

1 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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3 IN THE MATTER OF THE)
 PETITION OF ESCHELON)
 4 TELECOM OF UTAH, INC.,)
 FOR ARBITRATION WITH)
 5 QWEST CORPORATION, PURSUANT)
 TO 47 USC SECTION 252 OF THE)
 6 FEDERAL TELECOMMUNICATIONS)
 ACT OF 1996.) Docket No.
 7) 07-2263-03
 _____)

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9 September 12, 2007 - 9:30 a.m.

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 15 160 East 300 South, Room 403
 16 Salt Lake City, Utah 84114

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24 Reporter: Kathy Morgan, CSR, RPR
 25 Notary Public in and for the State of Utah

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1 SEPTEMBER 12, 2007 - 9:30 A.M. - SALT LAKE CITY, UTAH

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P R O C E E D I N G S

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4 THE COURT: Let's go on the record. This
5 is the Public Service Commission hearing in the
6 Matter of the Petition of Eschelon Telecom of Utah,
7 Inc., for Arbitration with Qwest Corporation Pursuant
8 to 47 UCS Section 252 of the Federal
9 Telecommunications Act of 1996, Public Service
10 Commission docket 07-2263-03.

11 I'm Steve Goodwill, an Administrative Law
12 Judge for the Commission, and I've been assigned by
13 the Commission to hear this matter. Notice of this
14 hearing was issued by the Commission on the 24th of
15 August 2007. At this time we'll go ahead and take
16 appearances, and we'll start with Qwest.

17 MR. SMITH: Your Honor, may I just jump
18 in. I'm Ted Smith with the law firm of Stoel Rives
19 here in Salt Lake City. I am serving in this case as
20 local counsel, and I would like to introduce
21 co-counsel, and then I will vacate the premises. To
22 my far right is Mr. Jason Topp of the Qwest Law
23 Department. Mr. Topp is a member of the Minnesota
24 Bar and is a resident of and works in Minneapolis.
25 To my immediate right is Mr. John Devaney of the

26

1 Washington D.C. office of the law firm of Perkins
2 Coie.

3 And Mr. Devaney, I think even before Your
4 Honor, has appeared here in Utah previously. He's a
5 member in good standing of the Bar of Washington,
6 D.C. So I don't think technically we need to move
7 for their admissions, but I did want to introduce
8 them, and if there are any issues that come up where
9 my assistance might be helpful in producing something
10 or the like, please feel free to give me a call.

11 THE COURT: All right, thank you.

12 MR. SMITH: I will be two blocks away and
13 available.

14 THE COURT: Thanks. And for Eschelon?

15 MR. MERZ: Good morning, Your Honor. My
16 name is Greg Merz with the Gray, Plant & Mooty law
17 firm in Minneapolis representing Eschelon Telecom of
18 Utah. Behind me here, and I'll just introduce them
19 briefly, because they'll be appearing later, are the
20 witnesses who will be appearing for Eschelon. Bonnie
21 Johnson is farthest to the right. Mr. Douglas Denny
22 is there in the middle, and Michael Starkey is here
23 on the left.

24 THE COURT: Okay, thanks.

25 Prior to moving to testimony and evidence

26

1 in this matter, I just want to remind everybody that
2 we do have information in this docket that's being
3 claimed as confidential, and it's been prefiled, a
4 protective order is in place to govern access to that
5 information. If necessary, we can close this hearing
6 if the parties or witnesses need to discuss the
7 specifics of this information, and it would be my
8 preference that we keep the hearing open to the
9 extent that we can.

10 I'll ask the attorneys' assistance in
11 doing that by referring to the information in
12 general, and but perhaps not to the specific
13 information. If we can get through it that way,
14 great. If you really feel the need to refer on the
15 record to specific information, we can, then, close
16 the hearing to only those who have signed the
17 protective order in this matter.

18 Again, I'll just ask the attorneys and, of
19 course, the witnesses to please be careful treading
20 around confidential information, and to alert me to
21 any potential problems that we're having with that.

22 Also prior to going on the record we
23 discussed the manner in which to proceed today, and
24 it's my understanding we'll start with Qwest and its
25 witnesses and testimony and then move to Eschelon.

26

1 With that, I guess, Mr. Topp?

2 MR. TOPP: Thank you, Your Honor. Qwest
3 calls Renée Albersheim to the stand. We have
4 provided the court reporter with a copy of an exhibit
5 list just for reference, and I would ask you if you
6 would like a copy of that as well, as we could
7 provide that to you.

8 THE COURT: If I could, please. Thanks.

9 Good morning, Ms. Albersheim. Good to see
10 you again. Could you please raise your right hand
11 and I'll swear you in.

12 (The witness was sworn.)

13 Thanks. Please be seated.

14 Mr. Topp?

15 DIRECT EXAMINATION

16 BY MR. TOPP:

17 Q. Good morning, Ms. Albersheim.

18 A. Good morning.

19 Q. Am I correct that you've filed testimony
20 in this case?

21 A. Yes, I have.

22 Q. And your direct testimony dated June 29th,
23 2007 has been marked as Qwest Exhibit 1?

24 A. Yes.

25 Q. And then the exhibits to that testimony
26

1 have been marked as Qwest Exhibits 1.1 through 1.7?

2 A. Yes.

3 Q. And you filed rebuttal testimony on

4 July 27th, 2007?

5 A. Yes.

6 Q. That's been marked as Qwest Exhibit 1R?

7 A. Yes.

8 Q. And the exhibits to that testimony have

9 been marked as Exhibits 1R.1 through 1R.9; is that
10 correct?

11 A. Yes, that's right.

12 Q. And you filed surrebuttal testimony on

13 August 10th, 2007?

14 A. Yes.

15 Q. And that's been marked as Qwest

16 Exhibit 1SR?

17 A. Yes.

18 Q. And sitting here today, do you have any

19 modifications to the testimony that you have

20 provided?

21 A. Yes, I do. I have a modification to my
22 surrebuttal, Qwest Exhibit 1SR at page 30. I need to
23 insert a line, I would say, at line 25, which should
24 say: "Fifth, CLEC," C-L-E-C, "submits" -- I'm writing
25 it down here -- "a supplemental order." And that,

26

1 then, necessitates a change to line 26, which should
2 read, instead of "fifth," "sixth." And then on the
3 next page, page 31, line 1 "sixth" should be changed
4 to "seventh."

5 Q. With that correction, are there any other
6 modifications you would make to your testimony if
7 those questions were put to you today?

8 A. No.

9 MR. TOPP: Qwest would offers Exhibit 1.1R
10 and 1.1SR, along with the associated Exhibits 1.1
11 through 1.7, and 1R.1 through 1R.9.

12 THE COURT: Any objection to their
13 admission?

14 MR. MERZ: No objection, Your Honor.

15 THE COURT: All right, they're admitted.

16 MR. TOPP: And Ms. Albersheim is available
17 for cross-examination.

18 THE COURT: Mr. Merz?

19 MR. MERZ: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. MERZ:

22 Q. Good morning, Ms. Albersheim.

23 A. Good morning.

24 Q. You are trained as a lawyer; is that
25 right?

26

1 A. Yes. Though I'm not a lawyer for Qwest,
2 yes.

3 Q. But that's your formal education, is as a
4 lawyer?

5 A. Yes.

6 Q. Your job title is Staff Witnessing
7 Representative? Do I have that right?

8 A. Yes.

9 Q. Now, you testified in this case, among
10 other things, regarding Qwest's Change Management
11 Process, also referred to as CMP; is that right?

12 A. Yes.

13 Q. You are not, yourself, part of Qwest's
14 change management team, are you?

15 A. No, I am not.

16 Q. And you do not participate in changes that
17 Qwest makes to its product catalog, also referred to
18 as the PCAT, P-C-A-T?

19 A. That's correct.

20 Q. And your job at Qwest is to testify in
21 regulatory proceedings like this; is that right?

22 A. Among other things, yes.

23 Q. I'd like you to refer to your rebuttal
24 testimony, which has been marked as Qwest Exhibit 1R.
25 And I'm looking specifically at page 7 of that

26

1 testimony.

2 A. I'm there.

3 Q. At line 12 of page 7, you say that: "CLECs
4 have rejected a significant number of the changes
5 proposed by Qwest through the CMP." Do you see that?

6 A. Yes, I do.

7 Q. Now, when you refer to CLECs rejecting
8 changes proposed by Qwest, do you mean to say that
9 Qwest withdrew proposed changes in response to some
10 input that they received from Qwest?

11 A. Generally, yes.

12 Q. CLECs do not have the ability to reject
13 changes that Qwest has proposed through CMP, do they?

14 A. In the strict sense of the term, no, but
15 they can object, and Qwest listens to their
16 objections.

17 Q. Qwest is not obligated to withdraw a
18 change that is proposed in CMP because CLECs have
19 objected, is it?

20 A. It's not obligated, but it is not likely
21 to try and push through a change that the CLEC
22 strongly objects to.

23 Q. Well, we actually have had a recent
24 hearing regarding some changes that Qwest made to its
25 expedites process. Do you recall that?

26

1 A. Yes, which was requested by a CLEC.

2 Q. And you recall that the specific change
3 that gave rise to the complaint in that matter was a
4 change that was objected to by CLECs; is that
5 correct?

6 A. It was objected to, though not
7 unanimously.

8 Q. Qwest is not obligated under CMP to
9 withdraw a proposed change even if CLECs do
10 unanimously object to the proposed change, correct?

11 A. That is correct, and the CMP allows the
12 CLEC several avenues for further objection, should
13 Qwest proceed.

14 Q. Now, in your testimony you described
15 postponement as one of the most powerful mechanisms
16 that CLECs have for challenging changes in the CMP;
17 is that right?

18 A. It is one of the mechanisms, yes.

19 Q. And postponement is a mechanism in the CMP
20 that enables a CLEC to request a delay in the
21 implementation of a proposed change; is that right?

22 A. Yes.

23 Q. It is up to Qwest to decide whether to
24 grant postponement; is that right?

25 A. That's correct.

26

1 Q. Postponement is an option that is
2 available to CLECs only if a CLEC has initiated
3 dispute resolution proceedings; isn't that right?

4 A. No.

5 Q. Would you go to Qwest 1.1, which I believe
6 is the first exhibit to your testimony.

7 A. I'm there.

8 Q. Qwest 1.1 is the CMP document; is that
9 right?

10 A. Yes.

11 Q. If Qwest denies a postponement, a change
12 can go into effect in 30 days; is that right?

13 A. That sounds correct, yes.

14 Q. If a postponement is granted, that
15 postponement may be for as few as 30 days; is that
16 right?

17 A. I believe that's correct.

18 Q. And would you agree with me that there is
19 no mechanism available for obtaining a longer
20 postponement if Qwest grants a 30-day postponement?

21 A. I don't believe that's correct. They can
22 ask for a longer postponement.

23 Q. If Qwest grants a CLEC's request for a
24 postponement and says the postponement will be for
25 30 days, does CMP enable the CLEC to ask for a longer
26

1 postponement?

2 A. Rather than enabling, I would say I don't
3 think it prohibits that. I believe the point of a
4 postponement is to allow for further discussion on
5 the change request.

6 Q. And I guess my question is: Are you aware
7 of any provision in CMP that would allow a CLEC to
8 seek a longer postponement if Qwest grants a
9 postponement of 30 days?

10 A. Well, there are lots of mechanisms
11 available that could result in a longer postponement,
12 not the least of which is the dispute resolution
13 process.

14 Q. And I'm not sure you've answered my
15 question. Postponement being a powerful mechanism
16 for CLECs.

17 A. Sure.

18 Q. My question is: If a CLEC requests a
19 postponement and Qwest grants that request, which
20 says that the postponement will be 30 days, is there
21 any provision in CMP that would allow the CLEC to
22 seek longer postponement if the 30-day request has
23 been granted?

24 A. Well, my answer is there's no prohibition,
25 okay? I don't believe it's explicit that it allows a

26

1 longer postponement. I believe that's still possible
2 through the mechanisms available in the CMP. There's
3 no prohibition.

4 Q. Is there any specific provision in CMP
5 that you're relying on in support of that opinion
6 that you've just given us?

7 A. Well, all the mechanisms that I've
8 testified to that allow a CLEC to object to a change,
9 including dispute resolution, including referral to
10 the oversight committee, so I don't believe there's a
11 prohibition against a longer postponement should it
12 be needed.

13 Q. And you believe that the CMP docket would
14 allow a CLEC whose request for a postponement had
15 been granted to seek a longer postponement than the
16 one that Qwest was allowed to, the one that Qwest had
17 agreed to grant?

18 A. I believe they could seek that.

19 Q. And my question is: Are you aware of any
20 provision in CMP that supports that opinion that
21 you've just given?

22 A. Again, I don't believe there's an explicit
23 statement to that effect, but I believe the
24 mechanisms in the CMP would let that happen.

25 Q. You've also mentioned dispute resolution.

26

1 You would agree with me that under the dispute
2 resolution in CMP, it's the CLEC, not Qwest, that is
3 the party seeking dispute resolution?

4 A. Generally that would be the case.

5 Q. And under the dispute resolution
6 provision, each party to the dispute resolution bears
7 its own cost in connection with that process?

8 A. I would assume so.

9 Q. And are you aware that that's, in fact,
10 what the CMP document provides?

11 A. That makes sense.

12 Q. I'm going to change gears now and talk
13 about intervals, and "intervals" refers to how long
14 it takes Qwest to provide a product or service,
15 correct?

16 A. Yes.

17 Q. Now, in your direct testimony, which has
18 been marked as Qwest Exhibit 1, page 34.

19 A. I'm there.

20 Q. You refer at lines 26 and 27 to change
21 requests submitted by AT&T, Eschelon, Comcast, Covad
22 and Qwest; is that right?

23 A. Yes.

24 Q. And you're talking here specifically about
25 interval change requests; is that right?

26

1 A. Yes.

2 Q. The requests submitted by AT&T, Eschelon,
3 Comcast and Covad all sought shorter intervals; is
4 that right?

5 A. I believe so.

6 Q. None of those requests involved a CLEC
7 requesting a longer interval, did it?

8 A. No.

9 Q. Now, Eschelon has proposed that when
10 parties are able to agree on an interval change, that
11 that change can be incorporated into the ICA through
12 the use of something called an advice adoption
13 letter; is that right?

14 A. That's Eschelon's proposal.

15 Q. And, in fact, it has proposed specific
16 forms attached to the proposed ICA at Exhibits N and
17 O to accomplish that process, correct?

18 A. That's correct.

19 Q. And you, I believe, criticized Eschelon's
20 proposal in that regard because it creates a unique
21 process for Eschelon?

22 A. Yes, and it also interrupts the CMP
23 process, which is the intended process for managing
24 service intervals.

25 Q. And you describe that process unique to
26

1 Eschelon as a one-off, correct?

2 A. Well, it would be true for Eschelon and
3 anyone who opts into Eschelon's contract, that's
4 correct.

5 Q. The one-off criticism is one that we see
6 in a number of places in your testimony with regard
7 to a number of issues; isn't that true?

8 A. That's true.

9 Q. Now, we've talked about these two forms,
10 Exhibits N and O. Those forms are modeled on similar
11 forms that the parties have agreed to use for
12 purposes of adding new products to Eschelon's ICA; is
13 that right?

14 A. They are similar. They are not the same.

15 Q. And those forms are Exhibits L and M,
16 correct?

17 A. I think that's right.

18 Q. And there's closed language in the
19 contract that talks about how parties will use those
20 forms to streamline the process for adding new
21 products to Eschelon's ICA; is that right?

22 A. Yes. That allows Eschelon to take
23 advantage of products created after the ICA was
24 completed.

25 Q. Now, you are familiar with Qwest's
26

1 negotiation template; is that correct?

2 A. Yes.

3 Q. And Qwest's negotiation template is
4 essentially Qwest's proposed offer that it holds out
5 as the terms under which it would agree to renew
6 their interconnection agreement with a CLEC, correct?

7 A. If the CLEC wanted to accept the
8 negotiation template as its contract, yes. But it's
9 also our starting point for negotiation, should a
10 CLEC wish to seek different terms.

11 Q. Now, formerly, the Qwest negotiation
12 template included the forms that are Exhibits L and M
13 to the proposed Eschelon ICA, correct?

14 A. I think that's correct. I'm not certain
15 if it was always attached to the negotiation
16 template.

17 Q. The negotiation template had the same
18 process by which a CLEC could, through the use of
19 advice adoption letters, add new products and
20 services to their contract, correct?

21 A. Yes, I think so. I'd have to check.

22 Q. We talked about this very thing, and I
23 believe it was in Washington; did we not?

24 A. Probably. I don't recall.

25 Q. And you recall that Qwest is changing its
26

1 negotiation template, and has, in fact, changed its
2 negotiation template to get rid of that process, the
3 advice adoption process, by which a CLEC can add new
4 products to its contract?

5 A. Like I said, I don't recall if it was part
6 of the negotiation template or not. I don't believe
7 it's part of it today.

8 Q. And so that's not something that Qwest is
9 holding out to other CLECs as part of its starting
10 point for negotiations?

11 A. That's correct, and I believe that's
12 because it was not used.

13 Q. And the advice adoption process is part of
14 the agreed-upon provisions of the Qwest-Eschelon
15 proposed ICA, correct?

16 A. Yes, and I suspect that is mostly a matter
17 of timing, and that we probably came to that
18 agreement before Qwest determined that it was no
19 longer useful to continue the advice adoption
20 letters, as they were not being used.

21 Q. You would agree with me that in
22 eliminating that process as part of its negotiation
23 template, Qwest has effectively created a one-off, a
24 specific process for Eschelon relating to adding new
25 products to its contract?

26

1 A. That would be true if Qwest suspected that
2 Eschelon were going to use the advice adoption
3 letters, but since they have not been used
4 previously, there is not much likelihood of that.

5 Q. I'd like to talk with you now about
6 acknowledging of mistakes and root cause analysis.
7 The issue here is that Eschelon has proposed language
8 regarding circumstances under which Qwest will
9 provide Eschelon with a root cause analysis of errors
10 to determine the cause of problems in ordering and
11 billing and the like, correct?

12 A. Yes.

13 Q. And then in addition, there's an issue
14 regarding the circumstances under which Qwest will
15 provide Eschelon with a written acknowledgment of a
16 mistake that it has made as part of the ordering,
17 provisioning, billing, repair process, correct?

18 A. That is part of it, yes.

19 Q. Now, Qwest objects to Eschelon's proposed
20 language. At least part of its objection is it
21 believes the language is ambiguous; is that right?

22 A. Yes.

23 Q. And if you would turn to your rebuttal
24 testimony, Qwest Exhibit 1R, I'm looking at page 32.

25 A. I'm there.

26

1 Q. And at the bottom of that page, beginning
2 at line 21, then carrying on to the next page, you
3 describe Qwest's concern regarding the ambiguity of
4 Eschelon's proposed language; is that right?

5 A. Yes.

6 Q. Now, your specific concern is the phrase:
7 "The letter will include a recap of sufficient,
8 pertinent information to identify the issue"; is that
9 right?

10 A. Yes.

11 Q. And in particular, you're concerned about
12 the word "sufficient"; is that right?

13 A. Yes.

14 Q. Would you agree with me that if the
15 Acknowledgement of Error letter is going to serve its
16 useful purpose, that it needs to contain sufficient
17 information to identify the issues?

18 A. The point is "sufficient" is a subjective
19 term. What will be "sufficient"?

20 Q. And my question is different. My question
21 is: You would agree that in order for this letter to
22 serve its purpose, it needs to provide sufficient
23 information to identify the issue; does it not?

24 A. Well, that would depend on the purpose
25 it's intended to serve. If it is simply -- if its

26

1 sole purpose is to say Qwest made an error, that
2 would be it. But the language is vague enough that
3 Eschelon could ask for more.

4 Q. What language has Qwest proposed to
5 address this ambiguity?

6 A. Qwest has not proposed language because
7 Qwest believes that it already has processes for root
8 cause analysis that are enough to provide Eschelon
9 with information regarding the source of errors
10 during processes.

11 Q. Go to your direct testimony, Qwest
12 Exhibit 1, and I'm looking at page 40 where the
13 Eschelon proposed language is set out.

14 A. I'm there.

15 Q. You see that -- and I'm looking
16 specifically at section 12.1.4.2.1 at the bottom of
17 the page.

18 A. Yes.

19 Q. Do you see that? And that's the provision
20 where this phrase "sufficient information to identify
21 the issue" is, correct?

22 A. Yes.

23 Q. Eschelon's proposed language includes
24 examples of what would constitute sufficient
25 information; is that right?

26

1 A. Yes, but it's not limited. It's an
2 example, but it's not an exhaustive list.

3 Q. You would agree with me that information
4 that is sufficient to identify the issue is going to
5 vary from circumstances to circumstance, correct?

6 A. I suspect it will.

7 Q. And it would be very difficult to come up
8 with an exhaustive list that in all cases is going to
9 be sufficient; is that correct?

10 A. That's true, but my point is that based on
11 "sufficient," we don't know what will be enough.

12 Q. Now, you've also expressed a concern that
13 Eschelon's language regarding providing the letter on
14 a non-confidential basis might require Qwest to
15 reveal sensitive customer information, including
16 CPNI.

17 A. That is a potential, yes.

18 Q. Now, Eschelon's proposal describes
19 specifically what Qwest must provide on a
20 non-confidential basis; isn't that right?

