so what they told us -- and if you look at 20 the changes that they made in Version 42, what they told 21 us is for these certain jeopardies, expect us to come, 22 we're coming anyway, even if you get one of these 23 jeopardies. They later did some systems changes to 24 prevent them from sending it to us, but first there was a 25 process change where they just communicated to us, don't</p>

Page 337

1 pay attention to these. These are internal goals for
 2 Qwest. When we don't meet them, we've done analysis and
 3 99.9 or 100 percent of the time we deliver the circuit on
 4 the due date, so we want you to ignore these. And this
 5 particular documentation in Exhibit BJJ-42 is documenting
 6 that piece of it.
 7 So if you go to Qwest-23, and it doesn't appear
 8 that there are page numbers, but at the bottom of the page
 9 there are actually page numbers from the PCAT. If you go
 10 to Page 8 of 20, this is where the redlined language that
 11 Qwest is adding in, and this is where they're telling us
 12 that Qwest differentiates between due date jeopardies and
 13 critical date jeopardies and we want you to ignore these
 14 particular type of jeopardies.
 15 And then this was the point in time, too, that we
 16 had also expressed concern because the Qwest facility
 17 jeopardy was rather just kind of a generic no facilities
 18 available. And we had expressed concern saying we need to
 19 determine if we need to, you know, work on alternate
 20 solutions for our customers, so we need to have more
 21 information. Do you have to clear an F2 pair, or do you
 22 have to get a permit to dig up the street? Because it
 23 makes a difference.
 24 So this is also where Qwest committed that within
 25 72 hours of the time they send the jeopardy that they

Page 338

1 would send us either an FOC or additional information on
 2 what -- you know, more information on the jeopardy.
 3 MR. TOPP: Yeah. And that's within 72 -- well,
 4 first of all, could I offer Exhibits 22 and 23.
 5 ARBITRATOR RODDA: First of all, let's
 6 identify -- I think that you were trying to identify that.
 7 MR. TOPP: Yeah. That's where I started.
 8 ARBITRATOR RODDA: But I still don't understand.
 9 I think we got a lot more information there than what this
 10 document is. Can someone tell me concisely what 22 is?
 11 Don't tell me what it does, just tell me what it is so I
 12 can identify Qwest-22.
 13 THE WITNESS: Oh, Qwest-22 is a Qwest
 14 announcement -- do you want me to do that, Mr. Topp?
 15 MR. TOPP: Yes.
 16 THE WITNESS: It's a Qwest announcement saying,
 17 you know, that they sent out on April 12th with proposed
 18 changes to their provisioning and installation overview
 19 PCAT. That their proposed effective date was May 27th.
 20 And the body of the announcement itself identifies, you
 21 know, the changes that Qwest is making, that it's related
 22 to this CR. Because they did synergies, they kind of
 23 combined the two CRs and did some other work in this.
 24 And this is the document that they changed.
 25 ARBITRATOR RODDA: Okay.

Page 339

1 THE WITNESS: 23 is the actually changes.
 2 ARBITRATOR RODDA: Okay.
 3 MR. TOPP: And I would offer Qwest-22 and 23.
 4 MR. MERZ: No objection, Your Honor.
 5 ARBITRATOR RODDA: Okay. Then Qwest-22 and
 6 Qwest-23 are admitted.
 7 (Exhibit Nos. Qwest-22 and Qwest-23 were admitted
 8 into evidence.)
 9 Q. (BY MR. TOPP) All right. Now, referring -- so
 10 Qwest-23 reflects changes to the PCAT. And this other
 11 stuff that you have mentioned such as the 72-hour update,
 12 that is in the documentation at Page 8 of 20, is it not?
 13 As well, is it not?
 14 A. Page 8 of 20?
 15 Q. Yeah. Referring to Exhibit 23.
 16 A. Yes. Yes. That's part of the changes to it.
 17 Also, if you go back to Page 20 of BJJ-5, it's also a
 18 commitment that, you know, Qwest made in the March 17th
 19 CMP meeting.
 20 Q. And I'll ask you to focus on provisions I'm
 21 asking you about.
 22 A. Okay.
 23 Q. Hopefully we can move through this a little bit
 24 more quickly.
 25 Now, and also there is information in here about

Page 340

1 the difference between a due date jeopardy and a critical
 2 date jeopardy. That appears on the same page, does it
 3 not?
 4 A. On Page 8, yes.
 5 Q. Yes. Now, in BJJ-5, you indicate that one of the
 6 resolutions -- well, before we get to that, did Eschelon
 7 file any objections to these language changes that appear
 8 in Qwest Exhibit 22 or 23?
 9 A. I don't recall if we filed any objections or not.
 10 I'm not certain that we filed any comments. Most of this
 11 was a collaborative effort so --
 12 Q. And, in fact, on Page 20 of your exhibit BJJ-5,
 13 it indicates that no comments came in for this CR.
 14 A. Oh.
 15 Q. And you don't have any basis to quarrel with that
 16 sitting here today?
 17 A. No, I don't.
 18 Q. Okay. And in this CR, I can find no language
 19 whatsoever that addresses whether, in fact -- let me look
 20 at how you describe this.
 21 That indicates that CLECs would receive an FOC
 22 before. In other words, 24 hours before delivering the
 23 facility. Does that exist in these process documents
 24 anywhere?
 25 A. I don't -- I'm not certain whether or not it