21 A. Not really.

22 Q. Well, I'm looking -- now I'm looking at
23 page 41, so the next page of your direct testimony.

24 A. Okay.

25 Q. And at section 12.1.4.2.5, you see that

26

1 what has to be provided on a non-confidential basis
2 is "the acknowledgment response described in Section
3 12.1.4.2.3," correct?

4 A. Yes.

5 Q. And if you look at that section, it refers
6 to Qwest's acknowledgment provided with Qwest's
7 identification, such as a Qwest letterhead or logo,
8 correct?

9 A. That's correct.

10 Q. And then the preceding section,
11 12.1.4.2.1., describes the information that has to be
12 included, correct?

13 A. Which includes a partial list, but it's
14 not exhaustive, and that's our concern.

15 Q. You would agree with me that at least with
16 respect to the examples that have been provided, that
17 none of those things are confidential information,
18 are they?

19 A. Actually, I believe they would be
20 confidential to Eschelon. Now, if Eschelon was
21 willing to share that, then they would not.

22 Q. But in any event, that's not information
23 that Qwest would have a concern about sharing with
24 Eschelon on a non-confidential basis, would it?

25 A. No.

26

1 Q. Now, the language that Eschelon has
2 proposed does not require Qwest, as part of its
3 Acknowledgment of Mistake letter, to include all of
4 the data that is associated with the root cause
5 analysis that is performed, does it?

6 A. It's not explicitly required, but it's
7 also not excluded.

8 Q. Well, is there anything in 12.1.4.2.1 that
9 you would point to as requiring Qwest to provide
10 information associated with its root cause analysis?

11 A. Yes. The sufficient pertinent
12 information, Eschelon could demand that the data that
13 provided the source for the root cause analysis be
14 included.

15 Q. And Qwest has not proposed any alternative
16 language to deal with that issue we've been talking
17 about, has it?

18 A. No.

19 Q. Now, the language that Eschelon has
20 proposed is based on relief that was ordered by the
21 Minnesota Commission in a complaint case; is that
22 right?

23 A. Yes, it's based on that, yes.

24 Q. And that's sometimes referred to as the
25 Minnesota 616 Case, correct?

26

1 A. Yes.

2 Q. And in that case, Qwest made an error in
3 transferring a customer to Eschelon; is that right?

4 A. I believe that's correct.

5 Q. As a result of that error, Eschelon's
6 customer unexpectedly lost service; is that right?

7 A. I think that's right. I'm a little vague
8 on the details now. It's been a while since I looked
9 at that case.

10 Q. The Minnesota Commission found Qwest's
11 service to be inadequate and ordered it to make
12 certain changes in its process; is that right?

13 A. Yes.

14 Q. And those changes included implementing
15 procedures for promptly acknowledging and taking
16 responsibility for those mistakes; is that correct?

17 A. That's correct.

18 Q. Now, referring to your rebuttal testimony,
19 Qwest Exhibit 1R, page 33.

20 A. Okay.

21 Q. And I'm looking specifically at line 17,
22 page 33 where you say: "Eschelon is the only CLEC to
23 request this process." Do you see that?

24 A. Yes, and also that Eschelon has not used
25 the process.

26

1 Q. And is the process that Qwest implemented
2 in response to Minnesota Commission's order one that
3 was specific to Eschelon, or was it one that was
4 available to all CLECs in Minnesota?

5 A. I believe it was available to all CLECs in
6 Minnesota. I believe that's what we were ordered to
7 do.

8 Q. I want to talk with you about expedites.

9 THE COURT: Before we do that, I just have
10 a quick question. Speaking to the interval issue a
11 moment ago, you mentioned the "sim" process. That's
12 the change management process?

13 THE WITNESS: Yes, CMP. It's referred to
14 various ways, both ways.

15 THE COURT: Okay, thank you. Sorry.

16 Q. (By Mr. Merz) Expedite. An expedite is a
17 process by which Qwest provides service more quickly
18 than it would under the interval that would generally
19 apply; is that right?

20 A. Yes, than it would under the standard
21 interval, yes.

22 Q. You testified in your testimony about
23 various changes that Qwest made to the expedite
24 process; is that right?

25 A. Yes.

26

1 Q. And you were not, yourself, involved in
2 developing any of those changes, correct?

3 A. No, I was not.

4 Q. And you were not involved in implementing
5 any of those changes; is that right?

6 A. That's correct.

7 Q. You are familiar with Bonnie Johnson of
8 Eschelon?

9 A. Yes, I am.

10 Q. And you are also aware of that Ms. Johnson
11 was involved on behalf of Eschelon in CMP activities
12 relating to changes that Qwest made to its expedite
13 process; is that right?

14 A. That's my understanding, yes.

15 Q. Do you understand that at one point in
16 time Qwest offered CLECs the opportunity to expedite
17 loops when certain emergency conditions were met?

18 A. Yes.

19 Q. Under that process, if the emergency
20 conditions were met, the expedite was provided at no
21 additional charge; is that right?

22 A. Yes.

23 Q. That process was one that was in place at
24 least sometime before 2000, correct?

25 A. I'm not sure when that process was
26

1 formally adopted.

2 Q. But you're aware of that it was before
3 2000?

4 A. I think so, yes.

5 Q. As of January of 2006, Qwest would no
6 longer provide emergency expedites for unbundled
7 loops; is that right?

8 A. In fact, Qwest offered expedites for
9 unbundled loops in all circumstances, not just in
10 emergencies.

11 Q. And you make a good point. The emergency
12 expedite process was one by which if the emergency
13 conditions were met, the CLEC didn't have to pay any
14 additional charge for the expedite, correct?

15 A. That was the old process, yes.

16 Q. As of January 2006, all expedites were
17 subject to a \$200-per-day retail charge; is that
18 correct?

19 A. No, that's not correct. Design service
20 expedites were subject to a charge of \$200 per day.
21 Non-designed services were still available for free
22 in emergency circumstances only.

23 Q. And so before January of 2006, CLECs could
24 get expedited loops under emergency conditions at no
25 charge?

26

1 A. That's correct.

2 Q. And after January of 2006, CLECs had to
3 pay \$200 a day for expedites for loops; is that
4 correct?

5 A. That's correct.

6 Q. You will agree with me that CLECs,
7 including Eschelon, objected to that change; did they
8 not?

9 A. Some CLECs did, yes, but the original
10 request was from a CLEC to expand the availability of
11 expedites for design services.

12 Q. And that request was a request that was
13 implemented in 2004, correct?

14 A. I believe the first implementation was,
15 yes.

16 Q. And that implementation didn't require
17 Qwest to start charging \$200 a day for emergency
18 expedites for design loops, did it?

19 A. I believe that was phased in.

20 Q. And that was phased in as part of Qwest's
21 own decision-making, not something that any CLEC was
22 asking for?

23 A. That's correct.

24 Q. There was no CLEC that was asking to pay
25 for something that they formerly hadn't been charged

26

1 for, was there?

2 A. Actually, that's not quite true, because
3 when Covad made its request, it said that it was
4 willing to pay a fee to expand the availability of
5 expedites.

6 Q. And did Covad also ask that Qwest
7 eliminate the emergency expedites process for loops?

8 A. No. It asked for broader availability of
9 expedites for loops, for all products.

10 Q. No CLEC asked Qwest to eliminate the
11 emergency expedited process for loops?

12 A. Not in those terms, no.

13 Q. And those CLECs that did offer input in
14 the CMP objected to Qwest's eliminating the emergency
15 expedite process for loops?

16 A. Some did, yes.

17 Q. Did any CLEC speak in favor of eliminating
18 the emergency expedites process for loops?

19 A. No. They spoke in favor of expanding the
20 expedite availability.

21 Q. That was in 2004?

22 A. I believe that continued through the phase
23 in process.

24 Q. Now, Eschelon's proposed language
25 describes when expedites will be available; is that

26

1 right?

2 A. As Eschelon would like them to be
3 available, yes.

4 Q. Qwest's proposed language refers to
5 Qwest's PCAT for the terms and conditions under which
6 expedites will be available; is that right?

7 A. Yes.

8 Q. Now, if the Commission were to adopt
9 Qwest's proposal with respect to expedites, the terms
10 and conditions under which expedites would be
11 available would be subject to change through CMP,
12 correct?

13 A. Would you say that again? I'm sorry.

14 Q. Yes. If the Commission were to adopt
15 Qwest's proposal with respect to expedites, the terms
16 and conditions under which Qwest would make expedites
17 available would be subject to change in CMP?

18 A. I'm not sure I would phrase it that way,
19 because as I see it, an interconnection agreement
20 deals with terms and conditions, whereas our PCAT
21 term deals with processes and procedures. So I would
22 not phrase it that way.

23 Q. Well, all right, I'll rephrase the
24 question. You would agree with me that if Qwest's
25 proposal with respect to expedites is adopted in this
26

1 case, the process by which Eschelon would be able to
2 get expedites would be subject to change in CMP?

3 A. Yes.

4 Q. Go to your rebuttal testimony, Qwest
5 Exhibit 1R. I'm looking at page 42.

6 A. I'm there.

7 Q. And I'm looking specifically at line 11 of
8 page 42. Do you see that there?

9 A. Yes.

10 Q. And you say they're: "Providing a service
11 in a shorter time frame than that set forth in the
12 standard interval is a premium service." Do you see
13 that?

14 A. Yes.

15 Q. And by "premium service," what you mean
16 there is that Qwest is providing service more quickly
17 than under the standard interval; is that right?

18 A. Generally, yes.

19 Q. Now, you are familiar with the Eighth
20 Circuit decision in the Iowa utilities board case,
21 correct?

22 A. Yes.

23 Q. In fact, that's a decision that you cite
24 in your testimony, correct?

25 A. Yes.

26

1 Q. You cite it for the proposition that Qwest
2 is not required to provide superior service to CLECs,
3 correct?

4 A. Yes, and I'd like to expand on that. Our
5 belief is that our requirement under 251 is to
6 provided the CLECs with a meaningful opportunity to
7 compete, and that is measured by our standard
8 interval, which are performance indicator definitions
9 set forth and under which we are measured by our
10 performance. If we are asked to provide service more
11 quickly, that goes above and beyond what we are
12 obligated to provide under 215.

13 Q. Well, you've already told me that when you
14 use "premium service" in your testimony, you're
15 talking about providing service more quickly than is
16 set forth in the standard interval, correct?

17 A. That's correct.

18 Q. You're not using "premium service" here in
19 your testimony to mean "superior service," are you?

20 A. I don't understand your question.

21 Q. Well, you used in your testimony at
22 page 42, line 11, the phrase "premium service,"
23 right?

24 A. Okay, yes.

25 Q. And you've been talking to me about a
26

1 decision regarding superior service, correct?

2 A. Okay, yes.

3 Q. And as I understand it, "premium service"
4 as used here in your testimony refers to providing
5 service more quickly than Qwest otherwise would
6 provide it under the standard interval?

7 A. That's correct.

8 Q. You're not using "premium service" to mean
9 "superior service." In your mind, they're different
10 things; isn't that right?

11 A. Yes, they could be used as different
12 terms.

13 Q. Not only could they be used as different
14 terms, but as you're using the phrase "premium
15 service" in your testimony at page 42, lines 11 and
16 12, it is intended as something different than
17 "superior service"; is that right?

18 A. In that sense. But I do believe that we
19 still consider expedites a superior service.

20 Q. You're not saying that Qwest -- that when
21 Qwest is providing service more quickly than the
22 standard interval, that that makes the expedite a
23 superior service, are you?

24 A. It is a superior service in that that is
25 faster than we are obligated to provide it, and that

26

1 our only obligation is to provide CLECs with parity,
2 and that we give expedites to them on the same terms
3 and conditions that we give to our retail customers.

4 Q. And I'm not sure if you answered my
5 question. My question is: You are not relying on the
6 fact that service is provided more quickly in an
7 expedite as the basis for your conclusion that an
8 expedite is a superior service, correct?

9 A. No. No. That's correct.

10 Q. In your rebuttal testimony -- do you
11 recall referring in your rebuttal testimony to the
12 fact that Eschelon can obtain high-capacity loops
13 more quickly than a retail customer can obtain a
14 retail analog private line, correct?

15 A. I recall that, yes.

16 Q. Now, you're not claiming, by virtue of
17 that faster provisioning, that a high-capacity loop
18 isn't a UNE, correct?

19 A. No.

20 Q. Qwest sets the intervals for its retail
21 service; isn't that right?

22 A. I believe the intervals were set as a
23 result of our 271 process, so it wasn't so much that
24 we set them as that they were agreed to.

25 Q. Well, I'm focusing on the retail
26

1 intervals.

2 A. Oh, on the retail?

3 Q. Yes.

4 A. There I'm not sure.

5 Q. Qwest could shorten these intervals if
6 they chose to, correct?

7 A. I imagine so.

8 Q. Going to your rebuttal testimony at
9 page 44, and I'm looking at the standard that starts
10 at line 19 and goes through 21. I'm just confused if
11 there's a missing word or a missing parenthesis or
12 something.

13 A. Page 44?

14 Q. Yes, page 44, line 19. I'm looking at the
15 sentence that starts at line 19, Eschelon's proposed
16 expedite language.

17 A. I think that is a typographical error, and
18 there probably should not be the parenthesis, "(only
19 in Washington)." That is probably not supposed to be
20 there.

21 Q. So that phrase, parentheses, "(only in
22 Washington)" is just -- that's another correction
23 that should be made?

24 A. Let me read this again.

25 Q. Sure.

26

1 A. Yes, I believe that is in there.

2 Q. So how would be it corrected?

3 A. I would strike out from the parentheses
4 through the word "in Washington."

5 Q. Qwest does provide expedites for design
6 and non-design services to CLECs under the emergency
7 conditions in Washington, correct?

8 A. In Washington it does, yes.

9 Q. And that's the only state where Qwest is
10 doing that presently?

11 A. That's correct. That's because our tariff
12 does not -- has not been updated to reflect the
13 current process in Washington, so we offer both to
14 retail and wholesale customers the emergency
15 expedites.

16 Q. Go to your rebuttal testimony at page 46,
17 line 21. You say there: "No CLECs requested
18 postponement of Qwest's proposed changes to the
19 expedite process, or sought dispute resolution
20 pursuant to the CMP document, or filed a complaint
21 against Qwest as a result of the changes implemented
22 through the CMP."

23 Do you see that?

24 A. Yes, I do.

25 Q. And, in fact, Eschelon filed a complaint
26

1 against Qwest regarding those changes; did it not?

2 A. Actually, the complaint was for
3 disconnection of a customer. Eschelon ultimately
4 blamed the expedite process for that. But the
5 complaint was that we refused to expedite
6 reconnection.

7 Q. And the complaint alleged that changes
8 that Qwest had made through its CMP process were
9 contrary to the commitments that Qwest had made in
10 the ICA, correct?

11 A. That was one of the allegations, and we
12 disputed that finding.

13 Q. And I understand you disputed it, but you
14 would agree with me that Eschelon, in fact, did file
15 a complaint in Arizona regarding changes that Qwest
16 made to the expedite process through CMP?

17 A. See, I wouldn't characterize it that way.
18 It wasn't a direct result of the CMP. It was the
19 result of being refused an expedite in Arizona.

20 Q. And Qwest's justification for refusing to
21 provide that expedite was that it had changed its
22 process through CMP, correct?

23 A. No. Our justification was that Eschelon
24 had not signed an amendment giving it the ability to
25 request expedites.

26

1 Q. And the reason Qwest believed an amendment
2 was necessary was because Qwest made a change in the
3 CMP that required that amendment, correct?

4 A. That's correct.

5 Q. Going to your rebuttal testimony, at
6 page 48 you refer to the recommendation of the
7 Arizona Staff in the complaint document that we've
8 just been talking about; is that right?

9 A. In the complaint docket?

10 Q. Yes.

11 A. Yes.

12 Q. Now, in that docket, the Arizona Staff did
13 not accept Qwest's argument that expedites are a
14 superior service, did it?

15 A. No.

16 Q. In that docket, the Arizona complaint
17 docket, the Arizona Staff recommended that the rates
18 for expedites be determined on a cost case, correct?

19 A. Yes.

20 Q. The Staff didn't say that Qwest should be
21 able to charge a retail rate for providing expedites
22 or for CLECs, did it?

23 A. No.

24 Q. The ALJ in Minnesota and the Minnesota
25 Commission also rejected Qwest's claim that expedites

26

1 are a superior service, correct?

2 A. I believe that's correct.

3 Q. And the ALJ recommended and the Minnesota
4 Commission ordered that the issue of the appropriate
5 rates for expedites be determined in a cost case?

6 A. That's correct.

7 Q. I want to talk with you now about
8 jeopardies, the issue of jeopardies. I'd like you to
9 refer to your surrebuttal testimony, which is Qwest
10 1-SR, page 5.

11 A. Okay.

12 Q. At line 21 of page 5 you say: "Eschelon
13 wants this Commission to believe that Qwest can
14 maintain jeopardy notice requirements specific to
15 Eschelon, and allow the CMP to maintain separate
16 jeopardy notice requirements for all other CLECs."

17 Correct?

18 A. Yes.

19 Q. Now, the Minnesota Commission has ordered
20 that Eschelon-proposed language with regard to
21 jeopardies be adopted, correct?

22 A. Yes.

23 Q. And Qwest has, in fact, already begun the
24 process of developing a separate system to implement
25 the Minnesota Commission's order, correct?

26

1 A. Yes, which creates, as I believe I said in
2 my testimony, the greater potential for error.

3 Q. But regardless of what this Commission
4 does, Qwest is going to need to implement and
5 maintain the two systems that you're talking about at
6 the bottom of page 5 of your testimony, correct?

7 A. Yes. We have to keep a separate process
8 just for Eschelon and opt-ins in Minnesota.

9 Q. In your testimony you refer to changes
10 made in CMP regarding the jeopardy process; is that
11 right?

12 A. I believe I do, yes.

13 Q. And you were not involved in any of those
14 change requests, correct?

15 A. Not directly, no.

16 Q. And your testimony is based on documents
17 that you reviewed and things that other Qwest
18 employees told you, correct?

19 A. Qwest employees who were directly
20 involved, yes.

21 Q. And you were aware that Bonnie Johnson was
22 involved on behalf of Eschelon as part of changes
23 made in CMP to the jeopardy process?

24 A. Yes.

25 Q. Go to your rebuttal testimony, Qwest 1R at
26

1 page 52.

2 A. Okay.

3 Q. I'm looking at the top of the page where
4 you say: "What did Eschelon ask for in its second
5 change request, PC-081403?" Do you see that?

6 A. Yes.

7 Q. And then you go on to describe what
8 Eschelon asked for as: "Change the jeopardy
9 notification process to reduce unnecessary jeopardy
10 notices being sent to the CLEC when the due date is
11 not in jeopardy and to improve the overall jeopardy
12 process."

13 Do you see that?

14 A. Yes, and that was what, ultimately,
15 Eschelon and Qwest agreed to implement in that second
16 change request.

17 Q. That was not what Eschelon asked Qwest to
18 do in CMP, was it?

19 A. Not originally, no.

20 Q. Go to -- actually I think it's
21 Exhibit 1R.2.

22 A. I'm there.

23 Q. Qwest Exhibit 1R.2 is documentation
24 relating to the changes made in CMP to the jeopardy
25 process; is that right?

26

1 A. The second change request, yes, the change
2 request record.

3 Q. Then if you go to the second page of 1R.2,
4 do you see at the bottom of the page there's a line
5 of stars?

6 A. Yes.

7 Q. And right underneath the line of stars you
8 see where it says: "Qwest will contact the CLEC to
9 test and accept only after the updated FOC has been
10 sent and a designated time frame has passed. Qwest
11 will not put the order in the CNR (Customer Not
12 Ready) jeopardy status until this time frame has
13 passed and the CLEC is not ready."

14 Do you see that?

15 A. I see that.

16 Q. That is what Eschelon asked for in the
17 second change request?

18 A. That was the original change request.
19 Qwest realized there were synergies between this
20 change request and prior one. In discussions in the
21 CMP with Eschelon, Qwest and Eschelon agreed to
22 change the change request to reflect the top portion,
23 the portion above that line, and that is what was
24 delivered as a result of the change request.

25 Q. Eschelon's agreement was that Qwest could
26

1 add additional material to the change request, but
2 that the initial request that Eschelon had made, the
3 one that we just read, needed to be retained as part
4 of the change request, correct?

5 A. Qwest agreed to retain the description of
6 the change request. Qwest did not agree to implement
7 the original change request. Qwest agreed to the
8 change implementation. If Qwest had agreed to the
9 original change request, the documentation changes
10 that Qwest produced as a result of the change request
11 would have reflected that deliverable. They did not.

12 Q. Qwest understood when Eschelon said you
13 can add additional material to this CR, but you have
14 to keep what we initially asked for; that Eschelon
15 was not giving up on its request as we've just
16 described it, correct?

17 A. That is not Qwest's understanding, no.

18 MR. DEVANEY: I guess I'd object to the
19 question without a reference to what he's talking
20 about.

21 THE COURT: I think she'd answered that
22 it's not her understanding.

23 Q. (By Mr. Merz) Well, let's look at the
24 first page of Qwest Exhibit 1R.2. Under "Description
25 of Change," you describe the additional synergies
26

1 that you've been talking about; is that correct?

2 A. Yes.

3 Q. And underneath the line of stars on the
4 first page is language that Qwest authored, correct?

5 A. Correct, based on discussions with
6 Eschelon and the other CLECs in the CMP, yes.

7 Q. Go to your rebuttal testimony at page 59.
8 This is Qwest Exhibit 1R.

9 A. What page?

10 Q. Page 59.

11 A. Okay, I'm there.

12 Q. I'm looking at line 4 where you say:
13 "Qwest's analysis of Eschelon's data on CNR
14 jeopardies contained in Exhibit 1R.9 and discussed in
15 detail below represent a very small portion of the
16 number of orders that Qwest places with -- that
17 Eschelon places with Qwest, demonstrating that such
18 issues are rare."

19 Do you see that?

20 A. Yes.

21 Q. What is it that you're saying is "rare"
22 there?

23 A. The CNR jeopardy situation described by
24 Eschelon in that exhibit.

25 Q. You understand that the exhibits that
26

1 you've referred to are intended to be examples. It's
2 not the complete and exhaustive list of situations
3 where the CNR jeopardy issue has arisen?

4 A. Yes.

5 Q. And so if those were examples, how could
6 you rely on that exhibit to form a conclusion that
7 that issue is rare?

8 A. If this addition -- if this issue were
9 more common, I would have expected more examples
10 along the lines of the other exhibit that it had
11 provided.

12 Q. Go down a little bit further to line 13
13 where you say: "Second, the data in Eschelon
14 Exhibit 3.75, also discussed in more detail below,
15 demonstrate that Eschelon is not dependent on the FOC
16 to install service, and that Eschelon is in
17 communication with Qwest, as more than 76 percent of
18 those orders were delivered by Qwest and accepted by
19 Eschelon on the original due date, even though
20 Eschelon did not receive an FOC."

21 Do you see that?

22 A. Yes.

23 Q. Now, another way to say this is 24 percent
24 of the time, Eschelon, when Eschelon didn't receive
25 an FOC following a Qwest jeopardy, Eschelon was not

26

1 able to accept the service on the due date, correct?

2 A. Actually that's not correct, and I didn't
3 catch that the last time you asked me that question,
4 because, in fact, another 8 percent were delivered
5 before the original due date without an FOC.

6 Q. Before the original due date or before the
7 supplemented due date?

8 A. Before the original due date.

9 Q. And what's the purpose of telling Eschelon
10 what the due date will be?

11 A. To provide it with a due date.

12 Q. Why do you want to provide Eschelon with a
13 due date? What's the purpose of that function?

14 A. So that they know when the service will be
15 delivered.

16 Q. And the way you advise Eschelon of the due
17 date is by providing an FOC, correct?

18 A. That is one way.

19 Q. So if Eschelon is expecting the service to
20 be delivered on Wednesday, and the service actually
21 gets delivered on Monday, wouldn't you regard that as
22 a problem?

23 A. I would think that's an advantage. You're
24 getting your service early.

25 Q. And you're not expecting the service to
26

1 come, correct?

2 A. No, but if you can be there to accept
3 service, I would expect you would want it earlier.

4 Q. The customer isn't expecting the service
5 to come, correct?

6 A. No, but most customers like it when they
7 get their service early.

8 Q. So if we've got 76 percent of orders
9 accepted, even though there was no FOC, and 8 percent
10 of orders that were accepted -- you're saying they
11 were accepted early?

12 A. Yes.

13 Q. So that leaves us with 17 percent of the
14 time, when Eschelon didn't get an FOC, it wasn't able
15 to accept on the due date, correct?

16 A. Actually, in some of those cases service
17 was delivered after the original due date. In most
18 of the other cases, that was what happened.

19 Q. Yes, and that was because Eschelon wasn't
20 able to accept the service on the original due date
21 because it hadn't gotten an FOC?

22 A. I don't think that's clear, because what
23 we're talking about are jeopardies, and it's more
24 likely that they were delivered late because the
25 jeopardy was not resolved until later. But that is

26

1 not clear from the data.

2 Q. Go to your rebuttal testimony at page 60.
3 I'm looking at line 10 where you say: "Nothing in our
4 procedures states that a facility jeopardy notice
5 should be interpreted as a definite indicator that
6 that service will be delivered late."

7 A. That's correct.

8 Q. Go to Exhibit 1R.3.

9 A. Okay.

10 Q. First of all, what is 1R.3?

11 A. That is a CMP notification.

12 Q. Relating to what?

13 A. The CR we've been discussing, PC0A1403-1.

14 Q. So these were changes that Qwest had made
15 to the jeopardy process, correct?

16 A. Yes.

17 Q. Go to the second full paragraph under
18 "Summary of Changes." Do you see that?

19 A. Yes.

20 Q. Looking at the next-to-the-last sentence
21 of that paragraph where it says: "If the column
22 contains 'yes' and Qwest is responsible for
23 resolution of the jeopardy condition, you will be
24 advised of a new due date when the jeopardy condition
25 has been resolved." Do you see that?

26

1 A. Yes.

2 Q. Now, when it says: "If the column contains
3 'yes,'" what it's referring to is this is a jeopardy
4 due date, correct?

5 A. Well --

6 Q. I'm sorry, let me say that again. If the
7 column is checked "yes," this is a due date jeopardy,
8 correct?

9 A. Yes.

10 Q. And so there's a jeopardy notice that the
11 due date may not be met, correct?

12 A. That's right, it may not be met.

13 Q. And Qwest is responsible for resolution of
14 a jeopardy condition. If it's a Qwest facility's
15 jeopardy, Qwest is responsible for resolving that
16 jeopardy condition, correct?

17 A. Correct.

18 Q. And so if we have a due date jeopardy that
19 is the result of a Qwest facility problem and
20 Eschelon hasn't been advised of the new due date, it
21 would be fair for Eschelon to conclude that the
22 jeopardy condition has not been resolved, correct?

23 A. Yes.

24 Q. Go to your surrebuttal, Qwest 1-SR, at
25 page 30. You have here a specific fact pattern

26

1 relating to a possible CNR jeopardy situation,
2 correct?

3 A. Yes. This is to illustrate the typical
4 CNR situation.

5 Q. This is one possible fact pattern that
6 might give rise to a CNR, customer not ready,
7 jeopardy, correct?

8 A. Correct.

9 Q. Now, this fact pattern does not include
10 Qwest jeopardy as one of its assumptions?

11 A. No, it does not. The intent was to
12 illustrate a typical CNR situation.

13 Q. The jeopardy language that Eschelon has
14 proposed, and that is the subject of this
15 arbitration, applies when there is a Qwest jeopardy,
16 correct?

17 A. That's correct.

18 Q. And so the fact pattern here that you are
19 describing is not one to which Eschelon's proposed
20 language would apply, is it?

21 A. Not directly, no. The intent was to
22 illustrate a CNR situation.

23 Q. Go to your rebuttal at page 1R at 62. I'm
24 looking at line 18. You say there: "As the evidence
25 demonstrates, in most instances this characterization

26

1 of the cause of delay is unreasonable"; is that
2 right?

3 A. Yes.

4 Q. What you're saying there is you believe
5 it's unreasonable to characterize Qwest as the cause
6 of delay in the kind of situation to which Eschelon's
7 proposed jeopardy language would apply, correct?

8 A. Yes.

9 Q. Now, Qwest's language -- I'm sorry --
10 Eschelon's proposed language applies, as we
11 discussed, where there's a Qwest-caused jeopardy,
12 correct?

13 A. Yes.

14 Q. And a Qwest-caused jeopardy is something
15 that is Qwest's fault, right?

16 A. I'm not sure I would want to assign the
17 term "fault." It means that Qwest had encountered a
18 facility issue.

19 Q. And it's Qwest's responsibility to address
20 that problem?

21 A. That's correct.

22 Q. And under Qwest's process, as we've seen,
23 once Qwest resolves the problem, it's supposed to
24 send an FOC with a new due date. That's Qwest's
25 process?

26

1 A. That is Qwest's process.

2 Q. And so if Qwest hasn't done that, it's
3 acted in a manner contrary to its own process,
4 correct?

5 A. That's correct.

6 Q. And you would agree with me that the
7 failure of Qwest to send an FOC is something that's
8 Qwest's fault, correct?

9 A. I would simply say that Qwest failed to
10 follow its process.

11 Q. Well, it's certainly not Eschelon's fault
12 that Qwest has failed to follow its process?

13 A. That's correct.

14 Q. And it's not Eschelon's fault that there
15 weren't adequate facilities available in the first
16 instance to deliver the service that Eschelon had
17 ordered?

18 A. That's correct.

19 Q. Now, you talk in your testimony in a
20 couple of places about communications between Qwest
21 technicians and Eschelon technicians. Do you recall
22 that?

23 A. Yes.

24 Q. And the communications you're talking
25 about relate to the delivery of service, correct?

26

1 A. Yes.

2 Q. You would agree with me that there's no
3 provision in the PCAT that requires any particular
4 communication between Qwest technicians and Eschelon
5 technicians regarding service delivery issues?

6 A. No, because the technicians are not part
7 of the service delivery, they're in the network
8 organization.

9 Q. And so if those communications are going
10 on, that's something that's not part of Qwest's
11 process as documented in the PCAT, correct?

12 A. Well, I would say it's part of Qwest's
13 process and it's part of Eschelon's process as well.
14 The explicit communication requirement, no, that
15 would not be in the PCAT.

16 Q. So if there were no communication between
17 Qwest technicians and Eschelon technicians, that
18 wouldn't be contrary to Qwest's process, would it?

19 A. Well, it would be hard to deliver design
20 services without that communication.

21 Q. And I'm talking now about communications
22 relating to when we're going to deliver. And it's my
23 understanding from your testimony that you believe
24 that that kind of communication should suffice, for
25 Eschelon to be aware that Qwest is ready to deliver

26

1 service.

2 A. Well, clearly it has sufficed. Based on
3 the data we were just discussing, in 82 percent of
4 the cases they were able to make those delivery
5 connections by communicating without an FOC.

6 Q. And my point is that communication is not
7 required under the contract or Qwest's written
8 process or any other requirement that you can think
9 of, is it?

10 A. It's not in the contract. I believe it is
11 probably a part of our internal process, and I
12 imagine it's part of yours as well.

13 Q. It's not something that's documented that
14 Eschelon could point to and say: "Here's your
15 responsibility. Your technicians will talk to our
16 technicians," instead of providing an example?

17 A. That would not be in the contract, no.

18 Q. The contract, the formal process
19 recognized by the contract and the parties is that
20 the FOC will be the notice of the due date?

21 A. That is the formal process.

22 MR. MERZ: I don't have anything further.

23 Thank you.

24 THE COURT: Mr. Topp?

25

26

1 REDIRECT EXAMINATION

2 BY MR. TOPP:

3 Q. Why don't we stick with jeopardy since we
4 discussed that at length. First I wanted to talk
5 generally about the issue of the jeopardy dispute.
6 And one aspect of the dispute is whether we're going
7 to refer to the PCAT or have the jeopardy process
8 spelled out in the interconnection agreement; is that
9 correct?

10 A. Yes.

11 Q. And then so the second issue is whether
12 Eschelon's proposal is consistent with Qwest's
13 current process?

14 A. That's correct.

15 Q. And then a third issue is if, in fact,
16 there are changes to Qwest's current process, is it a
17 good idea to do that as part of this arbitration?

18 A. That's part of the issue as well, yes.

19 Q. Now, with respect to the second piece of
20 this, there's been allegations made by Eschelon that
21 Qwest has agreed to provide an FOC the day before it
22 attempts to deliver service?

23 A. Yes.

24 Q. Is that your understanding?

25 A. Yes.

26

1 Q. First of all, if Qwest were to resolve a
2 jeopardy, a facilities issue on the date that
3 services was due, would it be possible for Qwest to
4 provide an FOC on the day before it delivers service?

5 A. No, that would be impossible to do,
6 because the jeopardy was resolved on the due date.
7 So it wouldn't be possible to provide the FOC at
8 least the day before, because Qwest cannot predict
9 when the jeopardy will be resolved.

10 Q. And it's the agreement of both Qwest and
11 Eschelon, is it not, that the parties are going to
12 endeavor to try and provide service on the due date?

13 A. That is everyone's goal, yes.

14 Q. And if you miss the due date, you're going
15 to attempt to provide service as soon as possible?

16 A. Yes.

17 Q. Now, if you could turn to Exhibit 1R.2
18 that Mr. Merz was discussing with you.

19 A. Yes. I'm there.

20 Q. Okay. And I think there was some
21 discussions about the notes related to the March 4th
22 ad hoc meeting which is discussed on pages 6 and 7 of
23 this document.

24 A. I don't have page numbers.

25 MR. MERZ: Your Honor, I didn't ask any
26

1 questions about the ad hoc meeting. I don't think
2 it's appropriate redirect. It's beyond the scope of
3 cross.

4 THE COURT: I don't recall any reference
5 to those pages, Mr. Topp. Was there some other
6 discussion?

7 MR. TOPP: There were some questions
8 regarding what the expected deliverable from Eschelon
9 was.

10 Q. (By Mr. Topp) Do you recall that,
11 Ms. Albersheim?

12 A. Yes, I do.

13 Q. And the March 4th, 2004 minutes discuss
14 that issue to some extent; do they not?

15 A. I believe they do.

16 Q. And, in fact, Eschelon has relied on
17 language under the March 4th minutes stating that:
18 "Bonnie confirmed that the CLEC should always receive
19 the FOC before the due date."

20 A. Yes.

21 Q. And then the statement that "Phyllis
22 agreed." Do you see where I'm referring?

23 A. Yes, I do.

24 Q. Now, in order to fully understand the
25 resolution that was discussed on that date, you would

26

1 agree with me, would you not, that one should look at
2 the entire minutes from that meeting?

3 MR. MERZ: Again, Your Honor, I think this
4 is beyond the scope of cross.

5 THE COURT: Could you ask that again,
6 Mr. Topp? I'm not sure.

7 Q. (By Mr. Topp) In order to understand the
8 commitment that was made by Qwest, would you agree
9 that looking at the entire minutes from that meeting
10 would be appropriate?

11 THE COURT: I think -- you can go ahead.

12 MR. MERZ: My question really didn't
13 relate to Qwest's commitment, but rather what it was
14 that Eschelon had asked for. That was, I think, the
15 only purpose that I had in talking about this
16 document.

17 MR. TOPP: They're attempting to create
18 the impression that Qwest agreed to a day before as a
19 part of this process. And Mr. Merz, when he talked
20 about what they asked for, that's the specific
21 language that he is talking about. That is the
22 language in between the stars on pages 2 and 3 of
23 this document. And I'm asking Ms. Albersheim some
24 questions to put into context exactly how this
25 process worked out.

26

1 Now, if Eschelon is willing to stipulate
2 that Qwest never agreed to this day before proposal,
3 we'd been fine with that. But they have extensive
4 testimony and they've asked questions in this hearing
5 attempting to further that position.

6 THE COURT: I'll allow the question.

7 MR. TOPP: Does --

8 THE WITNESS: Well, did you want me to
9 answer it?

10 MR. TOPP: I think you did, but . . .

11 THE COURT: Go ahead.

12 THE WITNESS: Because I don't think I got
13 there, but I would say you would look at the entire
14 minutes for that meeting, but also the other meetings
15 in this change request.

16 Q. (By Mr. Topp) And in the minutes for that
17 meeting, the next paragraph, which Eschelon has not
18 pointed out, what does that address?

19 A. It addresses how Qwest would approach
20 solving the issue raised by the change request. And
21 she's indicated there would be two phases. She
22 indicated they would ignore critical date jeopardies
23 and concentrate on due date jeopardies. And I would
24 like to point out that the final resolution involving
25 how this would be implemented was further discussed

26

1 in the March 17th meeting in which it was described
2 how this change request would be implemented, and
3 that is what resulted in the subsequent description
4 of the change requests and the new, if you will,
5 deliverables and what were provided by Qwest as a
6 result of this change request.

7 Q. Now, let's focus on the March 4th meeting
8 first, and then we'll get to March 17th. March 4th,
9 is it not correct that Ms. Martain -- and that's who
10 "Jill" refers to; is it not?

11 A. Yes.

12 Q. And that's Qwest representative, a Qwest
13 representative involved in these discussions; is it
14 not?

15 A. Yes, she was.

16 Q. And she says: "We'd like to implement this
17 process and monitor the impact and see if this
18 reduces the number of issues." Correct?

19 A. Yes.

20 Q. Then on the March 17th CMP meeting notes,
21 which began on the page before.

22 A. Page 5?

23 Q. Yes. That describes the agreement that
24 was reached regarding the CMP request; does it not?

25 A. Yes.

26

1 Q. And that describes some things that will
2 happen within 72 hours of the initial jeopardy
3 notification?

4 A. Yes.

5 Q. It does not provide that the CLECs will
6 receive an FOC at least a day before Qwest attempts
7 to provide service?

8 A. That's correct.

9 Q. And then the agreement was put out to CLEC
10 for comment; was it not? The agreement was
11 documented?

12 A. It was -- the results of the change
13 request were documented and put out for CLECs to
14 comment on in the form of a redlined PCAT.

15 Q. And the notice announcing those changes is
16 attached to your testimony as Exhibit 1R.3?

17 A. Yes.

18 Q. And if you'd turn to that exhibit.

19 A. Okay.

20 Q. That exhibit provides a description of the
21 changes that are, in fact, being made?

22 A. Yes.

23 Q. And again, the exhibit describes that
24 resolution usually occurs within 72 hours?

25 A. The resolution of the jeopardy, yes.

26

1 Q. And that's within 72 hours after the
2 jeopardy condition has been identified or noticed?

3 A. Correct.

4 Q. Now, there was a comment cycle on these
5 proposed modifications?

6 A. That's correct.

7 Q. Did Eschelon submit any comments?

8 A. No.

9 Q. And did they object?

10 A. No.

11 Q. Were the changes announced in this exhibit
12 ultimately the changes that were, in fact, made to
13 Qwest's PCAT?

14 A. Yes.

15 Q. Now, when Mr. Merz asked you some
16 questions about delivery of the FOC, there seemed to
17 be a general effort to portray it as unfair to
18 Eschelon to expect that they might receive the
19 service in the absence of an FOC. Do you agree with
20 that?

21 A. That's how it sounds, yes.

22 Q. Do you agree that that is an unfair burden
23 to place on Eschelon?

24 A. No, I don't, because we have
25 communications other than the FOC, and it's

26

1 everyone's desire to deliver service on the due date,
2 or before the due date, but on the due date
3 certainly. That is our obligation and what we try
4 and do.

5 Q. And typically, when service is being
6 provided, do the technicians work with each other
7 between the companies?

8 A. Yes.

9 Q. And are there communications associated
10 with attempting to provide service?

11 A. Yes. There are e-mails and telephone
12 calls.

13 Q. Let me turn to the issue of CMP in
14 general. You were asked some questions at the
15 beginning of cross-examination, or direct -- I guess
16 cross-examination by Mr. Merz. Mr. Merz asked you
17 some questions on a number of occasions about your
18 participation in CMP. How did you come by the
19 information that you have regarding what has taken
20 place?

21 A. Well, I have the CMP record, which is
22 public and available to the CLECs and to anyone else
23 who wants to know when has happened with certain
24 change requests. But I also have direct
25 communication with the CMP team on a regular basis

26

1 and with people who implement change requests that
2 are processed through the CMP.

3 Q. Now, with respect to -- you were also
4 asked a bunch of questions regarding dispute
5 resolution provisions and that sort of thing. Would
6 you suggest that the Utah Commission rely upon your
7 recollection of those dispute resolution provisions,
8 or are they documented somewhere so that that can be
9 verified?

10 A. I would suggest relying on the CMP
11 document itself, which is attached to my testimony
12 and to Ms. Johnson's testimony.

13 Q. I'd like to turn to the issue of
14 intervals. Now, intervals currently are controlled
15 or altered through a CMP process; is that correct?

16 A. That's correct.

17 Q. Have there been any concerns or problems
18 that you're aware of associated with interval
19 changes?

20 A. Through the CMP?

21 Q. Correct.

22 A. No.

23 Q. Now, Eschelon has asked you some questions
24 about an advice adoption letter proposal that they
25 have made. Is that the only proposal that Eschelon
26

1 has, in fact, made with respect to interval issues?

2 A. I'm not sure I follow you.

3 Q. They have different options for their
4 proposed language on these issues?

5 A. Well, yes. One involves only requiring
6 the advice adoption letter if an interval is
7 increased.

8 Q. And the other requires modification of the
9 contract; does it not?

10 A. Well, they both do. The advice adoption
11 letter is essentially an amendment to the contract.
12 And what they're doing is inserting contract
13 processing in the middle of the CMP. And it's not
14 just a matter of signing a document.

15 You have to, first of all, if this is
16 required, we're going to have to review our contract
17 when any interval change comes up, contact the CLECs
18 to ask for this amendment, advice adoption letter,
19 get their consent to sign the advice adoption letter,
20 agreeing on the terms, because just taking the letter
21 doesn't mean that that's what the terms will be.
22 CLECs may request changes, so that involves a
23 negotiation cycle.

24 If we come to terms, then it must be
25 submitted to the Commission and approved by the
26

1 Commission. All of that becomes a new part of the
2 process inserted into the CMP.

3 Q. Absent either of Eschelon's proposals, how
4 would modifications to intervals occur?

5 A. Using the change request process in the
6 CMP.

7 Q. Now, you were asked some questions about
8 exhibits to the contract that have been agreed upon
9 in Utah, and I believe they're Exhibits L and M,
10 which are advice adoption letters for new products.

11 A. Yes.

12 Q. What's the difference, from Qwest's
13 perspective, of CLECs opting into a new product that
14 Qwest has offered, as opposed to an altering of
15 intervals?