Page 341

1 exists in the process documents. I'll direct you once
 2 again back to Page 37 of BJJ-5 where when we provided
 3 examples, Phyllis -- it was actually Phyllis Susins at
 4 Qwest said that their process was to provide an FOC the
 5 day before after a Qwest facility jeopardy so that we knew
 6 Qwest was going to deliver the service.
 7 And also, if you go to Page 21 of BJJ-5, in a
 8 meeting that took place -- the ad hoc meeting on
 9 March 4th, if you look halfway down the page, it says:
 10 Bonnie confirmed that the CLECs should always receive the
 11 FOC before the due date. Phyllis agreed and confirmed
 12 that Qwest cannot expect the CLEC to be ready for the
 13 service if we haven't notified you. And then I asked
 14 about when Qwest sends us a customer not ready, then Qwest
 15 sends us a customer not ready jeopardy.
 16 So Qwest confirmed at that particular meeting
 17 that our understanding that Qwest would give us an FOC the
 18 day before, Qwest confirmed that.
 19 Q. Now, there were a number of issues that were
 20 raised as a part of this CMP process. In fact, Eschelon's
 21 original proposal was to receive notice in advance, an FOC
 22 in advance of provisioning without any -- without this
 23 24-hour time frame that you're claiming now; isn't that
 24 correct?
 25 A. Could you ask me that question again? I'm not

Page 342

1 sure just exactly -- in what forum are you talking about?
 2 In CMP or --
 3 Q. Yes, in CMP. Your initial request in this did
 4 not include the day before language, did it?
 5 A. It did not. And after -- if you, you know, look
 6 at the title of this CR that starts on Page 17 -- give me
 7 just a moment here.
 8 I think we said it was 17, didn't we?
 9 ARBITRATOR RODDA: I think something starts on 17.
 10 THE WITNESS: It said -- and I had actually
 11 specifically when we decided that there were synergies and
 12 we would do more work related to jeopardies than just our
 13 request, I had asked Qwest to keep the title, the old
 14 title, so that we could, you know, make certain that we
 15 captured that. And it says: Delayed order process
 16 modified to allow the CLEC a designated time frame to
 17 respond to a released delayed order after Qwest sends the
 18 updated FOC.
 19 And so that request with that title was
 20 completed, and throughout the process as we talked in CMP
 21 and at ad hoc meetings and provided examples, then Qwest
 22 confirmed that actually we should be sending you an FOC
 23 the day before.
 24 Q. (BY MR. TOPP) But you were willing to close this
 25 without any language in the product catalog obligating the

Page 343

1 FOC to be sent the day before?
 2 A. You know, regardless of whether or not the
 3 language is in the product catalog, Qwest had confirmed it
 4 on several calls and said that that was their process.
 5 Q. Now, is it your view that if Qwest resolves a
 6 Qwest jeopardy on the due date that Qwest should still
 7 send an FOC a day before it attempts to deliver the
 8 service?
 9 A. Our language that we are proposing in the
 10 interconnection agreement allows Qwest to attempt to
 11 deliver the service regardless of whether or not Qwest
 12 sends any FOC at all, or a timely FOC. We want to get
 13 service to our customer as much as Qwest wants to deliver
 14 it.
 15 Q. And, in fact, you attached to your testimony over
 16 100 examples of situations in which Eschelon filled orders
 17 without receiving an FOC beforehand; is that not correct?
 18 A. That is correct. That is an attachment to --
 19 it's an exhibit to my testimony which proves our language
 20 says we are committed to attempt to accept the circuit
 21 even if Qwest doesn't notify us.
 22 Q. And if there's an obligation to provide an FOC a
 23 day in advance, that's not going to make any difference
 24 with respect to getting orders provisioned in a timely --
 25 I mean, the FOC -- sorry. Let me clear that up.