16 A. Well, part of the difference is what Qwest
17 has to do to implement that change. If a CLEC wants
18 to take advantage of a new product, and as I've
19 stated in my prior responses, no one has used this
20 process, but that would involve changes in our
21 systems that would allow them to order the process,
22 that simply is a tabled update that lets them place
23 the order at that point.

24 What this involves is whether or not we
25 must change our provision intervals, and if we have a

26

1 process where Eschelon could refuse to sign the
2 advice adoption letter, we have the option of a
3 shorter interval for Eschelon and a longer one for
4 other CLECs, or vice-versa, we don't have a
5 synchronous process for our intervals. And it's not
6 realistic to try and offer a product at different
7 intervals to different CLECs.

8 Q. And it's also possible that other CLECs
9 might opt into the --

10 A. Yes, and then that complicates the process
11 more for us, because we then have the CLECs with one
12 interval and then the CLECs with another.

13 Q. And is it your understanding that even if
14 there is an objection to a change to an agreement,
15 are there still challenges in trying to alter the
16 contract to reflect those changes?

17 A. You're speaking of the advice adoption
18 letter?

19 Q. In either circumstance.

20 A. Well, there's an assumption that Eschelon
21 will simply sign the advice adoption letter and
22 that's the end of it. But they might want to
23 negotiate further terms. It becomes a contract
24 amendment, and they don't necessarily have to be
25 accepted on their face. We are required to

26

1 negotiate. That increases the complexity of the
2 circumstance.

3 Q. And would that complexity be further
4 increased if you have other CLECs in that mix?

5 A. Absolutely.

6 Q. I want to turn briefly to expedites. You
7 were asked some questions about expedites. Is it
8 your view that expedites constitute a superior
9 service?

10 A. It is my view that they do, yes.

11 Q. And have, in fact, State commissions
12 concluded that expedites constitute superior service?

13 A. Yes. The Florida and Kentucky Commissions
14 have ruled that way.

15 Q. In determining whether, in fact, an
16 expedite is a superior service or not, what, in your
17 view, do you compare it to?

18 A. To what we are obligated to provide under
19 251, and that is our standard balance interval, is
20 what we're obligated to provide. That's what we're
21 measured on. And on the basis of our standard
22 interval, we have been deemed as providing CLECs with
23 a meaningful opportunity to compete.

24 Q. And where have we been deemed, or where
25 has Qwest been deemed, to have met that requirement?

26

1 A. By the FCC in all 14 states, and by the
2 State Commission approving our application for 271.

3 MR. TOPP: That concludes my questions.

4 THE COURT: Any recross, Mr. Merz?

5 MR. MERZ: Just very briefly, Your Honor.

6 REXCROSS-EXAMINATION

7 BY MR. MERZ:

8 Q. You were asked some questions by Mr. Topp
9 regarding advice adoption letters. You are aware
10 that that process is not part of Eschelon's current
11 ICA with Qwest, correct?

12 A. I believe that's correct.

13 Q. And so that wasn't a process that
14 historically Eschelon had available to it, did it?

15 A. I don't believe so.

16 Q. So there's not, right now, any indication
17 that Eschelon does not intend to use that advice
18 adoption process, correct?

19 A. No, nor is there that it will.

20 Q. You were discussing with Mr. Topp concerns
21 that under Eschelon's proposal relating to intervals,
22 you would -- may be a situation where you're involved
23 in negotiations regarding those intervals; is that
24 right?

25 A. That potential exists through Eschelon's
26

1 proposal.

2 Q. So in your mind, an advantage of CMP is
3 that it avoids the need to have to negotiate with
4 Eschelon; is that right?

5 A. No. Actually, what it does is provides a
6 forum for all CLECs to have input on the proposed
7 change, and therefore we react consistently. Either
8 the change happens or it doesn't, based on the
9 feedback we've received from all CLECs, not just
10 Eschelon.

11 Q. If intervals are addressed only in the CMP
12 and not in Eschelon's contract, then Qwest would be
13 relieved of the obligation to negotiate with Eschelon
14 regarding changes to intervals; is that correct?

15 A. That's true.

16 MR. MERZ: I don't have anything further.
17 Thank you, Your Honor.

18 THE COURT: Mr. Topp?

19 MR. TOPP: I just have one or two.

20 FURTHER REDIRECT EXAMINATION

21 BY MR. TOPP:

22 Q. When Mr. Merz asked you about Qwest being
23 relieved of the obligation to negotiate, were you
24 referring to the obligation to negotiate a contract
25 amendment under section 251?

26

1 A. Well, I was referring to the specific use
2 of the advice adoption letter. We're always
3 obligated to negotiate. If we need to make a change
4 to a contract, we're obligated to negotiate a change
5 to the contract. But I was answering the question
6 with regard to using the advice adoption letter in
7 the situation where a request has been made to change
8 an interval.

9 Q. Let's assume that the advice adoption
10 letter is not in effect, and instead, CMP, as Qwest
11 has suggested, controls intervals, which is, I think,
12 what Mr. Merz's question was addressing. In that
13 circumstance, would there be discussions back and
14 forth with CLECs regarding interval changes?

15 A. Yes, absolutely.

16 Q. And are there dispute resolution
17 mechanisms available if a CLEC is unhappy with the
18 outcome of the process?

19 A. Yes.

20 Q. And has that process successfully dealt
21 with intervals up to this point?

22 A. Yes, it has. As I noted in my testimony,
23 we have not implemented all interval change requests
24 that we have proposed. As a result, the feedback
25 from CLECs.

26

1 MR. TOPP: No further questions.

2 THE COURT: Mr. Merz?

3 MR. MERZ: Nothing further, Your Honor.

4 THE COURT: You can go ahead and step
5 down. We'll take a five-minute break.

6 (Recess)

7 THE COURT: Let's go back on the record.
8 Mr. Topp.

9 MR. TOPP: Thank you, Your Honor.

10 Qwest next would offer the testimony of
11 Mr. William R. Easton. Pursuant to discussions prior
12 to this hearing, we have not brought Mr. Easton with
13 us to this hearing, but we have provided the Court
14 with an affidavit indicating that he stands by his
15 testimony, and we have offered -- or at this point
16 we'd offer and ask that it be accepted into evidence,
17 Exhibit Qwest 2 with associated Exhibit Qwest 2R,
18 which contains a confidential as well as a public
19 version, and Qwest 2SR.

20 THE COURT: We've got 2R, and that
21 contains confidential 2R.1 and 2R.2; is that correct?

22 MR. TOPP: That is correct. And I note,
23 at least on the exhibit list that I have, that those
24 exhibits are not reflected. So we'll modify and
25 provide a corrected version of that.

26

1 THE COURT: Thank you.

2 Any objection to the admission of
3 Mr. Easton's testimony as so marked?

4 MR. MERZ: No objection, Your Honor.

5 THE COURT: All right, it's admitted.
6 Mr. Topp?

7 MR. TOPP: Your Honor, at this point I'll
8 turn it over to Mr. Devaney.

9 MR. DEVANEY: Thank you, Your Honor.
10 Qwest at this point would call Ms. Teresa Million to
11 the stand. She's already there.

12 THE COURT: Ms. Million, would you please
13 stand and raise your right hand, I'll swear you in.

14 (The witness was sworn.)

15 Thank you, please be seated.

16 Mr. Devaney?

17 MR. DEVANEY: Thank you.

18 DIRECT EXAMINATION

19 BY MR. DEVANEY:

20 Q. Good morning, Ms. Million.

21 A. Good morning, Mr. Devaney.

22 Q. You have filed direct rebuttal and
23 surrebuttal testimony; is that correct?

24 A. That's correct.

25 Q. And for the record, your direct has been
26

1 marked as Qwest Exhibit 4. It's dated June 29th,
2 2007. Your rebuttal has been marked as Qwest
3 Exhibit 4R, and there are two exhibits accompanying
4 Exhibit 4R. They are 4R.1, 4R.2, neither of which is
5 confidential; is that correct?

6 A. That's correct.

7 Q. And then finally, you have Qwest
8 Exhibit 4SR, which is your surrebuttal testimony
9 dated August 10, 2007. None of the testimony you
10 provided is confidential, I believe; is that correct?

11 A. That's correct.

12 Q. Do you have any changes to any of your
13 testimony?

14 A. I do not. I will just note that with
15 respect to the exhibit, I only refer to that as one
16 exhibit in my testimony, and it has two parts. It
17 has an executive summary and then the attached cost
18 study that's in Excel format. And I think we've
19 listed them here as two separate exhibits. In my
20 testimony I only reference those as one
21 all-encompassing exhibit.

22 Q. And you're referring specifically to the
23 attachment to your rebuttal testimony?

24 A. That's correct.

25 Q. Are the answers that you provided to the
26

1 questions in all three pieces of your testimony true
2 and correct, to the best of your knowledge?

3 A. Yes, they are.

4 MR. DEVANEY: Thank you.

5 Your Honor, at this point we'd ask for
6 admission of Exhibits 4, 4R, 4R.1, 4R.2, 4SR.

7 THE COURT: And just for clarification
8 sake, I've got 4R.1. I just want to -- I'm not
9 seeing where anything is marked on my copies as 4R.2.
10 Is that the spreadsheet, Ms. Million? Is that what
11 you're referring to?

12 THE WITNESS: And that's what I was saying
13 just now, Your Honor.

14 THE COURT: That your testimony is marked?

15 THE WITNESS: That my testimony is only
16 marked as 4R.1, and it includes both the Word
17 document and the attending Excel spreadsheet.

18 THE COURT: And Mr. Devaney, when you
19 refer to 4R.2, you're calling that the actual
20 spreadsheet, then; is that correct?

21 MR. DEVANEY: Your Honor, I just was
22 handed a corrected exhibit list. I apologize.
23 There's only been one exhibit, Exhibit 4R.1. So let
24 me just go back through that again. So the rebuttal
25 testimony is 4R, and the single exhibit attached to

26

1 it is 4R.1. There is no 4R.2.

2 THE COURT: Great. Thank you for that.

3 MR. DEVANEY: My apologies.

4 THE COURT: No problem. Any objection to
5 the admission of this testimony?

6 MR. MERZ: No objection, Your Honor.

7 THE COURT: All right. It will be
8 admitted.

9 MR. DEVANEY: Ms. Million is available for
10 cross.

11 THE COURT: Mr. Merz?

12 MR. MERZ: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MERZ:

15 Q. Good morning, Ms. Million.

16 A. Good morning, Mr. Merz.

17 Q. You are trained as a lawyer; is that
18 right?

19 A. That's correct.

20 Q. You are not an economist, correct?

21 A. No, I'm not.

22 Q. Your job at Qwest is to be a cost witness,
23 correct?

24 A. Well, in the public policy organization I
25 am a cost witness. I'm involved in the preparation

26

1 of the cost studies.

2 Q. And in your testimony you describe your
3 job as that of a cost witness, correct?

4 A. Yes.

5 Q. That has been your job for eight years at
6 Qwest?

7 A. That's correct.

8 Q. I want to talk with you now about design
9 changes. Qwest acknowledges that Eschelon is
10 entitled to design changes at a cost-based rate,
11 correct?

12 A. Yes.

13 Q. Between approximately 1999 until October
14 of 2005, Qwest did not assess a separate charge for
15 loop design changes or CFA changes, did it?

16 A. That's correct.

17 Q. It did assess a separate charge for design
18 changes to unbundled dedicated interoffice transport,
19 sometimes referred to as UDIT, U-D-I-T, correct?

20 A. Yes.

21 Q. Qwest takes the position that the rate
22 that has been established for design changes that it
23 has been charging for UDIT design changes should
24 apply to loops and CFA changes as well; is that
25 right?

26

1 A. Qwest takes the position that the costs
2 that it submitted and that were approved by this
3 Commission contemplated that design changes applied
4 not only to transport services, but to loop services,
5 CFA changes, and in a variety of circumstances and to
6 a variety of products, and that that is evidenced in
7 the executive summary that I've attached as
8 Exhibit 4R.1 to my testimony.

9 And that it's been Qwest's position all
10 along, that those costs are included in the rate that
11 was established, regardless of whether Qwest actually
12 charged for it in every circumstance that it could
13 have since the time that rate was established.

14 Q. Eschelon has proposed a specific interim
15 rate for CFA changes, correct?

16 A. Yes, they have. And it's my position that
17 those interim rates aren't necessary, because there's
18 already an approved rate on record that includes the
19 costs incurred for all different types of design
20 changes.

21 Q. And I think it's likely we'll get through
22 this a little quicker if you'll answer my questions.
23 Obviously, Mr. Devaney will have a chance to further
24 question you about your position, so if you'll just
25 stick to my questions, I'll appreciate that, if you'd

26

1 try to do that.

2 A. Certainly.

3 Q. Eschelon has also proposed a specific
4 interim rate for design changes to loops; is that
5 correct?

6 A. Yes.

7 Q. Now, to refer to your surrebuttal
8 testimony, Qwest Exhibit 4SR, and I'm looking at
9 page 19. Specifically at line 5, you say:

10 "Particularly in an increasingly competitive
11 marketplace, it would be inappropriate to micromanage
12 Qwest's product offerings by requiring Qwest to
13 provide costs and processes to address every possible
14 way of provisioning all available products."

15 Correct?

16 A. Yes.

17 Q. Now, you would agree with me that with
18 respect to design changes, that's something for which
19 Eschelon does not have a competitive alternative,
20 does it?

21 A. If you're asking can Eschelon receive a
22 design change to a product that it's purchasing from
23 Qwest from another provider, the answer is no. All
24 I'm doing in this paragraph is suggesting that
25 micromanaging the way that a company provides its

26

1 products isn't appropriate when the marketplace in
2 general is becoming competitive.

3 Q. And I think you answered my question, but
4 if Eschelon needs a design change for a UNE that it's
5 getting from Qwest, Qwest is the only entity that can
6 provide that design change, correct?

7 A. That's correct.

8 Q. Now, historically, Qwest did distinguish
9 in its pricing which were UDIT design changes and
10 design changes for loops and CFAs, correct?

11 A. No, it did not.

12 Q. Well, I think you told me that until
13 October of 2005, Qwest didn't charge for loop design
14 changes or design changes -- for CFA changes,
15 correct?

16 A. Not charging and distinguishing between
17 pricing is two different things, in my opinion.

18 Q. The fact was that Qwest charged for design
19 changes for UDITs and didn't charge for design
20 changes for loops and CFAs prior to October of 2005?

21 A. Correct, and as my testimony states, there
22 are any number of reasons that can account for the
23 fact that Qwest might have an approved rate for
24 something and not be charging for that.

25 Q. If you would go to your surrebuttal
26

1 testimony at page 5.

2 A. I have that.

3 Q. Actually, I think I'm looking at your
4 rebuttal testimony rather than surrebuttal testimony
5 at page 5. At line 10, you say that: "Mr. Denney
6 fails to recognize that the necessary conclusion of
7 his argument is that Eschelon has benefitted by
8 paying a rate for UDIT design changes that is less
9 than a fully-compensatory stand-alone rate would be."

10 Do you see that?

11 A. Yes, I do.

12 Q. Now, Mr. Denney's argument is that the
13 rate that was established for UDIT design changes is
14 not an average rate, correct?

15 A. That's Mr. Denney's argument. My argument
16 is that it is a rate that encompasses all the
17 different types of products, so that's the basis for
18 that statement.

19 Q. But you say: "Mr. Denney fails to
20 recognize that the necessary conclusion of his
21 argument is that Eschelon has benefitted by paying a
22 UDIT design change rate that is less than the
23 fully-compensatory stand-alone rate." That's not
24 Mr. Denney's argument, is it?

25 A. Well, Mr. Denney argues that the UDIT rate

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1 is higher, and my point is that the UDIT rate --
2 first of all, I disagree with him that the UDIT rate
3 is higher, but if that were the case, and it's clear
4 from the cost study that was approved in the cost
5 docket that it's an average rate, then if you buy
6 Mr. Denney's argument that a UDIT process is more
7 expensive and costs more, then his conclusion that
8 they've only been paid for UDITs and not for loops
9 and CFAs leads you to understand, then, that the UDIT
10 on a stand-alone basis should be higher, and that's
11 not the case.

12 I go on further to explain that there's
13 very little difference in the cost, and that the rate
14 that was calculated and approved by this Commission
15 is an average rate.

16 Q. And again, you're going quite a ways
17 beyond my question. My question really meant to
18 focus on this sentence on line 10, page 5 of your
19 rebuttal testimony regarding the "necessary
20 conclusion of Mr. Denney's argument." And my
21 question is: If Mr. Denney's argument is that the
22 design change rate is not an average rate, then the
23 necessary conclusion that you're describing here,
24 that's not the necessary conclusion of his argument,
25 is it? It's the necessary conclusion of your

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1 argument; isn't that right?

2 MR. TOPP: Your Honor, it's been asked and
3 answered.

4 MR. MERZ: It's been asked, but it hasn't
5 been answered.

6 MR. TOPP: I disagree.

7 THE COURT: Go ahead and answer, Ms.
8 Million.

9 A. Well, again, that assumes that Mr. Denney
10 -- Mr. Denney talks about it being only based on
11 UDIT, and UDIT is transport. And I've been very
12 clear that the rate applies to more than transport,
13 and user premises are not involved in transport.

14 Q. (By Mr. Merz) I don't mean to necessarily
15 be getting into that issue. My only issue is your
16 characterization of the "necessary conclusion of Mr.
17 Denney's argument." What I would suggest to you is
18 that the characterization is, in fact, the necessary
19 conclusion of your argument, if it is, in fact, the
20 case that the design change rate is an average rate.
21 Isn't it true?

22 A. I disagree with you. I think that
23 Mr. Denney's conclusion that the rate is based on
24 UDIT only is wrong, and so then his conclusion that
25 it's based on UDIT is wrong, and because of that, if

26

1 they're only paying for UDIT and not design changes
2 for loops and CFAs, then based on his argument, that
3 UDIT by itself is more expensive than the other two
4 alternatives, which again, I argue, are not, that
5 somehow UDIT would be more expensive on a stand-alone
6 basis. And that's not the case. I explain that it's
7 not.

8 Q. But Mr. Denney isn't saying that the UDIT
9 design change rate is less than the fully
10 compensatory stand-alone rate, is he?

11 A. By failing to recognize that there are
12 both CFA changes and loop changes included in that
13 average rate, I believe so.

14 Q. If there aren't CFA changes and loop
15 changes included in the design change rate, then the
16 design change rate is fully compensatory as to the
17 design changes for UDIT, correct?

18 A. That would be correct if it were true, but
19 it's not true.

20 Q. And I understand you're quarreling with
21 the hypothetical. But it is the case that if the
22 UDIT -- if the design change rate that's been
23 approved is not an average rate, then that rate fully
24 compensates Qwest for UDIT design changes, correct?

25 A. Yes.

26

1 Q. And that's Mr. Denney's position, correct?

2 A. His position is that it's only based on
3 UDITs, and I've provided the evidence that shows that
4 that's not true.

5 MR. MERZ: I have just one exhibit that
6 I'm going to mark, Your Honor.

7 THE COURT: All right.

8 Q. (By Mr. Merz) Ms. Million, you have in
9 front of you there what's marked as Eschelon Cross 1;
10 is that right?

11 A. Yes.

12 Q. And you recognize this as the Exhibit A,
13 the price list for Qwest's Utah SGAT; is that right?

14 A. Yes.

15 Q. And you see here -- well, tell me, does
16 this document reflect the design change rate you've
17 been talking about?

18 A. Yes, it does. It's listed at 9.20.13
19 under "Miscellaneous Charges."

20 MR. MERZ: Your Honor, Eschelon offers
21 Eschelon Cross Exhibit 1.

22 THE COURT: Any objection?

23 MR. DEVANEY: No objection.

24 THE COURT: All right, we'll admit it.

25 Q. (By Mr. Merz) I want to shift gears now

26

1 and talk to you a little bit about superior service.
2 One of the things that you say in your testimony is
3 that the standard interval for a DS1 private line
4 retail customer is nine days, while the standard
5 interval or a DS1 loop is five days; is that correct?

6 A. Yes, that's correct.

7 Q. Now, you would not contend, based on that
8 difference in interval, that the DS1 loop represents
9 a superior service, would you?

10 A. The DS1 loop itself is not a superior
11 service, no.

12 Q. Now, what is your understanding of how the
13 retail interval for a DS1 private line was set?

14 A. I don't have any understanding of that.

15 Q. Do you know whether Qwest could change
16 that interval if it wanted to?

17 A. I do not.

18 Q. In your surrebuttal testimony, Qwest 4SR,
19 page 23, you refer to a decision by the Florida
20 Commission; is that right?

21 A. What page was that, please?

22 Q. Page 23 of your surrebuttal.

23 A. Yes, I have that.

24 Q. And so you're referring to a decision by
25 the Florida Commission; is that right?

26

1 A. Yes.

2 Q. And the specific issue on which you are
3 citing the Florida Commission concerns whether
4 expedites are a superior service; is that right?

5 A. Yes, that's correct.

6 Q. Now, you're aware that that particular
7 issue has already been addressed by the Minnesota
8 Commission in arbitration proceedings between
9 Eschelon and Qwest; is that right?

10 A. Yes.

11 Q. And you're aware that the Minnesota
12 Commission has rejected Qwest's argument that an
13 expedite is a superior service, correct?

14 A. Yes, I'm aware of that.

15 Q. You're also aware that the Minnesota
16 Commission ordered a \$100-per-order interim rate for
17 expedites, correct?

18 A. Yes.

19 Q. That was the rate proposed by Eschelon?

20 A. Yes.

21 Q. The Minnesota Commission also ordered that
22 a permanent rate for expedites be established in a
23 cost docket; is that right?

24 A. Yes.

25 Q. And Qwest, in fact, filed a cost study in
26

1 the Minnesota cost docket with respect to expedites;
2 is that right?

3 A. Yes, that's correct.

4 Q. You're aware as well -- we were just there
5 a couple weeks ago -- that the Arizona Commission
6 Staff has also rejected Qwest's position that
7 expedites represent a superior service?

8 A. The Staff argued that the Commission
9 hadn't decided that point, yes.

10 Q. And I'm speaking about the Commission
11 Staff. You're aware that that's their conclusion,
12 correct?

13 A. Yes.

14 Q. And you're also aware that the Arizona
15 Commission Staff recommended that the rate be
16 established for expedites in a cost docket, right?

17 A. Yes.

18 MR. MERZ: Nothing further. Thank you.

19 THE COURT: Mr. Devaney?

20 MR. DEVANEY: No redirect, thank you.

21 THE COURT: Thank you, Ms. Million.

22 Qwest's next witness.

23 MR. DEVANEY: Call Ms. Karen Stewart.

24 THE COURT: Ms. Stewart, if you'll raise
25 your right hand, I'll go ahead and swear you in.

26

1 (The witness was sworn.)

2 Please be seated.

3 Mr. Devaney?

4 MR. DEVANEY: Thank you.

5 DIRECT EXAMINATION

6 BY MR. DEVANEY:

7 Q. Good morning, Ms. Stewart.

8 A. Good morning.

9 Q. You have filed three pieces of testimony
10 also. Your direct has been marked as exhibit --
11 Qwest Exhibit 3, and attached to it is Qwest
12 Exhibit 3.1. Your rebuttal has been marked as Qwest
13 Exhibit 3R, and attached to it three exhibits, 3R.1,
14 3R.2, 3R.3. Finally your surrebuttal has been marked
15 as Qwest Exhibit 3SR. Let me ask you first, do you
16 have any corrections to any of your testimony?

17 A. No, I do not.

18 Q. And are the answers you've provided in
19 your testimony true and correct, to the best of your
20 knowledge?

21 A. Yes.

22 MR. DEVANEY: Thank you. Your Honor, we'd
23 ask for the admission of each of Ms. Stewart's
24 exhibits, that is Exhibits 3, 3.1, 3R, 3R.1, 3R.2,
25 3R.2, 3R.2 and 3SR.

26

1 THE COURT: Any objection to their
2 admission as marked?

3 MR. MERZ: No objection, Your Honor.

4 THE COURT: We'll admit them.

5 MR. DEVANEY: Thank you. Ms. Stewart is
6 available for cross-examination.

7 THE COURT: Mr. Merz?

8 MR. MERZ: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MERZ:

11 Q. Ms. Stewart, we'll begin by talking first
12 about access to UNEs, which is issue 931. I'd like
13 you to refer to your rebuttal testimony, which is
14 Qwest 3R, and I'm looking at page 14. Specifically
15 I'm referring to line 18 on page 14 where you say:
16 "Eschelon's language implies that access to or use of
17 a UNE entitles it to moves, adds and changes at no
18 additional charge." Do you see that testimony?

19 A. Yes, I do.

20 Q. Now, you would agree with me that
21 Eschelon's proposed language relating to issue 931
22 does not say what would be charged for access to
23 UNEs, it only defines what that phrase means?

24 A. My conclusion came from the hearing, which
25 hearing exhibits have been attached to my testimony,

26

1 that the interpretation of Mr. Denney was that it
2 could include all the adds, moves and changes.

3 Q. And my question is just focusing on
4 Eschelon's proposed language. And you would agree
5 with me that that language does not say what would be
6 charged for access to UNEs, it only defines what that
7 phrase means; is that right?

8 A. Yes, except for the term "access" implies
9 the recurring portion. When you access a UNE, you
10 pay a recurring charge to use that UNE. And so,
11 therefore, that was our concern with the word
12 "access," is that it implies that the use of the UNE
13 would result in you being able to do adds, moves and
14 changes at no additional charge.

15 Q. Let me ask you this: I mean, installation
16 of a loop, in order for Eschelon to access a loop, it
17 has to be installed, correct?

18 A. Yes.

19 Q. And there's a separate installation change
20 that Eschelon pays to install a loop, correct?

21 A. Yes.

22 Q. So that's been established and Eschelon
23 pays it, correct?

24 A. Yes.

25 Q. And Eschelon never indicated that it would
26

1 not pay a rate that's been approved by this
2 Commission, has it?

3 A. Other than your concerns over design
4 changes, we believe that is a rate that has been
5 approved by the Commission for design changes for CFA
6 loops and UDOT, and my understanding is you're
7 disputing that.

8 Q. And the parties disagree. But when
9 Eschelon acknowledges that the Commission has
10 established a rate, it pays that rate; does it not?

11 A. If you're saying when Eschelon
12 acknowledges and agrees with the rate the Commission
13 established, that you pay it, yes, I think that's
14 correct.

15 Q. Eschelon's language doesn't address -- and
16 I'm focusing on the language relating to issue 931 --
17 that language doesn't address whether there will be a
18 separate charge for access to UNEs, does it?

19 A. No.

20 Q. And you would agree with me that in order
21 to recover a separate rate for an activity, Qwest has
22 to show the cost of performing that activity is not
23 already recovered in an existing rate; is that right?

24 A. I agree that generally that's the case.

25 Q. Looking at your rebuttal, again at
26

1 page 15, at the very bottom you have Qwest's proposed
2 language here. Do you see that?

3 A. Yes, I do.

4 Q. And I'm looking at the phrase "moving,
5 adding to, repairing and," and it's underlined. Do
6 you see that?

7 A. Yes, I do.

8 Q. Now, I believe that the contention, at
9 least that has been used generally in this case, is
10 that underlining indicates language that is disputed;
11 is that right?

12 A. Yes.

13 Q. But you would agree with me that the
14 phrase "moving, adding to, repairing and" is
15 agreed-upon language, correct?

16 A. In the process of the negotiations with
17 Eschelon, Qwest agreed to that language with its
18 additional modifications, that these are activities
19 that would occur, versus the use of the word
20 "access," which implies that they're included in the
21 recurring rate.

22 Q. And my only point is that page 15,
23 line 27, "moving, adding to, repairing and" shouldn't
24 be underlined, should it?

25 A. No, it should not.

26

1 Q. Now, if Qwest's language is adopted
2 relating to issue 931, you would agree with me that
3 there is potential for a future dispute about whether
4 the items covered by section 9.1.2 are subject to
5 cost-based rates or tariff rates, correct?

6 A. Yes.

7 Q. Now, there are specific examples inside
8 the parentheses at page 16 of your testimony,
9 beginning at line 1 through line 3, correct?

10 A. Yes.

11 Q. Those examples include design changes,
12 maintenance of service, including trouble isolation,
13 additional dispatches and cancelation of orders,
14 correct?

15 A. Yes.

16 Q. Now, is Qwest willing to commit to
17 providing these things under Eschelon's contract
18 TELRIC rates, unless and until there's a change of
19 law?

20 A. That's not a question that I have
21 researched, but if Eschelon was willing to accept all
22 of our other language, then that would be potentially
23 something we could look at.

24 Q. Well, I mean, Qwest agrees that it's
25 required to provide design changes at cost-based

26

1 rates, correct?

2 A. That is correct, that Qwest is agreeing to
3 TELRIC-based design changes in this ICA.

4 Q. And does Qwest also agree that Eschelon is
5 entitled to trouble isolation charges at cost-based
6 rates?

7 A. I don't represent the trouble isolation
8 product, so I'm hesitant to make any statements on
9 that.

10 Q. How about additional dispatches? Do you
11 know whether Qwest would commit to providing
12 additional dispatches at cost-based rates?

13 A. Again, I don't represent that issue, so
14 I'm hesitant to make a statement.

15 Q. Cancellation orders, same answer?

16 A. Same answer. I don't represent that part
17 of the company.

18 Q. But you do represent the company with
19 respect to this language at the bottom of page 15 and
20 carrying on to page 16, correct?

21 A. Yes, I do. I do represent that at
22 applicable rates, we'll make these activities
23 available.

24 Q. And my question is: If this language is
25 adopted, what can the Utah Commission expect going

26

1 out into the future? Can the Commission expect that
2 Qwest will provide design changes, maintenance
3 service, including trouble isolation, additional
4 dispatches and cancellation of orders at cost-based
5 rates, or is Qwest going to take the position that
6 these things may be tariff rates?

7 A. Well, what we relied upon is that we
8 currently do have in Exhibit A lists of various
9 rates, and if there's going to be changes with those
10 rates, we'll file them with the Commission. If the
11 Commission has any concerns, at that time they can be
12 researched.

13 Q. And but I take it that "at the applicable
14 rate" would not, in your mind, foreclose Qwest from
15 charging a tariff rate even for those things that are
16 identified as examples in these parentheses on
17 page 16?

18 A. No, we're not trying to foreclose. We're
19 not also trying to say that there would be tariff
20 rates. What we're trying to say is because, as in
21 the testimony of Mr. Starkey that this language could
22 cover thousands of activities, even unknown
23 activities, we have no way of knowing, into the
24 future, what those may be.

25 And in particular, now that the FCC has
26

1 required Qwest to make commingled arrangements, which
2 are arrangements of UNEs and tariff services, then
3 that question of would some activity toward a
4 commingled arrangement, if there are new and
5 different activities not even foreseen at this point
6 as indicated by Eschelon's witness, that then we'll
7 need to look at what will be the applicable rates.

8 Q. And I'm not talking about any activities
9 beyond those that are listed as examples in your
10 testimony, and the language that the parties have
11 agreed to. With respect to those examples, I take it
12 Qwest would not commit that those things will be
13 subject to cost-based rates and not TELRIC, not
14 tariff rates, unless and until there's a change in
15 the law?

16 A. And if I wasn't clear before, I'll be
17 clearer now. I'm not the witness that represents
18 those issues, so I'm not qualified to make that
19 commitment on the witness stand, as I sit here. I
20 said that if that is Eschelon's proposal, and it
21 would settle the issues, Qwest would be more than
22 happy to take that issue back and see if we can
23 settle it.

24 Q. I'm not asking or questioning a new
25 commitment, but what I'm asking is to try and

26

1 understand what's meant by the phrase "at the
2 applicable rate." I take it in your mind, that rate
3 might be even as to those items that are listed as
4 examples in Section 9.1.2, that "applicable rate"
5 might be the tariff rate; is that correct?

6 A. It might be, but once again, I'm focusing
7 on this "e.g." which indicates that these are only
8 examples, and by Eschelon's own witness' testimony,
9 that this could cover thousands of activities. So we
10 believe that it's crucial that we would have cost
11 recovery in whatever is the appropriate cost recovery
12 at the time those activities are asked of Qwest.

13 Q. I want to talk with you now about network
14 modernization and maintenance, which is issue 9-33,
15 and it concerns section 9.1.9 in the contract. These
16 terms relate to network modernization and maintenance
17 activities performed by Qwest; is that right?

18 A. Yes.

19 Q. Now, the parties have agreed on language
20 that provides Qwest with the ability to do network
21 modernization and maintenance activities that result
22 in minor changes to transmission parameters; is that
23 right?

24 A. Yes.

25 Q. Eschelon has proposed language to define
26

1 what would not be considered a minor change to the
2 transmission parameters; is that right?

3 A. That's my understanding.

4 Q. And you understand as well that Eschelon
5 has made two alternative proposals on this issue?

6 A. Yes.

7 Q. One of those proposals is that changes to
8 transmission parameters resulting from Qwest network
9 modernization and maintenance activities will not
10 adversely affect service to Eschelon end-user
11 customers; is that correct?

12 A. Yes.

13 Q. And the other proposal is that if changes
14 do result in unacceptable changes in the transmission
15 of voice or data, that Qwest and Eschelon will work
16 together to address that situation, correct?

17 A. Yes.

18 Q. Now, looking at your rebuttal testimony,
19 which is Qwest Exhibit 3R, and I'm looking at
20 page 23. At line 5 you say: "Eschelon's use of the
21 defined term 'CLEC's End-User Customer' would
22 improperly expand the prohibition against
23 'unacceptable changes' to third-party retail
24 customers, including customers of carriers other than
25 Qwest and Eschelon."
26

1 Do you see that?

2 A. Yes, I do.

3 Q. Now, you would agree with me that "CLEC"
4 has a defined meaning in the contract, the proposed
5 contract, between Eschelon and Qwest; is that right?

6 A. Yes.

7 Q. And that defined meaning is "Eschelon,"
8 correct?

9 A. Yes.

10 Q. So wherever you see "CLEC" in the
11 contract, you're supposed to insert "Eschelon,"
12 correct?

13 A. Yes.

14 Q. So you read the phrase "Eschelon's
15 End-User Customer" as applying not only to Eschelon's
16 end-user customer, but end-user customers of other
17 carriers; is that right?

18 A. Yes, because the capital "E" and the
19 capital "U" indicate that "End-User" is a defined
20 term within the ICA. When you go to the ICA
21 definition section, you will see that "End-User" used
22 that context, with a capital E and a capital U, means
23 other end-users than the CLECs.

24 Q. But you would not read the phrase
25 "Eschelon's End-User Customer" that in that phrase,

26

1 Eschelon has limited the scope of "End-User
2 Customer"?

3 A. No, again because "end-user" is a defined
4 term within the ICA. You go back and you look at the
5 defined term, and I believe it includes the end-users
6 of other CLECs, and Qwest's end-users.

7 Q. So how should that phrase be written in
8 order to limit it to Eschelon's end-user customers?

9 A. One potential would have been the CLEC's
10 small "E," small "U." It still does not address our
11 primary concern, which is that Qwest cannot step into
12 some type of obligation between Eschelon and
13 Eschelon's end-users. Qwest has an ICA between Qwest
14 and Eschelon, but it does not have an ICA agreement
15 between Qwest and the end-user. And so this language
16 has the end-user being the one who is defining
17 whether the service is acceptable.

18 Q. And the focus of my question is really a
19 lot narrower than that. And I just want to address
20 this concern that you raised in your testimony that
21 Eschelon's language expands Qwest's obligation beyond
22 the customers of Eschelon. And I understand that the
23 way you would deal with that is to put "end-user" in
24 lower case; is that right?

25 A. Yes.

26

1 Q. Going now to issue 9-34, which is another
2 issue related to network modernization and
3 maintenance, this issue concerns customer notice that
4 Qwest is obligated to provide Eschelon; is that
5 right?

6 A. Yes.

7 Q. Now, going to your surrebuttal testimony
8 at page 16. At page 16, line 5 you criticize
9 Eschelon's language on the ground that it's not
10 sufficiently narrowly tailored; is that right?

11 A. Yes.

12 Q. Has Qwest proposed any alternative
13 language to address that concern that you've raised?

14 A. Qwest believes that it's -- that the
15 existing language that's in the ICA is suitable
16 because it identifies that Qwest will provide all of
17 the notice that it's required to per the FCC
18 requirement. So Qwest doesn't believe that any
19 addition is needed to make a complete coverage of
20 this notice of issue for Eschelon.

21 Q. The FCC requirements that you're referring
22 to are described in the FCR rule as minimum
23 requirements; is that right?

24 A. I think "minimum." I believe that they're
25 the appropriate requirements that have stood the test

26

1 of time across the United States for many carriers
2 making updated changes. For example, Qwest made
3 thousands of changes in its network.

4 Q. And my question isn't about your opinion
5 regarding the appropriateness of the requirements.
6 My question is whether you understand that those
7 requirements are described by the FCC as "minimum"
8 requirements.

9 A. Yes. Qwest must at least do that portion.

10 Q. And you understand that there's nothing in
11 the FCC rules that would prevent the Utah Commission
12 from requiring more than that list of requirements?

13 A. Yes. However, if we did more, then
14 potentially the underlying cost and factors for
15 network adds, moves and changes, or whatever these
16 apply under, would maybe not be appropriate, because
17 if you do more notice, then there's more cost. And
18 our costs were determined on using the FCC notice
19 requirements.

20 Q. I want to talk with you now about loop
21 transport combinations, and as I understand it, you
22 have two concerns with Eschelon's proposed language.
23 One is that Eschelon is trying to create a new
24 product called a loop transport combination; is that
25 right?

26

1 A. Yes.

2 Q. And another concern is that Eschelon is
3 trying to bring non-UNEs within the coverage of the
4 ICA; is that right?

5 A. Yes.

6 Q. I'd like to go to your direct testimony,
7 which is Qwest 3. Looking at page 49, "Loop
8 Transport Combinations." Do you see there on page 49
9 the underlined language in bold-face type is the
10 language proposed by Eschelon; is that right?

11 A. Yes.

12 Q. And you see there in the middle of that
13 language that it says: "At least as of the effective
14 date of this agreement, Loop Transport Combination is
15 not the name of a particular Qwest product."

16 A. Yes.

17 Q. Does that language proposed by Eschelon
18 not address your concern that Eschelon is trying to
19 require Qwest to create a new product?

20 A. No, it does not, because these terms cover
21 three distinct products, or three distinct terms and
22 conditions. And by trying to use one umbrella term,
23 it could result -- or I believe Eschelon's intent of
24 the result is that each of those three separate
25 products, EELs, commingled EELs and high-capacity

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1 EELs, would be treated the same. Therefore, that
2 creates, like, a single product.

3 Q. Go to the last sentence of Eschelon's
4 proposal where it says: "The UNE components of any
5 Loop Transport Combination are covered by this
6 agreement." Do you see that?

7 A. Yes, I do.

8 Q. Now, doesn't that also suggest that the
9 non-UNE components of any loop transport combination
10 are not governed by this agreement?

11 A. No, because the sentence up above states:
12 "If no component -- if no component -- of the loop
13 transport combination is a UNE, however, the loop
14 transport combination is not addressed by this
15 agreement."

16 However, because your umbrella loop
17 transport covers commingled arrangements, in a
18 commingled arrangement the components is a UNE.
19 Therefore, you would be implying that a commingled
20 arrangement would be covered by this agreement,
21 including the tariff portion. And Qwest believes
22 that's inappropriate.

23 Q. But doesn't the last sentence of
24 Eschelon's proposal address that? Because it says:
25 "The UNE components of any loop transport combination
26

1 are governed by this agreement."

2 A. I think at best it's silent but implied,
3 that if there is no component, it's not covered by
4 this agreement, but if there is a component, it could
5 be covered by this agreement. That is Qwest's
6 concern.

7 Q. If the last sentence were to say: "The UNE
8 components of any loop transport combination are
9 governed by this agreement, and the non-UNE
10 components of any loop transport combination are not
11 governed by this agreement," that would address your
12 concern, wouldn't it?

13 A. It would address one of our concerns, yes.

14 Q. And the other concern, as I understand it,
15 is addressed by the sentence: "At least as of the
16 effective date of this agreement, loop transport
17 combination is not the name of a particular Qwest
18 product." Is that not the case?

19 A. No, it is not. Like, for example, in the
20 loop transport combination umbrella it talks about
21 using a single LSR to provide service, and in a
22 commingled arrangement, we actually need to have an
23 ASR for the private line portion, because that's the
24 systems that do that. And for the UNE portion, we
25 need the LSR. So by having this umbrella term,

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1 there's already at least one underlying process
2 change that would be forced upon Qwest.

3 So again, it's not going to address our
4 concerns. Saying it's not a product doesn't change
5 the legal obligation to treat three separate
6 services, EELs, commingled EELs and high-capacity
7 EELs, the same. So for all intents and purposes,
8 it's like you would create a single product.

9 Q. Go to your rebuttal testimony, 3R. Look
10 at page 35. At line 15 you have language that Qwest
11 is proposing to resolve this loop transport -- I'm
12 sorry -- resolve issue 9-55; is that right?

13 A. Yes.

14 Q. Now, you say there that: "When a UNE
15 circuit is commingled with a non-UNE circuit, the
16 rates, terms and conditions of the ICA will apply to
17 the UNE circuit (including Commission jurisdiction)
18 and the non-UNE circuit will be governed by the
19 rates, terms and conditions of the appropriate
20 tariff." Correct?

21 A. Yes.

22 Q. Now, a non-UNE circuit will not always be
23 covered by tariff; isn't that correct?

24 A. That is correct, although the tariff is a
25 defined term, and I've tried to indicate that it's a

26

1 variety of services.

2 Q. One of the things that you say, you said
3 the tariff is a defined term that includes interstate
4 tariffs, state tariffs, price lists and price
5 schedules. What about commercial agreements? Is a
6 commercial agreement included in the defined term
7 "tariff"?

8 A. Not specifically.

9 Q. A commercial agreement is something that
10 could govern a non-UNE circuit, correct?

11 A. Yes.

12 Q. I want to talk with you now about
13 commingling. If you'd refer to your direct
14 testimony, Qwest Exhibit 3, page 82. And on page 82
15 you have Qwest's proposed language related to
16 "Maintenance and Repair for UNE Component of
17 Commingled EELs"; is that right?

18 A. Yes.

19 Q. And Qwest's proposal, boiled down, is that
20 Eschelon will have to do separate trouble tickets,
21 one for the UNE portion and one for the non-UNE
22 portion of a point-to-point that is non-multiplex
23 commingled EEL; is that right?

24 A. No.

25 Q. Okay, explain to me where I'm wrong.

26

1 A. What our language is is that the CLEC
2 needs to do the appropriate trouble isolation to the
3 Qwest network. In doing that isolation they will
4 typically be able to determine what the portion is.
5 They would then send in a repair ticket on that.