Page 344

1 In those situations where Eschelon has gone ahead
 2 and provisioned absent an FOC, how has Eschelon known that
 3 it needs to do something?
 4 A. Well, I think that every situation is different.
 5 You know, perhaps on those particular days we -- you know,
 6 the staff scrambled to be able to do that. You know, if
 7 we don't know Qwest is going to deliver the circuit, then
 8 we don't prepare internally for that to happen. But if we
 9 are able to do that, we do, you know, make every effort
 10 and every attempt to do that.
 11 Q. Uh-huh.
 12 A. And I think in response, you know, I believe --
 13 and if you want to ask it again, you said that -- I think
 14 you asked me how Qwest can deliver it on the due date if
 15 they have to send an FOC the day before. And our language
 16 doesn't require Qwest to send an FOC before they attempt
 17 to deliver. It only says if Qwest hasn't, that we haven't
 18 had an opportunity.
 19 Qwest made it very clear through this CMP process
 20 as this CR was going on that a Qwest facility jeopardy in
 21 particular, the due date was in jeopardy. And we actually
 22 talked a lot in CMP about the train. Should we stop the
 23 train or do we keep the train going? And that's when they
 24 looked at all of those Qwest jeopardy codes and determined
 25 that I want you to ignore these, but the Qwest facility

Page 345

1 jeopardies you have to pay attention to and you have to
 2 assume that the due date could be missed.
 3 So Ms. Albersheim yesterday indicated that we
 4 should still be ready, and that's not what they told us in
 5 Qwest's CMP.
 6 Q. Okay. When you -- but you would agree with me,
 7 wouldn't you, that there are circumstances where Eschelon
 8 can be ready to accept a circuit even when it has not
 9 received an FOC?
 10 A. I think that in the best interest of getting the
 11 service provisioned, we have scrambled to accept these
 12 circuits even when it wasn't on the workload, or there may
 13 have been additional tasks that we needed to complete to
 14 accept the circuit. My exhibit with the examples of those
 15 where we didn't get an FOC but we accepted the circuit
 16 anyway when Qwest contacted us to deliver it is proof
 17 that, yeah.
 18 Q. And that's, in fact, what you would want Qwest to
 19 do is to try and deliver on time if they possibly can?
 20 A. Yes.
 21 MR. TOPP: I have no other questions.
 22 ARBITRATOR RODDA: Okay. I don't have any
 23 questions. Thank you very much.
 24 MR. MERZ: Could I just -- maybe one or two
 25 follow-up.

Page 346

REDIRECT EXAMINATION

1
 2
 3 Q. (BY MR. MERZ) If you go to BJJ-5, and I'm
 4 looking particularly at Page 36. What is -- that's the
 5 first page of a multipage document; correct?
 6 A. Yes. It's an ad hoc call that occurred on
 7 March 4, 2004, regarding jeopardies and this change
 8 request.
 9 Q. And the document itself is dated February 25th of
 10 2004; is that right?
 11 A. That is correct.
 12 Q. And who prepared these materials that begin at
 13 BJJ-5 Page 36?
 14 A. Qwest prepared these materials, and they provided
 15 it to CLECs in advance on February 25th, in advance of the
 16 call that happened on March 4th, as a reference point.
 17 Q. What was the purpose of the ad hoc call on
 18 March 4th?
 19 A. The purpose of the ad hoc call -- one of the
 20 purposes was to review the examples that Eschelon had
 21 provided to Qwest where we had a question regarding what
 22 we believed to be noncompliance of the jeopardy process.
 23 Q. And are you referring, then, to the examples that
 24 you find on Page 37 and following?
 25 A. That is correct.

Page 347

1 Q. And Qwest prepared Page 37 as well?
 2 A. Yes.
 3 Q. And Page 38, these are all part of the same
 4 Qwest-prepared document?
 5 A. Yes.
 6 Q. Okay.
 7 A. And 39, 40, and then also 41, actually, through
 8 the end because we also -- you know, the red line that
 9 starts on 41 that I referred to before, it was also a part
 10 of the discussion that day when we talked about the
 11 jeopardy codes. So that was a part of it also.
 12 MR. MERZ: I don't have any further questions.
 13 Thank you, Ms. Johnson.
 14 ARBITRATOR RODDA: Thank you.
 15 Okay. Anything else from Qwest?
 16 MR. TOPP: No.
 17 ARBITRATOR RODDA: I suggest we take a short
 18 break between witnesses, and so 10 minutes or so.
 19 (A recess was taken from 2:55 p.m. to 3:12 p.m.)
 20
 21 DOUGLAS DENNEY,
 22 called as a witness on behalf of Eschelon, having been
 23 first duly sworn by the Certified Reporter to speak the
 24 truth and nothing but the truth, was examined and
 25 testified as follows:

Page 348

DIRECT EXAMINATION

1
 2
 3 Q. (BY MR. MERZ) Good afternoon, Mr. Denney.
 4 A. Good afternoon.
 5 Q. Please state your name for the record.
 6 A. Douglas Denney.
 7 Q. By whom are you employed?
 8 A. I'm employed by Eschelon Telecom, Inc.
 9 Q. Have you prepared testimony that has been filed
 10 in this case?
 11 A. Yes, I have.
 12 Q. And you have direct, rebuttal, and surrebuttal
 13 testimony; is that right?
 14 A. Yes.
 15 Q. Your direct testimony has been marked as Eschelon
 16 Exhibit 13; is that correct?
 17 A. Yes.
 18 Q. And the confidential exhibits to your direct
 19 testimony have been marked as Eschelon Exhibit 14; is that
 20 correct?
 21 A. Yes.
 22 Q. Your rebuttal testimony has been marked as
 23 Eschelon Exhibit 15; is that correct?
 24 A. Yes.
 25 Q. Your surrebuttal testimony has been marked as