6 If they want to help us, in case we get
7 there and see no trouble, they can also include in
8 their "remarks" section the circuit ID of the other
9 service that is commingled with it so we'll have that
10 information as we are taking a look. So there is no
11 requirement that you have to put in two circuit
12 trouble tickets.

13 Q. How is Eschelon going to know whether the
14 trouble is in the UNE or the non-UNE portion of a
15 point-to-point EEL?

16 A. Well, typically that's an arrangement
17 where it's -- and there's various arrangements, but
18 in a typical arrangement it's the high-capacity
19 transport between central offices, and then a local
20 loop between the end-user and central office. And I
21 believe that Eschelon would typically have the
22 capability to determine or see, or at least make an
23 educated guess, whether it's between the end-user and
24 the central office, or if it's in the high-capacity
25 transport.

26

1 Q. Now, remember, we're talking about a
2 point-to-point EEL, so that the transport and the
3 loop are the same bandwidth for a point-to-point EEL,
4 correct?

5 A. Yes.

6 Q. And so you believe that for a
7 point-to-point EEL, Eschelon has the ability, through
8 testing, to be able to know whether the trouble is in
9 the transport or the loop portion of the circuit?

10 A. My understanding is that there is
11 information that is helpful for them. But I'm going
12 to be honest. I'm not an expert in Eschelon's
13 testing capabilities.

14 Q. Well, do you know how helpful it would be?
15 You said an "educated guess." I guess the question
16 is: How likely is Eschelon to guess right that the
17 trouble is in the transport of the loop portion of
18 the circuit?

19 A. As I indicated before, it's my
20 understanding, in consultation with our network
21 individuals, that you would be able to have an
22 indication. But regardless, if you don't, you can
23 add in the other circuit ID in the "remarks" section
24 so we'll have both pieces of information as we're
25 going forward to test that circuit.

26

1 If we determine that it is not on the
2 circuit that the trouble ticket was put in on, then
3 we will immediately contact Eschelon and see whether
4 Eschelon wants us to put in the trouble ticket on the
5 section that had a problem, or whether Eschelon will
6 put in the trouble ticket on the section that had a
7 problem.

8 But in all cases, the repair is not being
9 delayed. We're going forward. However, it is
10 necessary that we have a complete and accurate repair
11 record on each circuit. So part of that is because
12 there are hidden past payment-type issues that come
13 into play on repair tickets and, etc., and they're
14 different for wholesale services than they are for
15 UNE services. So ultimately we do need to have a
16 complete record of all repair issues on a particular
17 circuit.

18 Q. You would agree with me that it's
19 technically feasible to simultaneously test both the
20 loop and transport portion of a commingled
21 point-to-point EEL, correct?

22 A. It's technically feasible, right. I'm
23 sure it is.

24 Q. And that is, in fact, how Qwest tests UNE
25 point-to-point EELs today, correct?

26

1 A. I don't know exactly how they do that,
2 because, again, typically it's a high-capacity
3 transport component, and it's a loop component. So I
4 personally don't know in what order or how the
5 company tests.

6 Q. Well, Qwest doesn't require a CLEC to open
7 a trouble ticket for one part of a UNE EEL and then
8 open a second trouble ticket for the second part if
9 it turns out the trouble isn't in the first part,
10 does it?

11 A. No.

12 Q. Now, another aspect of Qwest's proposed
13 language is that Qwest may charge if no trouble is
14 found on either circuit; is that right?

15 A. Yes.

16 Q. Now, if the trouble isn't found on either
17 part of the commingled EEL, could the trouble still
18 be in Qwest's network?

19 A. If no part of the circuit has trouble, is
20 it still in the Qwest network? I mean, I guess I'd
21 need an example of what you were thinking about.

22 Q. What if the trouble was at the switch?

23 A. That would still be a trouble in the path
24 of the circuit, plus an EEL point-to-point circuit
25 that we're talking about here doesn't go through the

26

1 central office.

2 Q. It's got to start somewhere, right?

3 A. Well, it does, but it doesn't typically.

4 Typically it would not go through a central office.

5 It would go from the end-user to a frame in the

6 office, out to, typically, a CLEC colocation at a

7 remote CO. Typically an EEL would not go through our

8 central office switch.

9 Q. And I guess my question is: If the trouble
10 isn't on either part of the commingled EEL, could the
11 trouble still be in the Qwest network?

12 A. I'm struggling to come up with a scenario.

13 Q. Eschelon has proposed language that would
14 allow Eschelon to assess a trouble isolation charge
15 under certain circumstances; is that right?

16 A. Yes.

17 Q. And that language, actually, has been
18 stricken in Qwest's proposal; is that right?

19 A. Yes, because initially this was a disputed
20 issue between the parties.

21 Q. And you're aware it's no longer a disputed
22 issue?

23 A. Yes, I am.

24 Q. You've done some work on that since we
25 last met, I take it?

26

1 A. Yes, I have.

2 Q. So Qwest would no longer propose, I take
3 it, striking that language from its proposal; is that
4 right?

5 A. I believe it would be reasonable, based on
6 the latest information I've received.

7 Q. It would be reasonable to include that
8 language?

9 A. Yes, it appears to be reasonable, given
10 that that issue has been resolved.

11 THE COURT: Just so that I'm clear, is
12 that the language that appears stricken in this
13 testimony here that you're referring to?

14 MR. MERZ: Yes, and let's actually find
15 that.

16 Q. (By Mr. Merz) The language we're talking
17 about, Ms. Stewart, if you'd look at your direct
18 testimony on page 82.

19 A. Yes.

20 Q. And I'm looking at the language that
21 starts on line 32 and ends on line 34. "Hence, the
22 CLEC may charge Qwest" -- to section 12.4.1.8: "Qwest
23 may also" -- "CLEC may also charge only a single
24 charge for both circuits associated with a commingled
25 EEL." Is that right?

26

1 A. Yes.

2 Q. And that language, you believe, is
3 reasonable to be included?

4 A. Yes. However, since the parties were
5 unable to negotiate the whole settlement in an
6 agreement, we've had no fresh work on that situation.

7 Q. The very last issue I wanted to talk with
8 you about -- and I don't have much to say about it --
9 is loop mux combination. In your rebuttal testimony
10 you, at page 81 -- well, that can't be right. Well,
11 I'll just ask you the question. Do you recall
12 testifying at some point in this case that multiplex
13 is used with commingling in an interstate access
14 service?

15 A. What I testified is that typically what
16 we're seeing in commingled arrangements -- well, in a
17 loop mux combination, since multiplexing is not an
18 individual UNE, therefore, it needs to be purchased
19 from a tariff service, which would make a combination
20 of multiplexing and a loop a commingled arrangement,
21 yes.

22 Q. And my question is whether or not
23 multiplexing is being used to provide intrastate
24 access service?

25 A. Yes, it can.

26

1 Q. And it can be used with a loop to provide
2 intrastate access service?

3 A. Yes, it can.

4 MR. MERZ: I don't have anything further.
5 Thank you.

6 THE COURT: Mr. Devaney?

7 MR. DEVANEY: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. DEVANEY:

10 Q. Ms. Stewart, just a few followups. First
11 I'd like to ask you some questions about Eschelon's
12 proposed use of the term "loop transport combination"
13 in the Interconnection Agreement, which you just
14 discussed with Mr. Merz a few minutes ago. And that
15 issue relates to three products that Qwest has that
16 consist of loop transport combinations. And I think
17 you testified in response to Mr. Merz's questions
18 that those products are EELs, commingled EELs and
19 high-capacity EELs. Do you recall that?

20 A. Yes, I do.

21 Q. And would you just explain for Your Honor
22 and the Commission what an EEL is as compared to a
23 commingled EEL and a high-capacity EEL?

24 A. Yes, I will. An EEL, by definition, is a
25 combination of UNEs, and typically that would be a

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1 UNE loop with UNE transport, and Qwest puts it
2 together and makes a combination. A commingled
3 arrangement would be where one portion of the service
4 is not a UNE. It could be an intrastate service, it
5 could be an interstate service, but nonetheless, it's
6 not a UNE, it's commingled. And the definition of
7 "commingled" is basically putting two things
8 together, and Qwest makes the combination.

9 High-capacity EELs are EELs in that it's
10 typically an arrangement of a UNE -- an arrangement
11 of two UNEs, although it doesn't necessarily have to
12 be because a commingled high-capacity EEL could also
13 occur. But the reason, the bottom-line reason why
14 high-capacity EELs are pulled out and are a separate
15 product is because the FCC established unique
16 requirements for CLECs to require Qwest to create a
17 high-capacity EEL.

18 And so there's numerous tests that have to
19 be met, and the intent of those tests was so that
20 those EELs could not be, wholesale, used to bypass
21 switched access service. And so there's some tests
22 to ensure the appropriate use of the service; so, for
23 example, that circuits and that high-capacity
24 arrangements have access to 911, a seven-digit
25 telephone number has been assigned to show that it's
26

1 going to be used for local exchange service and not
2 to bypass the Qwest network.

3 Q. In response to one of Mr. Merz's questions
4 you said that Qwest has concerns about the use of
5 what you call the "umbrella" term "loop transport
6 combination" because it may result in a meshing
7 together, if you will, or failure to distinguish
8 among these three services. Why does Qwest believe
9 it's important to distinguish among these three
10 products and services?

11 A. Just as I indicated, there are very unique
12 terms and conditions. If you have a UNE EEL, then,
13 of course, you've got the UNE components and the
14 terms and conditions of that. As I've discussed, I
15 think, previously there's PIT and PAT payments that
16 have to do with performance, etc.

17 If it's a commingled arrangement, then
18 one-half would be controlled by the ICA, because
19 that's a UNE. The other portion of the circuit would
20 be controlled by the tariff, or whatever mechanism
21 was being used to purchase that second element.

22 And then thirdly, the high-capacity EEL
23 restrictions or requirements that I just discussed.
24 They're not appropriate to apply to a
25 non-high-capacity EEL. On the other hand, we need to

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1 make sure that they are appropriately applied for a
2 high-capacity EEL. So an umbrella term, trying to
3 call these all sort of one product, then, would lead
4 to potential confusion about what terms and
5 conditions would apply.

6 Q. Changing the subject to the issue of
7 commingling repairs that I think is issue 9-59, if I
8 recall correctly.

9 A. Yes.

10 Q. Mr. Merz just talked to you about that. I
11 just want to be sure the record is clear on this.
12 Did you testify that if Eschelon were to place the
13 circuit IDs for both circuits in a commingled
14 arrangement on a trouble report, that could eliminate
15 the need for Eschelon to submit a second trouble
16 report?

17 A. Yes. Well, there may be no need for a
18 second trouble report at all if the first trouble
19 report does an adequate job of isolating it to which
20 circuit has a repair problem. But Qwest would
21 allow -- there's no way on a trouble ticket you can
22 officially put in two circuits. Each circuit has to
23 have its own trouble ticket. But we will allow the
24 CLEC to put into the "remarks" section the second
25 circuit ID so that we'll know, one, it's a commingled

26

1 arrangement; and two, then we've got that second
2 circuit ID as we go and do testing on the facility.

3 Q. And my last question for you relates to
4 issue 9-61, loop mux combinations. In response to
5 one of Mr. Merz's last questions, you, I think, said
6 that multiplexing with commingled arrangements can be
7 used for -- to provide intrastate service. Do you
8 recall that?

9 A. Yes, I do.

10 Q. And I think it's also clear from your
11 answer that it can be used to provide interstate
12 service; is that correct?

13 A. Yes.

14 Q. And do you know which is more common in
15 Qwest's experience with CLECs, whether they use
16 commingling in these -- I'm sorry -- whether they use
17 loop mux combinations with commingling to provide
18 interstate service or intrastate service?

19 A. Our language allows them to use either
20 one, whatever is appropriate, intrastate private line
21 or interstate private line. And if I implied our
22 language didn't do that, then I'll correct that. You
23 can do either one. However, what we have seen is
24 that the vast majority are using interstate services
25 when they put together a commingled arrangement.

26

1 We're not seeing intrastate service being commingled.

2 MR. DEVANEY: Thank you. That's all I
3 have.

4 THE COURT: Mr. Merz?

5 MR. MERZ: Just one question following up
6 on, I think, the question Mr. Devaney just asked.

7 RECROSS-EXAMINATION

8 BY MR. MERZ:

9 Q. Does Qwest agree that a CLEC can purchase
10 a UNE with a special access mux?

11 A. That -- for example, in the example that
12 we just gave, yes, it could be an intrastate service
13 that they make the commingled arrangement with.

14 Q. And just to make sure we're clear, Qwest
15 would allow a CLEC to purchase a UNE loop with a
16 special access mux?

17 A. Well, when you say "special access," there
18 are -- I don't know if that's enough of a generic
19 term. Are we going off into discussions of, like,
20 loops, trunking? And, I mean, there are various
21 different types of services that are generally called
22 access service. So I feel like I should more
23 specifically answer the question: If you were to go
24 to the private line portion of the tariff, be it an
25 interstate tariff, then yes, you could have

26

1 interstate commingling with a UNE. And typically,
2 like I said, what commingled arrangement people are
3 choosing to do are out of the FCC interstate tariff.

4 Q. In a loop mux combination, what part of
5 that combination is the UNE and what part is the
6 non-UNE?

7 A. In that particular arrangement, the loop
8 is the UNE and the multiplexing is the non-UNE.

9 Q. And so could the non-UNE multiplexer be a
10 special access multiplexer?

11 A. My understanding is it can be whatever
12 would be the appropriate private line tariff price
13 list, etc., that would be appropriate for that. The
14 reason I'm hesitating is because people use
15 interchangeably "special access," "switched access,"
16 "private line service." And so I just feel that your
17 question is trying to target that.

18 I'm not sure I'm understanding the
19 question. Generally, you could make a commingled
20 arrangement, whether it was a loop mux combo or
21 another one, between -- my understanding is --
22 between a UNE and another service that you've
23 obtained, and you could obtain that service from an
24 interstate tariff.

25 Q. And I'm not talking generically about
26

1 combinations. I'm talking specifically about loop
2 mux combo and what Qwest believes is available to
3 CLECs under that description, "loop mux combo." The
4 question is whether a loop with a special access mux
5 would be considered to be, by Qwest, to be a loop mux
6 combo.

7 A. If Eschelon was to request that Qwest make
8 a combination between a UNE and a non-UNE, and they
9 put a service together, whether it was loop mux combo
10 or, etc., and the multiplexing was obtained, not from
11 an interstate service but from an intrastate service,
12 that would be fine. If you're somehow implying
13 intrastate service doesn't exist in the State of Utah
14 for multiplexing, that I do not know.

15 MR. MERZ: Nothing further. Thank you.

16 THE COURT: Anything further for this
17 witness?

18 MR. DEVANEY: No, thank you.

19 THE COURT: Okay, thank you. Anything
20 further from Qwest?

21 MR. TOPP: That concludes our witnesses.

22 THE COURT: Okay. Given that, I guess at
23 the time I guess it makes sense to break for lunch.
24 We'll be back at 1:30. Does that work?

25 (Brief discussion concerning times held off the
26

1 record.)

2 THE COURT: We're back on the record in
3 docket 07-2633-03, and I believe, Mr. Merz, we were
4 going to turn to you.

5 MR. MERZ: Thank you, Your Honor.
6 Eschelon calls Michael Starkey to the stand.

7 THE COURT: If you'll raise your right
8 hand, I'll swear you in.

9 (The witness was sworn.)

10 Thank you. Please be seated.

11 Mr. Merz?

12 MR. MERZ: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. MERZ:

15 Q. Good afternoon, Mr. Starkey.

16 A. Good afternoon, Mr. Merz.

17 Q. You prepared in this case direct rebuttal
18 and rebuttal testimony; is that right?

19 A. Yes.

20 Q. I will note for the record that your
21 direct testimony has been marked as Eschelon
22 Exhibit 1, and includes Eschelon Exhibits 1.1 through
23 1.7; that your rebuttal testimony has been marked as
24 Eschelon Exhibit 1R, and that your surrebuttal
25 testimony has been marked as Eschelon Exhibit 1SR.

26

1 Mr. Starkey, is the information contained in your
2 direct rebuttal and your surrebuttal testimony true
3 and correct, to the best of your knowledge?

4 A. Yes.

5 MR. MERZ: Your Honor, Eschelon offers
6 Eschelon Exhibit 1, including 1.1 through 1.7;
7 Eschelon Exhibit 1R and Eschelon Exhibit 1SR.

8 THE COURT: Any objection to their
9 admission as marked?

10 MR. DEVANEY: No objection.

11 THE COURT: We'll go ahead and admit them.

12 MR. MERZ: Your Honor, Mr. Starkey is now
13 available for cross-examination.

14 THE COURT: Mr. Topp or Mr. Devaney?

15 MR. DEVANEY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. DEVANEY:

18 Q. Good afternoon, Mr. Starkey.

19 A. Good afternoon, Mr. Devaney.

20 Q. Let me just begin by asking you a few
21 questions about your background. I see from your CV
22 that your educational background is primarily in
23 finance and economics; is that correct?

24 A. Yes.

25 Q. And you're not a telecom engineer; is that
26

1 right?

2 A. That is correct.

3 Q. And you've not had a job with
4 telecommunications engineer responsibilities; is that
5 right?

6 A. That is correct.

7 Q. And I take it you don't consider yourself
8 an expert in operational support systems; is that
9 correct?

10 A. I know a good deal about operational
11 support systems, but I probably wouldn't hold myself
12 out as an expert.

13 Q. Have you ever designed, developed or
14 maintained an operational support system?

15 A. No.

16 Q. Have you ever been an employee of a
17 telephone company?

18 A. I have not.

19 Q. I see from your CV, which is marked as
20 Exhibit 1.1 to your direct, that you've testified in
21 more than 150 proceedings, you say, before about four
22 state commissions, the FCC and the courts. And as I
23 looked at your CV and the parties that you've
24 represented, it appeared that the majority of them
25 were CLECs. Is that a fair statement?

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1 A. I've not looked to see whether the
2 majority of them are. A good number of them are.
3 But there are also carriers in there that are
4 wireless carriers. There are commissions themselves,
5 ILECs, and there are various types of companies that
6 I've represented. But CLECs are a large part of our
7 business.

8 Q. I'd like to ask you about issue 9-31,
9 which is non-discriminatory access to UNEs. And I'll
10 ask you to turn to page 134, 135 of your direct. I'm
11 asking you to turn there simply because it's a
12 convenient place to see the parties' competing
13 proposals, and I just want to make sure we agree what
14 the differences are between the proposals. As you
15 see at line 10 on page 134, that's where Eschelon's
16 proposed number 1 is set forth. Are you with me?

17 A. Yes.

18 Q. And I think Eschelon's strike-through
19 language indicates what the dispute is. Qwest is
20 proposing that activities available for UNEs includes
21 "moving, adding to, repairing and changing" the UNE,
22 and Eschelon is replacing that with "access to." And
23 then, of course, in the last phrase, Qwest has
24 inserted "at the applicable rates," which Eschelon
25 has proposed to strike; is that correct?

26

1 A. Yes.

2 Q. And I think the dispute really boils down
3 to, in large part, whether all of the activities
4 encompassed by those terms, "moving, adding to,
5 repairing and changing," must be provided by Qwest at
6 TELRIC cost-based rates or whether some of the
7 activities could be governed by a rate other than
8 TELRIC. Is that a fair summary?

9 A. It is fair, though I might add one thing
10 to it, which is I think what I would say is that the
11 crux of the issue comes down to whether those things
12 we've identified there, "moving, adding to, repairing
13 and changing," fall within the FCC's definition of
14 access to an unbundled network element.

15 Q. And the relevance of that is, from
16 Eschelon's perspective, if those activities fall
17 within access to a UNE, then TELRIC would govern; is
18 that correct?

19 A. That's right. The FCC has determined that
20 TELRIC is the proper basis for setting rates for
21 access to unbundled network elements.

22 Q. And would you agree with me that TELRIC
23 only applies to products and services that an ILEC is
24 required to provide under Section 251 of the Act?

25 A. No, first because I would take issue with
26

1 the notion of products and services as opposed to
2 access to unbundled network elements. "Network
3 element" is a defined term in the Act that describes
4 access to a facility and to features and functions.
5 I think limiting it to products and services is
6 overly restrictive, more so than simply saying
7 "access to unbundled network elements."

8 Q. Let me ask it another way. Would you
9 agree that for an element, a product, a service or a
10 service related to a product to be governed by a
11 TELRIC, it has to fall within section 251?

12 A. I would agree that, I think, to date the
13 FCC has applied the TELRIC pricing standard only to
14 those elements that are subject to 251.

15 Q. You have agreed in other states, I think,
16 and I'll ask you to confirm this, that the terms
17 "moving, adding to, repairing and changing" encompass
18 literally thousands of activities, correct?

19 A. They do, or could.

20 Q. And those terms could include activities
21 that we don't know about today that might evolve in
22 the future with changes to technology and engineering
23 procedures; is that correct?

24 A. Yes.

25 Q. And Eschelon's position in this
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1 arbitration is that every one of those activities,
2 those thousands of activities, falls within section
3 251 and are governed by TELRIC; is that correct?

4 A. I don't believe so. I think I would say
5 it differently. When you look at section 9.1.2 of
6 the contract, which is where the disputed language is
7 found, 9.1.2 deals with what is access to unbundled
8 network elements. In fact, if you read the first
9 sentence, it says: "Qwest shall provide
10 non-discriminatory access to unbundled network
11 elements." Then it goes on to say the rates, terms
12 and conditions. The remainder of the paragraph
13 describes what "access to unbundled network elements"
14 means.

15 The disputed language under issue 9-31
16 really, in my mind, comes down to whether the
17 activities that are described in the agreed-upon
18 language under "moving, adding to or repairing," fall
19 under the purview of "access to unbundled network
20 elements."

21 Q. If they fall within the "access to
22 unbundled network elements," then those activities
23 are within section 251, correct?

24 A. Yes, per the FCC's decision in the Local
25 Competition Order.

26

1 Q. And TELRIC would apply, under your
2 proposal?

3 A. Yes, because, in part --

4 Q. Let me just ask you another question.

5 MR. MERZ: Your Honor, could I ask that
6 the witness be allowed to finish his answer?

7 THE COURT: You can go ahead.

8 MR. DEVANEY: You can go ahead.

9 A. I was just going to say because, in part,
10 taking section 9.1.2 in whole, the last part of 9.1.2
11 talks about "routine network modifications," which is
12 another component of accessing unbundled network
13 elements. And therein, when it talks about routine
14 network modifications, the FCC specifically put the
15 standard as non-discrimination, and refused to
16 identify specifically the activities that might fall
17 thereunder. Understanding that things change and
18 that these are multiple activities, instead it
19 expressed a standard under which it required them to
20 be considered access to unbundled network elements.

21 Q. (By Mr. Devaney) Eschelon's position,
22 though, is that while these terms encompass thousands
23 of activities, some of which we don't know about
24 today, all of those activities, by definition,
25 constitute access to UNEs within section 251, and

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1 that TELRIC applies, correct?

2 A. And I think that's the same question that
3 I answered before, and I would say yes, with the
4 understanding that if they fall within the purview
5 of, quote, unquote, "access to unbundled network
6 elements," then yes, TELRIC rates apply. If they
7 don't, then perhaps not.

8 Q. And by contrast, Qwest's language
9 recognizes that certainly TELRIC will apply to many
10 of these activities, but leaves the door open to
11 perhaps some activities that might be outside the
12 purview of 251 and for which TELRIC rates would not
13 apply; isn't that right?

14 A. It does, and we think unnecessarily so,
15 because it wouldn't, by definition, be purviewed to
16 251 if it weren't an access to unbundled network
17 element.

18 Q. But the point is we don't even know what
19 all these activities are, do we?

20 A. We don't, nor did the FCC when they made
21 the routine network modifications decision and said
22 though we don't know what they are, we know what the
23 standard is. And the standard is if you do it for
24 yourself or your retail customers, then you must do
25 it for the CLEC. That's what "non-discriminatory

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1 access" means.

2 Q. Well, let's talk about non-discriminatory
3 access. And I think you have the agreement in front
4 of you, the interconnection agreement.

5 A. I do.

6 Q. I'll ask you please to turn to section
7 9.1.2.

8 MR. DEVANEY: And, Your Honor, if you have
9 the issues matrix in front of you, it's page 33 of
10 the issues matrix.

11 THE COURT: Thank you.

12 MR. DEVANEY: Mr. Starkey, I'll give you a
13 second to look that over.

14 THE WITNESS: I'm familiar with it.

15 Q. (By Mr. Devaney) There's agreed language
16 in section 9.1.2 that establishes Qwest must provide
17 non-discriminatory access to UNEs on rates, terms and
18 conditions that are non-discriminatory, just and
19 reasonable, correct?

20 A. Yes.

21 Q. And there's also agreed language that
22 Qwest must provide equal UNE access to that which
23 Qwest provides to other carriers, correct?

24 A. Yes.

25 Q. And there's also agreed language that
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1 Qwest must provide the same routine network
2 modifications that it performs for its own customers,
3 correct?

4 A. I think it's broader than that. It says
5 to itself or its own affiliates as well, so it's not
6 only its customers, but also to itself and its
7 affiliates.

8 Q. Okay, fair enough. And related to that
9 there's also agreed language that Qwest must provide
10 access to UNEs in substantially the same time and
11 manner that it provides to itself and its affiliates,
12 correct?

13 A. Yes.

14 Q. And finally, there's also agreed language
15 that Qwest must provide access to UNEs and give
16 Eschelon a meaningful opportunity to compete,
17 correct?

18 A. Yes.

19 Q. Changing the subject now to issue 9-33,
20 network modernization. Please turn to page 146 of
21 your direct.

22 A. Okay.

23 Q. And again, I'm asking you to reference
24 that page simply because that's where Eschelon's
25 proposals are set forth. You have two proposals for
26

1 issue 9-33; is that right?

2 A. Yes.

3 Q. And just as a point of reference, issue
4 9-33 relates to changes to the network that result in
5 minor changes in transmission parameters, correct?

6 A. Yes.

7 Q. Now, within section 9.1.9, I believe, and
8 you can confirm this for me, that there is agreed
9 language ensuring that any network maintenance and
10 modernization activities that Qwest engages in will
11 result in UNE transmission parameters that are,
12 quote, "within transmission limits of UNE ordered by
13 the CLEC," correct?

14 A. Yes.

15 Q. And would you agree this language
16 obviously places a limit on the changes in
17 transmission parameters that can result from a Qwest
18 maintenance or modernization activity?

19 A. Yes.

20 Q. Are you aware of an Eschelon customer ever
21 complaining that a Qwest modernization or network
22 maintenance activity, as opposed to installation
23 activity -- I'm talking now about maintenance
24 modernization -- has put an Eschelon customer out of
25 service? Service that was operating and then no

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1 longer is.

2 A. I know you realize that we have a bit of
3 dispute as to whether the dB loss example resulted
4 from installation versus maintenance and
5 modernization. In my testimony I describe the fact
6 that we believe that when the Qwest technician
7 changed the various transmission capabilities of the
8 electronics in the dB loss example, that they were
9 undertaking a modernization maintenance activity. So
10 my answer would be yes, with that caveat.

11 Q. Well, as you say, we do have a debate
12 about whether that was an installation or a
13 modernization, that one incident. But my question is
14 broader than that. Let's put that one incident
15 aside, over which we obviously debate, and let me ask
16 you: Do you have any knowledge of a Qwest
17 modernization or maintenance activity ever having put
18 an Eschelon customer out of service?

19 A. I don't, though Ms. Johnson, being
20 directly involved with that on a day-to-day basis,
21 would probably be the better person. If that
22 happened regularly, she would know more than I.

23 Q. But you're the person responsible for this
24 issue, correct?

25 A. For this particular language, because we
26

1 have identified specific instances where these types
2 of activities have put our customers out of service,
3 with respect to the dB loss example.

4 Q. Let's go back. You said "instances." All
5 you're talking about is the one episode you and I
6 just discussed, which is one episode, and it
7 involved, in our view, an installation. You don't
8 have anything in mind other than that, do you?

9 A. I don't, but think it was more -- I think
10 it was beyond just one customer. I think it was an
11 issue that impacted customers generally.

12 Q. Okay. Now, turning to Eschelon's proposal
13 number 1 for this issue, which is page 146 of your
14 direct, the proposal would prohibit Qwest from making
15 changes to the network that, quote, "adversely affect
16 service to any CLEC End User customers"; is that
17 right?

18 A. I'm reading along with you here. Yes.

19 Q. And I know we've been through these
20 questions before, but I have to ask them for the sake
21 of the record in this case. It's correct that
22 Eschelon's use of "adversely affect" is not defined
23 anywhere in its proposal or elsewhere in the
24 interconnection agreement; is that right?

25 A. And my answer today is probably going to
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1 be a little different from what you heard the last
2 couple of times, because as I read this further, I
3 think the answer to that is yes, that's true, it's
4 not a defined term.

5 However, if you read on in that sentence,
6 and you read the sentence in its entirety, it gives
7 you an "other than." It basically says that these
8 changes will not adversely affect services to any End
9 User, CLEC End User customers "other than a
10 reasonably-anticipated temporary service
11 interruption."

12 So it's telling you what would not be
13 considered an adverse effect, and that's a temporary
14 out-of-service situation. I think you can take from
15 that that if it were anything but a temporary service
16 outage, then it would be considered an adverse
17 effect.

18 Q. So "anything but a temporary service
19 outage." Does that mean a reduction in dB loss that
20 doesn't result in an outage? Would that be covered
21 by your term, "adverse effect"?

22 A. No. I mean, I think, as we've talked
23 about, and I know you're focusing on option 1, and
24 option 2 takes care of many of these things you're
25 talking about.

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1 Q. And we'll talk about option 2.

2 A. I know we will, but the purpose of this
3 language is to deal with service outages. It's to
4 deal with situations where our customer has said,
5 Prior to this particular network maintenance and
6 modernization activity, my service worked fine. Now
7 it doesn't. Then it's an adverse effect.

8 Q. But here's my question for you. You said
9 that the purpose of this is a customer says, My
10 service worked fine, and now it doesn't. That is,
11 under your language, an adverse effect. How do we
12 know, on your proposal, whether service no longer
13 works fine? There's no definition or metric that
14 allows the parties to determine whether a service no
15 longer, quote, "works fine," or whether there has
16 been an adverse effect. That's my ultimate question
17 for you. That's not defined anywhere, is it?

18 A. It's not defined anywhere, and I think, as
19 we've talked about before, you have to keep two
20 things in mind when you look at that term, "adverse
21 effect." The first thing is that terms like that,
22 and that term itself, are found elsewhere in the
23 contract and are not defined in agreed-upon language.
24 So this notion that it must be defined specifically
25 here but not elsewhere, in my mind just rings hollow.

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1 Secondly, you have to take -- you also
2 have to take note of how this particular piece of the
3 contract would work in reality, and that is Qwest
4 would go out, they would do their network maintenance
5 and modernization activity. Unless and until an
6 Eschelon customer contacts Eschelon and says, I don't
7 know why, but my service worked yesterday and it
8 doesn't work today, or, My service worked well
9 yesterday and today I barely have signal, Eschelon
10 would research. They would find that that was in an
11 area where this network modernization process was
12 taking place.

13 If they could pinpoint that that was the
14 causality of the situation, they'd then contact
15 Qwest, and they'd say, We have an adverse service
16 effect. If Qwest agreed, they'd take care of it. If
17 not, then we have a dispute under the contract that
18 has -- where we do dispute resolution.

19 Q. Right. And I guess my point is that I
20 think we all agree that these contracts ought to have
21 some certainty to them. And with respect to this, if
22 Eschelon came to Qwest and said, There's an adverse
23 effect to one of our customers, there's nowhere in
24 this contract we could go to look, for example, to an
25 ANSI standard, or some sort of other performance

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1 standard, to determine whether there really is a
2 measurable adverse effect. It's a purely subjective
3 determination, isn't it?

4 A. I wouldn't agree it's purely subjective,
5 though I would agree with the first part of your
6 question, which is it's not tied to a particular ANSI
7 standard. It's really tied to the customer service
8 and Eschelon's ability to continue to provide that
9 service they provided yesterday, the day after this
10 activity takes place.

11 Q. Well, then, who determines -- from whose
12 perspective is it determined whether there's been an
13 adverse effect? Is it from Eschelon's customer's
14 perspective? From Eschelon's perspective? From
15 Qwest's perspective? That's not defined anywhere in
16 your language, either, is it?

17 A. Nor would it have to be. It's Eschelon's
18 perspective. They bring it to Qwest. Qwest either
19 agrees or they don't, and if they don't, you
20 undertake a dispute resolution. The notion here is
21 that we're trying -- without this type of language,
22 we feel there's no obligation on Qwest's part to put
23 a circuit that went out of service back in service.

24 Q. Also with respect to this proposal, and
25 we'll turn to the proposal in a second, if there is a

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1 prohibited adverse effect, there's no language in
2 your proposal that explains what the consequences are
3 for Qwest; is that correct?

4 A. Not as specifically under option 1 as
5 there is under option 2. I think under option 1 it
6 says: "There shall be no adverse effect." I think
7 you deduct from that that if there was an adverse
8 effect, that you have to fix it.

9 Q. Let's turn to option number 2, then. And
10 in option 2 your proposal says that: "If a change to
11 the network results in CLEC's end-user customer
12 experiencing, quote, 'unacceptable changes' in the
13 transmission of voice or data" -- and let's stop
14 there, and I'll ask you a similar question, and that
15 is, again, "unacceptable changes" is not defined
16 anywhere in your proposal or in the interconnection
17 agreement; is that right?

18 A. That's correct. I'd give the same answer
19 I gave previously.

20 Q. So again, there's no metric by which the
21 parties would be able to determine whether a change
22 is acceptable or unacceptable; is that correct?

23 A. I'd give you the same answer I gave
24 earlier, which is I think there is. I think the
25 process by which the contract is constructed is that

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1 this places an obligation on Qwest to do certain
2 things. If Eschelon believes that Qwest hasn't met
3 that obligation, the two of them discuss it. And if
4 they're not able to resolve the dispute, then they
5 follow dispute resolution.

6 Q. Well, then, let me ask you this: If
7 Eschelon comes to Qwest and says, you know, This
8 change that my customer is experiencing is
9 unacceptable, and Qwest says, you know, I don't
10 agree, where do the parties go in the interconnection
11 agreement, and what language can they look at to see
12 if this change we're talking about is acceptable or
13 not? There's nowhere to go, is there?

14 A. I think there is. And I think what you
15 have to do is you have to understand -- let's say
16 that Eschelon were to come to Qwest and say,
17 Yesterday my customer's service worked and --

18 Q. Let me just -- let me be very specific.
19 Is there anyplace we can go to find what
20 "unacceptable" means as you're proposing to use it?
21 Is there a definition somewhere?

22 A. It's not a defined term.

23 Q. Okay. That's all I need to know. Then
24 the rest of option 2 says that: "If there is an
25 unacceptable change, that service will be restored
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1 to, quote, 'an acceptable level.'" And again,
2 "acceptable level" is not defined anywhere in the
3 proposal or elsewhere in the agreement; is that
4 correct?

5 A. It's not a defined term, you're correct.

6 Q. Let's turn to issue 9-34, which is "Notice
7 of Network Changes." And just to put this in
8 perspective, I believe this issue involves the
9 content of the notice Qwest will provide to Eschelon
10 when it plans to modify its network as part of a
11 modernization or maintenance activity. Is that a
12 fair statement?

13 A. It is.

14 Q. And Eschelon's proposals relating to this
15 issue are also set forth on page 146 of your direct;
16 is that right?

17 A. Yes.

18 Q. Looking first at option 1, it states:
19 "Such notices will contain the locations at which the
20 changes will occur, including, if the changes are
21 specific to an End User Customer, the circuit ID and
22 End User Customer address information."

23 Just to back up, Qwest is agreeing to
24 provide notice that complies with the FCC's rules
25 with respect to notice; is that right?

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1 A. Yes.

2 Q. And here Eschelon is proposing to go
3 beyond those rules by requiring Qwest to provide
4 circuit ID customer addresses. With that in mind,
5 you use the words "changes specific to an End User
6 Customer." And I know, again, we've had this
7 discussion elsewhere, but "specific to an End User
8 Customer" means exactly what? Where can we find that
9 in your proposed language?

10 A. "Specific to an End User Customer" means
11 changes that are not those types of changes that are
12 described in the sentence above that deal with area
13 code changes, seven- to ten-digit dialing, that type
14 of thing. They are changes whereby you undertake an
15 activity, if we have a customer that's going to be
16 impacted because of that, then we expect enough
17 information to be able to inform that customer, more
18 so than inform a group of customers that might be
19 impacted on a broader sale.

20 As to the second part of your question,
21 where can that be determined in the contract, again,
22 it's not a defined term. What we're talking about
23 here is contract language that would be applied when
24 an activity has taken place that has impacted one of
25 our customer's service.

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1 So again, we come back to you and we say,
2 Look. We have an issue. Something you did put our
3 customer out of service or substantially impacted the
4 quality of their service, and we need to get it
5 fixed. The notion here is that if that type of
6 activity is going to take place, we need to know
7 which customers to talk to.

8 Q. So does that notice requirement apply to
9 any customers whose service could be affected or
10 whose transmission parameters could be affected by
11 network changes?

12 A. Can I hear that again?

13 Q. Yes. Let me be a little more specific.
14 If, for example, Qwest made a software switch, or a
15 software change in one of its switches that was going
16 to result in a potential change in transmission
17 parameters to customers in a distribution area, would
18 all customers in the distribution area have to be
19 given the type of notice that you're asking for here?

20 A. No.

21 Q. Okay, and why not? And where is that
22 spelled in your language?

23 A. Understood. And I was just reading along
24 here, and the agreed-upon language that exists above
25 it, if you'll go to section 9.1.9 of the contract.

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1 It's not included on page 146 of my testimony, so you
2 actually have to go to that particular section.
3 You'll see it begins with: "Qwest shall provide CLECs
4 advance notice of network changes pursuant to
5 applicable FCC rules, including changes that will
6 affect" -- and then it gives three different types of
7 changes that will "affect CLEC performance or ability
8 to provide service, network interoperability, or the
9 manner in which customer premise equipment is
10 attached to the public network.

11 Charges -- changes that affect
12 interoperability include" -- and then it goes on to
13 talk about "seven- and ten-digit dialing." Then
14 "such notices which contain the locations at which
15 the changes will occur." And then we've said, or
16 we've attempted to add language that would say: "And
17 when specific to an End User Customer, they would
18 also include the customer's ID." That software
19 change that you're describing is not specific to an
20 End User Customer. It impacts multiple customers.
21 In fact, it probably impacts everyone on the switch.

22 Q. Okay. So what you're talking about is a
23 change that affects only one End User Customer? I
24 guess I'm struggling to understand the distinction.
25 How would Qwest know, if "specific to an End User
26

1 Customer" isn't defined, what scope of notice it
2 needs to provide?

3 A. You have two questions there, and I'm
4 going to try to answer them both. The first one was:
5 How do we know when it is specific to an End User
6 Customer, and does it mean one customer? Yes, I
7 think it does. I think what we're talking about here
8 is "an" End User Customer, and I think that's
9 singular.

10 The second part of your question was, How
11 does Qwest know where to look in the contract when
12 it's going to impact one customer? Let me give an
13 example. One of the three impactable -- if that's a
14 word -- changes that are described at this section of
15 the contract are changes that affect customer premise
16 equipment that's attached to the network.

17 Let's say you were making a change, like
18 you did in the dB loss scenario, where you were
19 taking equipment and retuning it. That equipment has
20 an origination point and a terminus point: equipment
21 in a central office and equipment at an end-user
22 location. The equipment at the end-user location, if
23 it's going to be impacted by that particular change,
24 then we need to know about it.

25 Q. So your position, then, is that under this
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1 proposal, Qwest's notice obligation to provide
2 circuit ID and customer address, would only arise if
3 a change is specific to a single End User Customer;
4 is that correct?

5 A. Yes, keeping in mind -- let's say that in,
6 for example, the dB loss scenario, you were going to
7 be retuning equipment. You might retune equipment to
8 one end-user today, retune equipment to another
9 end-user tomorrow, and so on and so forth. We'd like
10 to know, for each of those scenarios, which End User
11 Customers are going to be impacted.

12 Q. With respect to the request that Qwest
13 provide access to -- or I'm sorry -- customer circuit
14 IDs and customer addresses in their notices, am I
15 correct that Eschelon, in its own databases, has
16 electronic access to both its customer circuit IDs
17 and customer addresses?

18 A. Yes, I believe it does, with one caveat.
19 Eschelon uses the circuit identification provided to
20 it by Qwest to track its customers.

21 Q. Okay. Let's turn to "Loop Transport
22 Combinations," issue 9-55. I'll ask you to turn to
23 pages 189 through 190 of your direct.

24 MR. MERZ: I'm sorry, Mr. Devaney. Could
25 you give those page numbers again?

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1 MR. DEVANEY: 189 through 190.

2 MR. MERZ: Thank you.

3 Q. (By Mr. Devaney) Now, just to refresh our
4 memories, this issue involves Eschelon's proposed use
5 of the term "loop transport combinations," and it's a
6 defined term in the interconnection agreement; is
7 that right?

8 A. Yes.

9 Q. And it would include, under your proposal,
10 the following products: EELs, commingled EELs and
11 high-capacity EELs; is that right?

12 A. Yes.

13 Q. And you agree, I think, that EELs, as
14 compared to commingled EELs, have different rates,
15 terms and conditions and provisioning obligations
16 that apply to them; is that right?

17 A. I think I would, yes, with one caveat,
18 which is EELs and commingled EELs are the
19 combinations of different things, the combination of
20 multiple things. The terms, conditions and rates
21 that apply to a UNE in either of those circumstances
22 are the same, it's just that in a UNE combination of
23 EELs, all of them are UNEs and all UNE applications
24 apply. In a commingled EEL arrangement, there's a
25 UNE and then a non-UNE. The terms and conditions

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1 specific to UNEs still apply to that UNE piece.

2 Q. Understood. We agree on that.

3 A. So there are differences, but there are
4 also similarities.

5 Q. Right. But there are also important
6 differences between the non-UNE piece of a commingled
7 EEL on the one hand, and the fact that an EEL is all
8 UNEs. That results in different rates, terms and
9 conditions; does it not?

10 A. I would agree there are important
11 differences and important similarities, and the
12 purpose of this particular language is to capture
13 both.

14 Q. And yet even though there are those
15 differences, important differences between those
16 products, Eschelon's proposing to use the same term
17 for these three products; isn't that right?