Page 365

1 Change in circumstances?
 2 A. That would be a change. They're both a change of
 3 one.
 4 Q. And what if there were an intervening cost docket
 5 such that some of the rate elements in the first quote had
 6 changed. Change in circumstance?
 7 A. Yes.
 8 MR. ROSELLI: I have nothing further.
 9 ARBITRATOR RODDA: But someone does; right?
 10 MR. ROSELLI: Someone does, right. I'm sorry.
 11 MR. DEVANEY: I do.
 12
 13 CROSS-EXAMINATION
 14
 15 Q. (BY MR. DEVANEY) Good afternoon, Mr. Denney.
 16 A. Good afternoon.
 17 Q. I have a few areas to touch upon with you. And
 18 one is an area that you and I have spent a lot of time
 19 together on, and it's rates.
 20 You testified in your summary that one of your
 21 areas that you were addressing is -- I think you said how
 22 do you establish cost-based rates. Do you recall saying
 23 something like that at the start of your testimony?
 24 A. I don't know if I -- I think when I started my
 25 testimony I said that a big theme of mine is having

Page 366

1 cost-based rates apply to the things that Eschelon is
 2 purchasing out of this contract.
 3 Q. Okay.
 4 A. And there are provisions on establishing --
 5 there's things about establishing rates for products that
 6 Qwest doesn't, you know, currently offer, or how interim
 7 rates apply. There's some provisions in my proposals
 8 about that as well.
 9 Q. Okay. Let me just ask you in general. Just sort
 10 of pull back to the big picture.
 11 With respect to nonrecurring rates and the method
 12 for establishing them, tell me if you agree in general
 13 that one should look at the time needed to perform -- or
 14 first of all, I guess the activities that go into a
 15 nonrecurring activity, the time needed to perform the
 16 activity, the labor costs, the systems costs, are those
 17 all factors that should be considered in establishing a
 18 nonrecurring rate?
 19 A. I mean, I would agree with that with the caveat
 20 that there's, you know, the assumption that we're looking
 21 in a -- what we call economic costs or forward-looking
 22 economic costs. So there's often a dispute within that
 23 about do we just look at the times that we have right now,
 24 or should we be looking at what are the efficient times,
 25 or is it the system -- the embedded systems that we have

Page 367

1 now, or should we be looking at how the efficient systems
 2 would work.
 3 Q. Right.
 4 A. So I agree that you would look at these
 5 activities, but you need to -- I mean, there is some
 6 dispute on exactly how those get interpreted within the
 7 concept of forward-looking economic costs.
 8 Q. Okay. And I acknowledge that. So you get into
 9 debates about what technologies to use, what times to use,
 10 but in general would you agree that the factors that I
 11 identified are sort of the framework for establishing
 12 nonrecurring rates?
 13 A. Well, I mean, I would add, I guess, one more
 14 thing to that is that -- I mean, rates are either
 15 explicitly identified or they're implicit, covered in
 16 other rates. So when we establish nonrecurring rates,
 17 usually the first thing we look for is are these costs
 18 that we're trying to recover here already being recovered
 19 somewhere else, maybe through cost factors or maybe
 20 through, you know, installation pieces that would go into
 21 a loop cost.
 22 Q. But setting aside --
 23 A. Right. So recognizing that, I mean, I agree the
 24 things you're talking about for nonrecurring charges are
 25 areas that you would look at, but not in a vacuum,

Page 368

1 obviously.
 2 Q. Understood. And for a rate to comply with TELRIC
 3 and to be cost-based, that is for a nonrecurring rate,
 4 would you agree that you have to look at those factors
 5 that you and I just discussed?
 6 A. Right. The times, the activities that occur, the
 7 probabilities that would occur around them, labor rates,
 8 systems, yes.
 9 Q. In this particular case, there's been discussion
 10 of the design change rate of \$72 and change which was
 11 established in the last cost proceeding that you and I
 12 both participated in.
 13 Did you analyze that study in that proceeding?
 14 A. No. I did not.
 15 Q. Have you ever analyzed that study?
 16 A. I mean, I have looked at Qwest's design change
 17 cost studies across some states where I can find them.
 18 They're similar with minor differences across states. So
 19 I have looked at that. I have not -- I do not have in my
 20 possession the Arizona study. I know that we've asked
 21 Qwest for that and it hasn't been provided.
 22 Q. But in the cost proceeding you did not -- that
 23 you participated in in which this study was presented, you
 24 did not analyze it; correct?
 25 A. Yeah. I mean, I'm hesitating because at the end

Page 369

1 of these -- I worked for AT&T at the time, and at the end
 2 of these proceedings there were compliance filings, and I
 3 probably had my hands in every compliance filing that
 4 occurred in that docket. So I probably have seen that
 5 study, but I didn't do an analysis of that study at the
 6 time.
 7 Q. Okay.
 8 A. I didn't testify on that study in that case. I
 9 testified on the HAI model in that case.
 10 Q. I remember that. Okay. Now, in your testimony
 11 related to CFA changes, I'm going to paraphrase a couple
 12 of criticisms that you level at Qwest with respect to CFA
 13 changes. And if you disagree with my paraphrasing, go
 14 ahead and correct me, but I'm just trying to move things
 15 along.
 16 A. Okay.
 17 Q. I think you criticized Qwest for assuming that
 18 there's more time than -- we assume too much time for the
 19 lift and lay of the CFA. That is, removing the circuit
 20 from one connecting facility assignment and then moving it
 21 to another one. You analogize that to unplugging and
 22 plugging in a lamp, and you think that we go way beyond
 23 that; right?
 24 A. I mean, the design change study includes over an
 25 hour of time for something that we know -- there's a

Page 370

1 30-minute installation window in these cases. We know
 2 that Qwest has done these CFA changes multiple times in
 3 that 30-minute window.
 4 Q. What design change study are you referring to?
 5 A. Well, that time there's a design -- there's a
 6 study in Washington and there's a study in Oregon. And
 7 both of those studies have over an hour of time involved
 8 for looking at doing this design change.
 9 Q. Right. But you haven't seen the study in
 10 Arizona, or if you have you don't remember what's in it?
 11 A. Right. Qwest has not provided me with a study in
 12 Arizona, but their study is the same -- it's essentially
 13 the same with a few tweaks in minutes across the states.
 14 And the rate in Arizona is, I mean, it's similar to the
 15 rate that's been established in other states.
 16 Q. Are you aware that the design cost study in
 17 Arizona does not include any technician time?
 18 A. The design change studies that I have seen, they
 19 have -- and I have to look at a copy of the study on
 20 there, but there are these blocks of time for -- they're
 21 nondescript of what is in that time, but there's a block
 22 of time for this design change that's like a 35-minute
 23 period for doing some engineering review, or something
 24 like that. I don't know what is in that. I don't think
 25 there's a separate broke out tech time, technician time

Page 371

1 listed in those studies. They're very nondescript, I
 2 would say.
 3 Q. Were you here yesterday when Ms. Million
 4 testified about Qwest design studies?
 5 A. Yes, I was.
 6 Q. Did you hear her say that no technician time is
 7 included in that study?
 8 A. I heard her say that, but I don't think you can
 9 tell that from the study. Their testimony in that case is
 10 not clear. There isn't a separate line item for
 11 technician time. There I agree with that, but there's a
 12 block of time, over an hour of time in these studies for
 13 processing this design change. And it's fairly -- for the
 14 bulk of that time, it's fairly nondescript as to what is
 15 happening during that time.
 16 Q. Are you disagreeing with Ms. Million's sworn
 17 testimony that there's no technician time included in
 18 Qwest's cost study?
 19 A. I'm saying you can't tell from looking at that
 20 study. There's no descriptions in the case. You know,
 21 there's no descriptions of what is exactly in there in
 22 that study.
 23 Q. And when you say that study, what study are you
 24 referring to?
 25 A. The design change study that Qwest has filed in

Page 372

1 multiple states across the region.
 2 Q. When did they file that study?
 3 A. Let's see. In Arizona it was filed as part of
 4 the compliance -- I mean, the Washington study was filed
 5 as part of the compliance filing, and that docket was
 6 probably around the 2003, 2004 time frame.
 7 Q. Okay.
 8 A. There was a study in Oregon that Qwest had
 9 provided maybe around 2002.
 10 Q. Okay. And the Arizona docket in which the study
 11 was filed was 2000; correct?
 12 A. Right. Well, the Washington was the compliance,
 13 so it probably started around that same time.
 14 Q. With respect to issues 9-50 and 9-53, subloop and
 15 UCCRE, U-C-C-R-E, all caps, am I correct that Eschelon has
 16 never ordered either of those services from Qwest?
 17 A. Right. That's correct. Eschelon has not ordered
 18 those. These are things that are in the Qwest SGAT as
 19 offerings, and Eschelon is opposed to them being just
 20 removed on a wholesale basis from Eschelon.
 21 Q. And am I correct to understand that Eschelon has
 22 no current expectation of needing that in the near term,
 23 either service?
 24 A. That I can't answer. I mean, the use for these
 25 change -- you know, can change every day. So I don't know

Page 373

1 of plans to order that, but I can't say. I'm not in that
 2 group of people who does that.
 3 Q. Are you aware of any CLEC who has ever ordered
 4 either the subloop service of UCCRE service?
 5 A. No. I'm not aware. What I am aware is that Cox
 6 made a filing here recently in Arizona that asked for the
 7 subloop cross-connect rates to be established for all of
 8 those rates, including the ones that Qwest -- they are
 9 interim rates right now -- asked for permanent rates to be
 10 set in Phase III.
 11 Q. Are you familiar with what led to that filing and
 12 whether Cox has any intention of actually using that
 13 service?
 14 A. No. I do know that Cox asked for those rates to
 15 be established. I have the filing. I haven't talked to
 16 people at Cox, but I do know that they asked for rates for
 17 these particular elements we're talking about for which
 18 Qwest had testified that there's no evidence that there
 19 will be any demand in the future. Cox asked for these
 20 rates to be established.
 21 Q. Are you aware of any past dispute between Cox and
 22 Qwest that's being litigated now that might affect Cox's
 23 request that was set forth in that brief?
 24 A. No, I'm not.
 25 Q. Could you please take a look at the proposed

Page 374

1 language of Eschelon's for both 9-50 and 9-53, in
 2 particular Section 1.73.
 3 ARBITRATOR RODDA: Are you looking at the joint
 4 matrix?
 5 MR. DEVANEY: Yes.
 6 ARBITRATOR RODDA: Do you have a page number?
 7 MR. DEVANEY: I do. Page 58.
 8 ARBITRATOR RODDA: Thank you.
 9 Q. (BY MR. DEVANEY) And under Eschelon's proposed
 10 Section 9.3.3.8.3.1, it says: If Qwest performs or offers
 11 to perform the cross-connect for any other CLEC during the
 12 term of this agreement, Qwest will notify CLEC and offer
 13 CLEC an amendment to this agreement that allows CLEC, at
 14 its option, to request that Qwest run the jumper for
 15 intrabuilding cable in MTEs on nondiscriminatory terms and
 16 conditions.
 17 Do I read this correctly that if Qwest performs
 18 even just one cross-connect for another CLEC, that would
 19 trigger a right for Eschelon to enter into an amendment to
 20 the interconnection agreement?
 21 A. I'm sorry. Because I'm going to -- I turned to
 22 the Exhibit A at 1.7.3, and I know you read from 9. --
 23 which is proposal No. 1 related to this issue. So I
 24 wasn't in the right place when you were reading. So let
 25 me -- I think I have that in the testimony, so let me find

Page 375

1 that issue.
 2 Now what was your question?
 3 Q. My question is let's assume hypothetically that a
 4 CLEC comes to Qwest in an emergency and says, well, I need
 5 you to form a cross-connect, just one cross-connect for
 6 us. Can you do it? Qwest does it.
 7 Is that going to trigger under your proposal,
 8 that single incident, Qwest having to offer an amendment
 9 to the interconnection agreement to Eschelon?
 10 A. Well, to -- I mean, the language --
 11 Q. If you can answer that, and then give whatever
 12 explanation you have.
 13 A. Yes, I think it would, but I think the language
 14 says if Qwest performs or offers to perform. And right
 15 now -- I mean, in my view Qwest is offering to perform
 16 because they -- this is in their SGAT. It's out there in
 17 other companies' contracts. So I believe that Qwest
 18 should offer an amendment to Eschelon.
 19 This was Eschelon's first proposal on this issue
 20 because we said we didn't have an immediate plan to buy
 21 this, so we won't put it in the contract right now. But
 22 as long as you're offering to perform this for other
 23 CLECs, then we should have the right, if we decide to use
 24 it, to add an amendment to our contract in order to
 25 utilize that product. So that's the intent here of this

Page 376

1 language.
 2 Q. If Qwest has no demand for a product, no legal
 3 obligation to provide it, no one is ordering it, do you
 4 think Qwest ought to have the right to stop offering the
 5 product?
 6 A. Not necessarily. I think there's been
 7 products -- there's been products in the past where demand
 8 didn't exist immediately for that product. I think
 9 there's an analysis that needs to be undertaken. I think
 10 it's possible with this issue that if there is no interest
 11 in this, no CLECs would object and Qwest could ask the
 12 Commission and say, look, we've asked you to have rates
 13 for this in the past. We would ask you not to have rates
 14 for that in the future. And that's kind of our alternate
 15 proposals here for this section.
 16 So it would set up a process by which Qwest could
 17 reasonably remove this from other CLECs. If no one was
 18 interested, no one would object to having this removed
 19 from the contracts. But if there's an interest and the
 20 Commission has either proposed rates or indicated it
 21 planned on proposing rates, and Qwest has put forth TELRIC
 22 rate offers for this product, then I think Qwest should
 23 offer that product until such time that the Commission has
 24 made another determination.
 25 Q. Do you know how many years Qwest has been

Page 381

1 apply that rate to multiple terminations within a central
 2 office; correct?
 3 A. I mean, if the rate is developed appropriately,
 4 then that's correct, and the rate is developed and
 5 approved. It's the application that you're changing here.
 6 Q. I understand. That's helpful. Thank you.
 7 Now I want to ask you some questions about issue
 8 9-58, commingled arrangements.
 9 A. Okay.
 10 Q. And one of Eschelon's requests with respect to
 11 commingled arrangements is that the same circuit ID, a
 12 single circuit ID be used for the UNE component of a
 13 commingled EEL and the tariff component of a commingled
 14 EEL; is that correct?
 15 A. That is one of the proposals. That's correct.
 16 Q. Okay.
 17 A. There are some alternatives that we've offered up
 18 to Qwest where that wouldn't have to be the case, but that
 19 is -- one of the proposals, the main proposal, is that the
 20 circuit ID should be the same as it is for an all-UNE EEL.
 21 Q. Okay. Is it your understanding that circuit IDs
 22 contain product specific information in them that are
 23 recognized by the systems, the provisioning and billing
 24 systems of ILECs like Qwest?
 25 A. I believe there's maybe a letter code that may --

Page 382

1 I'm not -- product specific information such as -- there
 2 is some of that information in there. I'm not sure
 3 exactly what your --
 4 Q. Well, here's what I'm getting at. Is it your
 5 understanding that Qwest and other ILECs provision UNEs
 6 out of one provisioning inventory database and bill UNEs
 7 out of one database, and by contrast provision and bill
 8 tariffed services out of other databases?
 9 A. Not entirely, because I believe the facilities
 10 and things are all in -- all in TIRKS, I believe, for both
 11 UNEs and special access facilities. And so we're talking
 12 about the same physical facilities. You may have a
 13 different -- it may go somewhere after that point, but the
 14 facility is the same for both of these. We're not talking
 15 about a set of special access inventory and a set of UNE
 16 inventory.
 17 Q. But for provisioning purposes, Qwest and other
 18 ILECs have different provisioning and billing systems for
 19 UNEs on the one hand and tariffed services on the other;
 20 isn't that correct?
 21 A. To some degree I think there's some crossover on,
 22 you know, some of these systems. For example, like, I
 23 think, UDITs are, you know, unbundled transports ordered
 24 via ASRs, you know, even though they're local service
 25 things. So I'm not sure there's a hard and fast rule in

Page 383

1 that regard.
 2 Q. But as a general rule, isn't it true that
 3 tariffed services are provisioned and billed out of
 4 databases separate from UNE provisioning and billing
 5 databases?
 6 A. I think that's been Qwest's practice. And I have
 7 pointed out there's been disputes going back in the first
 8 arbitration whether Qwest should even create these
 9 separate billings systems for these.
 10 Q. And part of the function of the circuit ID is
 11 when Qwest gets an order, it sees the circuit ID and it
 12 knows which system to send it to; correct? So it can be
 13 provisioned and billed.
 14 A. I mean, I don't know if I agree with that
 15 entirely. I mean, for billing the rates are what they
 16 are.
 17 Q. Well, the bills have to be generated
 18 electronically, don't they?
 19 A. Right.
 20 Q. And they have to be sent to a billing system, and
 21 to be sent to the correct system you have to have the
 22 right circuit ID; correct? To generate the right bill?
 23 A. I think you have to have the right rates
 24 associated with the circuit that's being purchased in
 25 order to bill the right bill. And how -- the system that

Page 384

1 you choose to bill that on is Qwest's -- in my view,
 2 that's Qwest's choice of how they choose to bill that.
 3 But the fact is that you just have to have the underlying
 4 rates right for the right facilities.
 5 Q. Okay. Well, have you looked into what it would
 6 cost -- first of all, have you looked into whether it's
 7 technically feasible for Qwest to begin using the same
 8 circuit ID for the UNE piece and the tariff piece as
 9 opposed to the UNE and UNE? Have you looked into whether
 10 that's technically feasible?
 11 A. I mean, I have looked into it to the extent that
 12 Qwest does it today for UNE to UNE. They do it for
 13 special access to special access. They have done changes
 14 in the past where things have moved from special access to
 15 UNE without changing circuit IDs, and they managed to do
 16 those, so I believe it's technically feasible. I haven't
 17 done anything beyond that.
 18 Q. Okay. Have you analyzed -- if you think it is
 19 technically feasible, have you done any analysis of what
 20 the cost would be to begin using the single circuit IDs
 21 for UNE services on the one hand and tariffed services on
 22 the other?
 23 A. I don't think the cost would be anything, because
 24 Qwest has single circuit IDs for these end-to-end circuits
 25 today. They do UNE loop and UNE transport on a single

Page 385

1 circuit ID.
 2 Q. But you're failing to discern my distinction.
 3 That's UNE to UNE. But we're talking about two different
 4 provisioning systems, UNE on the one hand and tariffed on
 5 the other.
 6 In that circumstance, have you analyzed what it
 7 would cost to use the same circuit ID to process orders
 8 and to provision orders?
 9 A. And I have already said that it's my opinion that
 10 there should not be a technical problem to doing that, so
 11 I don't see where there would be any cost, because you
 12 already are able to do that -- they are already able to do
 13 that today.
 14 Q. Have you studied that? Have you done any cost
 15 analysis at all?
 16 A. No, not other from what I have described to know
 17 that Qwest is able to do that today with the circuits.
 18 Q. If there is a cost, is that something that
 19 Eschelon is willing to compensate Qwest for?
 20 A. I mean, there's a process if there's a cost for
 21 Qwest to go to --
 22 Q. If Qwest has to engage some outside firm to, you
 23 know, spend millions of dollars perhaps to begin using
 24 single circuit ID for these orders, if that's technically
 25 feasible, is Eschelon willing to compensate Qwest for

Page 386

1 whatever that cost is?
 2 A. I mean, Eschelon is not going to write a blank
 3 check to Qwest. In my experience, whenever Qwest doesn't
 4 want to do something, it's very expensive for them to do.
 5 So I'm not going to say Eschelon is going to write Qwest a
 6 blank check. There are processes set up for Qwest to
 7 collect rates when they believe --
 8 Q. We don't have to agree on the amount. But in
 9 principle you have made this demand on us to have a single
 10 circuit ID. Are you willing to pay for it? That's my
 11 question.
 12 A. I mean, Eschelon's -- Eschelon is willing to pay
 13 cost-based rates that are ordered by a commission's
 14 forward-looking economic costs. So to the extent that
 15 Qwest, you know, develops cost-based rates, if there are
 16 any additional costs for having to do this and there are
 17 cost-based rates associated with that, then Eschelon would
 18 abide by Commission orders and pay those rates.
 19 Q. Okay. Part of your proposal here with commingled
 20 arrangements is not just the single circuit ID, but also
 21 that Qwest change its processes and systems to have a
 22 single billing account number, a single circuit ID, to use
 23 just one form of service order form, the LSR you want
 24 used, not just the --
 25 A. Any form. We're not stuck to the LSR. A single

Page 387

1 order.
 2 Q. Okay. So let's -- you obviously won't agree with
 3 me on this, but let's assume that it costs a lot of money
 4 to make all of those systems and provisioning changes.
 5 Would you be willing to insert language into this
 6 contract that says Eschelon is making these requests, and
 7 Eschelon will be willing to pay a reasonable, forward-
 8 looking cost for whatever changes -- whatever costs are
 9 incurred with these changes? Is that something that you
 10 would be willing to do?
 11 A. Is that a Qwest language proposal offer that I
 12 should be taking back to our negotiations team?
 13 Q. I'm asking you today. Are you willing to agree
 14 to pay the costs of those systems changes?
 15 A. I'm not willing to agree to that today. But if
 16 Qwest has specific language that it is proposing in the
 17 contract, then that would go back to our negotiations team
 18 to look at. But I wouldn't agree to that today, because
 19 that's like writing a blank check by saying we're just
 20 going to agree to pay Qwest with something that you're
 21 going to -- I don't --
 22 Q. I'm not talking about amounts but in principle.
 23 Is Eschelon willing to pay for the costs of the changes
 24 that it's demanding Qwest make to its systems?
 25 A. No, because I don't think you need -- we don't

Page 388

1 believe you need to make the changes you're making. We've
 2 had a lot of discussion on this in negotiation, and we
 3 don't believe Qwest has provided, you know, reasonable
 4 evidence that it needs to make all of these changes.
 5 We don't understand why this isn't just a billing
 6 change or taking something that was a UNE, that wasn't a
 7 UNE, that is no longer a UNE, why it's not just a rate
 8 change.
 9 Q. So the answer is, no, you're not willing to pay?
 10 A. That's right.
 11 MR. DEVANEY: Thank you.
 12 Your Honor, would it be possible to take just a
 13 three or four-minute break? There's an exhibit that was
 14 introduced yesterday that I don't have with me that I
 15 would like to get from the court reporter and ask a few
 16 questions about.
 17 ARBITRATOR RODDA: Certainly.
 18 (A recess was taken from 4:04 p.m. to 4:14 p.m.)
 19 ARBITRATOR RODDA: Let's go back on the record
 20 then. I think we found the exhibit.
 21 MR. DEVANEY: We did. Thank you for that break.
 22 Q. (BY MR. DEVANEY) Mr. Denney, could you please
 23 look, and maybe you have it, DD-23?
 24 A. Right. And I thought you said the Cox exhibit,
 25 not the cost exhibit. That's why I didn't think I had it