18 A. It is, but not in isolation. When you see
19 how it defines that term, you see that it points out
20 those very specific difference and similarities.

21 Q. And do you recall that the Minnesota
22 Department of Commerce concluded that it would be
23 confusing to use the same term for those three
24 different products?

25 A. The Department of Commerce did, yes.

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1 Q. And so the Commission then rejected
2 Eschelon's use of that term; isn't that correct?

3 A. In rereading the order after our last
4 conversation on this topic, I don't believe so. As I
5 read the order, what happened was that the parties
6 came to an agreement on that language, and the
7 Commission simply adopted it.

8 Q. So it's your position that the Minnesota
9 Commission has adopted the use of "loop transport
10 combination"?

11 A. That's not what I said. My reading of the
12 Commission's order is that the Commission basically,
13 in its order, after the ALJ's order came out, said
14 that this issue is really no longer before it, other
15 than approving an agreement already reached by the
16 parties, and so it approved that agreement.

17 Q. And so you are stating, then, that in
18 Minnesota, Eschelon agreed not to use "loop transport
19 combination," that term?

20 A. I'm not saying that. All I'm saying is
21 that the Commission did not find that the term was
22 confusing.

23 Q. Okay, but it didn't adopt the term?

24 A. It didn't.

25 Q. At page 189, carrying over to 190 of your
26

1 direct, you state: "When Qwest's proposals are
2 closely scrutinized, it becomes clear that Qwest is
3 attempting to position one type of loop transport
4 combination -- a commingled EEL -- so that the terms
5 governing the non-UNE" -- I'm going to skip the
6 parens -- "will dictate how the UNE portion of the
7 combination is ordered, provisioned and repaired."

8 Do you see that?

9 A. I do.

10 Q. Are you aware that Qwest has proposed and
11 agreed to language stating that when a UNE circuit is
12 commingled with a non-UNE circuit, the rates, terms
13 and conditions of the interconnection agreement will
14 apply to the UNE circuit?

15 A. That sounds familiar. Can you point me to
16 where that is?

17 Q. Sure. You can find it in, I believe, the
18 issues matrix under section 9.23.4.

19 A. I don't have a matrix in front of me, but
20 I have the marked-up contract in front of me.

21 Q. Right.

22 A. And with that in mind, can I hear your
23 question again?

24 Q. Sure. All I'm trying to establish is
25 you've suggested that Qwest's intent here is to have

26

1 the UNE component of a commingled EEL not be governed
2 by UNE terms. I'm paraphrasing your statement, but
3 that's how I read your statement.

4 And my point is that in section 9.23.4,
5 Qwest has specifically agreed to language
6 establishing that for commingled EELs, the rates,
7 terms and conditions of the interconnection agreement
8 will apply to the UNE circuit. And it's also stated
9 that this Commission will have jurisdiction over that
10 portion of the circuit. Were you aware of that?

11 A. Yes.

12 Q. And it's still our testimony that Qwest is
13 attempting to have the UNE component of a commingled
14 EEL governed by terms other than those in the
15 interconnection agreement?

16 A. I need to get back to my testimony here to
17 make sure that's a fair characterization of what I
18 said. Yes, and I'll tell you why. And it has to do
19 with the very last part of that question, which says:
20 "Will dictate how the UNE portion of the combination
21 is ordered, provisioned and repaired." Our concern
22 is that once a UNE is commingled in a combination of
23 UNE and non-UNE, that the way in which the service is
24 ordered and repaired become dominated by the non-UNE
25 component.

26

1 As we heard today in the conversation, I
2 think, with Ms. Stewart, in that situation Qwest is
3 requiring that we serve, in many instances, two
4 trouble tickets, or to try to get us to isolate the
5 trouble in one circuit versus the other, changing the
6 way we currently do it with UNEs today.

7 Q. And your position is that Qwest
8 agreed-upon language in 9.23.4 does not address that
9 issue?

10 A. I think what I said is not as clearly as
11 we would like it addressed by our proposed language.

12 MR. DEVANEY: Thank you. That's all I
13 have.

14 THE COURT: Mr. Merz, if you'll allow me,
15 I have one quick question. I want to make sure I
16 understand Mr. Starkey on one point.

17 Mr. Starkey, back on, I believe it was
18 9-33.

19 THE WITNESS: Modernization?

20 THE COURT: Yes. You indicated that, or I
21 thought I heard you say that if Qwest's proposed
22 language were adopted with respect to that issue, the
23 9-33, that if an End User Customer experienced any
24 difficulties, Eschelon has no other recourse under
25 the ICA? Is that what you said? No recourse to
26

1 require Qwest to restore service?

2 THE WITNESS: I think that is, in part,
3 true, yes. And the situation we give in the
4 testimony is the dB loss example, which is we had
5 service working. Qwest made a change to its network
6 that brought that service down. When Eschelon
7 reported that to Qwest, Qwest said, Well, we have
8 provided the service within the ANSI standard, and
9 hence, that's where our obligation is.

10 And so they defended their obligations
11 with respect to even though they put the circuit
12 down, they had no obligation to fix it. As long as
13 it was within the ANSI standards, then they had met
14 their obligation. This was specifically intended to
15 address that situation, saying not only does it have
16 to be within the standards, it also has to work.

17 THE COURT: Okay. I understand now.

18 Thank you.

19 Mr. Merz, do you have anything else?

20 MR. MERZ: I don't have any redirect.

21 THE COURT: Thank you very much.

22 THE WITNESS: Thank you.

23 MR. MERZ: We call Bonnie Johnson.

24 THE COURT: Ms. Johnson, if you'd please
25 raise your right hand, I'll go ahead and swear you

26

1 in.

2 (The witness was sworn.)

3 Thank you. Please have a seat.

4 Mr. Merz?

5 MR. MERZ: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MERZ:

8 Q. Good afternoon, Ms. Johnson.

9 A. Good afternoon.

10 Q. You have prepared a direct rebuttal and
11 surrebuttal testimony filed in this case; is that
12 correct?

13 A. That's correct.

14 Q. And for the record, I will note that your
15 direct testimony has been marked as Eschelon
16 Exhibit 3, which includes Eschelon Exhibits 3.1
17 through 3.85. Your rebuttal testimony has been
18 marked as Eschelon Exhibit 3R, which includes
19 Exhibits Eschelon 3R.1 and 3R.2, and your surrebuttal
20 testimony has been marked an Eschelon 3SR, which
21 includes Exhibits Eschelon 3SR.1 through Eschelon
22 Exhibit 3SR.3. Ms. Johnson, is the information
23 contained in your direct rebuttal and surrebuttal
24 testimony true and accurate, to the best of your
25 knowledge?

26

1 raise your right hand, I'll swear you in.

2 (The witness was sworn.)

3 Thank you. Please be seated.

4 Mr. Merz?

5 MR. MERZ: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MERZ:

8 Q. Good afternoon, Mr. Denney.

9 A. Good afternoon.

10 Q. You have prepared direct rebuttal and
11 surrebuttal testimony filed in this case; is that
12 correct?

13 A. Yes.

14 Q. I will note for the record that your
15 direct testimony has been marked as Eschelon
16 Exhibit 2, and that it includes Eschelon Exhibits 2.1
17 through 2.33; that your rebuttal testimony has been
18 marked as Eschelon Exhibit 2R, and it includes
19 Eschelon Exhibit 2R.1; and that your surrebuttal
20 testimony has been marked as Eschelon Exhibit 2SR,
21 and that includes Exhibits 2SR.1 and 2SR.2.

22 Is the information contained in your
23 direct rebuttal and surrebuttal testimony true and
24 accurate, to the best of your knowledge?

25 A. Yes, it is.

26

1 MR. MERZ: Your Honor, Eschelon offers
2 Eschelon Exhibits 2; 2.13 through 2.33; 2R, 2R.1;
3 2SR, 2SR.1 and 2SR.2.

4 THE COURT: Any objections to the
5 admission as marked?

6 MR. TOPP: No objection.

7 THE COURT: Okay. They're admitted.

8 MR. MERZ: And, Your Honor, Mr. Denney is
9 now available for cross-examination.

10 THE COURT: Mr. Devaney?

11 MR. DEVANEY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. DEVANEY:

14 Q. Good afternoon, Mr. Denney.

15 A. Good afternoon.

16 Q. Just a few questions about your
17 background. Your education and training are primely
18 in economics; is that right?

19 A. That's correct.

20 Q. You're not an engineer?

21 A. I'm not an engineer.

22 Q. And you don't have expertise in OSS
23 issues?

24 A. You mean in terms of the same context you
25 asked Mr. Starkey? I haven't designed OSS systems.

26

1 I mean, certainly from a cost-study standpoint, I've
2 looked at, you know, cost studies as they relate to
3 OSS charts.

4 Q. Have you ever had responsibility for
5 designing, developing or operating an OSS system?

6 A. No, I haven't.

7 THE COURT: Would you, for the record,
8 just state what OSS is?

9 MR. DEVANEY: Sure. Operation Support
10 System.

11 Q. (By Mr. Devaney) And as long as we're
12 clarifying the record on OSS systems, would you agree
13 that OSS systems are the computer systems that are
14 used to receive and process orders and to generate
15 bills relating to orders at the highest level?

16 A. Right. I mean, to both receive and to
17 send. From Eschelon's side, we have our own OSS
18 system, so to send orders, right. So it's kind of
19 the exchange of orders, you know, processing orders,
20 and the ways that the systems can communicate with
21 each other, you know, in many cases, to eliminate
22 human interaction in those communications and to
23 facilitate the ordering, you know, provisioning and
24 repairing circuits.

25 Q. Right. Well, let's turn to our first
26

1 issue that we'll discuss, and that's 4-5, 4-dash-5,
2 Design Changes. To put this issue in context, would
3 you agree that a design change typically occurs when
4 a CLEC submits an order to Qwest, and then for some
5 reason decides to change the order and has to submit
6 a new order, which requires Qwest to engage in
7 additional activities to process the new order?

8 A. I would agree that when there's a design
9 change, there is a change to the order. I mean,
10 there's a definition of "design change" in the
11 contract.

12 Q. Right.

13 A. Which states I think much more clearly
14 what exactly "design changes" are. That's in section
15 4 of the contract.

16 Q. Okay, that's fine, but do you generally
17 agree with my description, that it's a change to an
18 order and that Qwest, when an order is changed, has
19 to take certain steps to process the new order?

20 A. I think that's encompassed by "design
21 change," and the definition actually says it's a
22 change in the circuit design after, you know, after
23 engineering review. So it's a change, you know, a
24 change in the circuit design from a service that was
25 previously requested by the CLEC. So I don't know

26

1 that that's limited to a change in order situation,
2 but certainly a change in an order that's being
3 processed would -- could encompass, if it falls
4 within additional things, it could be a design
5 change.

6 Q. Okay. And I think that you've testified
7 in past proceedings that you've had an engineer
8 explain to you what is involved in a design change.
9 But I'm correct that you've never performed a design
10 change yourself; is that correct?

11 A. Let me clarify. In the past, my focus and
12 discussion with the engineer is really what's
13 involved with a CFA change, was connecting facility
14 assignment change, which is a change to, you know,
15 could be a change that might take place during the
16 turn-up of a circuit. And so I have not done those
17 myself, but those are the discussions I specifically
18 had with the engineer.

19 Q. So the discussions did not include design
20 changes involving loops and transport?

21 A. At a very high level, my focus is having
22 that engineer, as we've discussed in the past,
23 walking through what would happen in a case with a
24 change in a connecting the facility assignment on the
25 day of a coordinated cut.

26

1 Q. Okay. And you've not analyzed, I take it,
2 what changes Qwest would have to make, or any ILEC
3 would have to make, to its downstream operations and
4 support systems in the event of either a loop
5 transport or CFA design change; is that correct?

6 A. I don't know that I would agree with that.
7 I mean, certainly there's been testimony on design
8 changes and on design change cost studies. There's
9 been depositions of Qwest, in the Minnesota UNE case,
10 depositions of Qwest engineers who perform design
11 changes. And so I've looked at their descriptions of
12 what occurs. I've looked at Qwest cost support for
13 what occurs.

14 Q. Let me ask it a different way, then.
15 You've not had firsthand hands-on experience with
16 making changes to downstream OSS systems that are
17 necessitated by design change; is that correct?

18 A. I have not personally done that process.

19 Q. Now, in this case, as I think we've
20 established, we're really talking about three types
21 of design changes: loop, UDIT for transport and CFA,
22 which is, I think you said before, Connecting
23 Facility Assignment; is that right?

24 A. That's correct.

25 Q. And the dispute essentially lies in the
26

1 fact that Qwest's position is that this Commission's
2 ordered rate for design changes of \$35.89 should
3 apply to all three types of design changes. And by
4 contrast, Eschelon is proposing separate rates for
5 all three design changes; is that correct?

6 A. That's correct.

7 Q. And the rates that Eschelon is proposing
8 are \$35.89 for transport; \$30 for loops and \$5 for
9 CFA; is that right?

10 A. That's correct.

11 Q. And you've not -- or Eschelon has not --
12 submitted a cost study in support of its rates in
13 this case; is that correct?

14 A. We've certainly submitted cost support for
15 the rates that we've had, and discussion as to why
16 the rates we're proposing are appropriate. We're
17 proposing interim rates in this case.

18 Q. Right. And, you and I have been together
19 for a decade now, and you and I have talked about
20 cost studies in many proceedings. You wouldn't call
21 what you submitted in this proceeding a "cost study,"
22 would you?

23 A. No. That's correct. But, I mean, I just
24 don't want to leave the impression that we didn't
25 offer cost support for our rates.

26

1 Q. And the cost support you're referring to
2 is what's set forth in your testimony, your narrative
3 testimony. And I think there's an attachment to your
4 testimony; is that correct?

5 A. That's correct.

6 Q. Okay. You've presented a fair amount of
7 testimony with respect to this design change issue,
8 particularly with respect to the CFA issue relating
9 to what tasks are required to be performed by an
10 engineer or technician in a central office, correct?

11 A. Yes.

12 Q. Are you aware that the cost study upon
13 which this Commission bases its \$35.89 rate does not
14 include engineering technician time in a central
15 office?

16 A. I've looked at that study, and it does not
17 include activities that would be required for a CFA
18 change, which is part -- which supports my
19 conclusion.

20 Q. That's not my question. That's not my
21 question, Mr. Denney. My question is different.
22 Would you -- are you aware of the fact that the cost
23 study that this Commission used to establish its
24 \$35.89 rate does not include technician or engineer
25 activity in a central office?

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1 A. I mean, that cost study is attached to Ms.
2 Million's rebuttal testimony, I believe 4R.1. And, I
3 mean, I think there's -- I mean, a lot can be
4 determined from looking at that, looking at that cost
5 study, exactly what's there and what's not there.
6 And what's included there in this study is service
7 delivery coordinator costs and design cost.

8 Q. And there's nothing in there about
9 engineer or technician time; is that correct?

10 A. That's correct.

11 Q. Thank you. I'd like to ask you now about
12 issue 9-53, which is UCCRE, U-C-C-R-E, which stands
13 for "Unbundled Customer Controlled Rearrangement
14 Element." Let's turn, Mr. Denney, to page 112 of
15 your direct. And I'm asking you to refer to that
16 page, that page and the pages that follow it, because
17 that's where Eschelon's proposals are set forth for
18 this issue. And the proposals that Eschelon has put
19 forth for proposal numbers 2, 3 and 4 generally
20 provide for what I'm going to call a product
21 phase-out process. Is that a fair characterization?

22 A. Right, but there are three versions of
23 kind of a similar process, a process by which Qwest
24 could phase out a product that it's been offering
25 that it no longer wishes to -- you know, offering

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1 under the contract that it no longer wishes to offer.

2 Q. And I want to ask you some specific
3 questions about each of the three proposals that
4 Eschelon has put forth for this product phase-out
5 process.

6 Let's look first on page 112 at proposal
7 number 2, which is section 1.7.3. It states there --
8 and I'm paraphrasing, and you can correct my
9 paraphrase if you think it's wrong -- it says here
10 that if Qwest wants to phase out a provision of an
11 element, service or functionality, it must obtain an
12 order from the Commission to do that.

13 However, obtaining an order won't be
14 necessary if, one, Qwest promptly phases out an
15 element, service or functionality that's in the
16 agreements of all CLECs in Utah within a three-month
17 time period, when the FCC has ordered that the
18 element, service or functionality does not have to be
19 "ordered." It says "ordered"; is that right? That
20 strikes me as wrong. Should that be "provided"?

21 A. I'm thinking here that this actually --
22 this proposal here came from the Department of
23 Commerce in Minnesota when we were having the debate
24 on these proposals. So I believe this is their, you
25 know, their language that they proposed and have

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1 adopted in Minnesota. But I do believe that, I mean,
2 it does not have to be processed makes sense as well.

3 Q. I'm sorry?

4 A. I mean, you asked me if that last part
5 would say "does not have to be" --

6 Q. "Provided."

7 A. -- "provided."

8 Q. That makes more sense than ordered,
9 wouldn't it?

10 A. Yes.

11 Q. Now, here's my question for you.

12 Basically, as I read this, what it says is that Qwest
13 has to obtain an order from this Commission to stop
14 offering a product or service that's in an agreement,
15 in any CLEC's agreement, unless after an FCC order
16 stating that Qwest no longer has to provided the
17 product or element, Qwest can remove the product or
18 element from all the CLEC's agreements in Utah within
19 three months of the FCC order. Is that a fair
20 statement?

21 A. That's the first condition there under
22 which Qwest would not need to phase out the product.

23 Q. Okay. So I want to focus on this specific
24 contract language that sets that forth. Would Qwest
25 be able to avoid going through this phase-out

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1 proceeding before the Commission if it offered an
2 amendment to all the CLECs within a three-month
3 period? Or would, in fact, the amendment removing
4 the product from the interconnection agreements have
5 to be agreed upon and approved by this Commission for
6 Qwest to avoid a product phase-out proceeding?

7 A. I mean, the mere offering of the amendment
8 would not -- I mean, under this particular proposal,
9 the mere offering of the amendment would not be
10 enough. Qwest needs to be involved in phasing out
11 that product from, you know, from all CLECs who have
12 that product in their interconnection agreement.

13 Q. Okay, well, we're focusing on contract
14 language here.

15 A. Right.

16 Q. And it says, under number 1: "Qwest
17 promptly phases out an element, service or
18 functionality from the agreements of all CLECs in
19 Utah within a three-month time period of when the FCC
20 has ordered that the element no longer needs to be
21 provided."

22 What I'm trying to understand is what's
23 our contractual obligation under that? Does that
24 mean that after an FCC order comes out, we've got to
25 propose an amendment, get the CLECs to agree to it,

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1 and get this Commission to approve it within three
2 months in order to avoid going through a phase-out
3 proceeding? Or is it enough for us to merely offer
4 the amendment within the three-month period?

5 A. I mean, as I said before, it's not enough
6 for you to offer the amendment, so you need to be --

7 Q. What is enough?

8 A. I mean, under this particular proposal, I
9 think Qwest needs to get the amendment out there,
10 engage the CLECs, and phase that product out from the
11 CLECs within a three-month time period.

12 Q. And if a single CLEC in Utah refuses to
13 respond to our offer, say we send them an amendment
14 and they say, We're not interested in entering into
15 this. Even though the FCC has said you don't have to
16 provide it anymore, we're not going to talk to you
17 about it. Or they just don't even call us back.
18 That means that we've got to go through a product
19 phase-out, get Commission approval to stop offering
20 the product the FCC has said we no longer need to
21 provide. Is that correct?

22 A. That's why we have multiple proposals
23 here. But under this proposal, I mean, that's
24 correct. The intent here is that Qwest couldn't go
25 on offering a product to some select group of CLECs

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1 and not offer that product to Eschelon.

2 Q. Okay. But again, the way this would work
3 contractually is if we get even one obstinate CLEC
4 who says, I'm not going to pay attention to what the
5 FCC ruled. I'm going to continue demanding that this
6 product be in my interconnection agreement. That's
7 enough for us to have an obligation to everybody to
8 continue to provide it?

9 A. Well, an obligation to provide it under
10 Eschelon's contract, I mean, one option to Qwest is
11 to, with that, I mean, how would you resolve that
12 dispute with that CLEC? You'd go to dispute
13 resolution, you'd take that to the Commission.
14 You're already at the Commission, then.

15 Q. And we sure couldn't do that within three
16 months, could we?

17 A. You could go to the Commission within that
18 time period. I mean, if it's a clear FCC elimination
19 of a product, Eschelon's not going to oppose that
20 product being removed from its interconnection
21 agreement. Where the problem arises is where there's
22 not this clear delineation, or Qwest makes a claim,
23 you know, we offered this in the past, but we no
24 longer want to offer that anymore for some reason.
25 That's where this language is here to protect, you

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1 know, protect Eschelon from having those products
2 approved from Eschelon while Qwest still makes them
3 available to other carriers.

4 Q. Let's talk about the phase-out process.
5 If the FCC issues an order tomorrow saying that Qwest
6 no longer needs to provide widget A, and widget A
7 happens to be in the existing interconnection
8 agreements of some carriers, and Qwest can't get an
9 amendment done within three months, and it goes
10 through a phase-out proceeding before this Commission
11 pursuant to your language, is it your view, and
12 Eschelon's view, that this Commission would have
13 authority to require Qwest to continue providing
14 widget A, even though the FCC has said there's no
15 longer an obligation?

16 A. I think this Commission is obligated to
17 follow the FCC rules on most -- I mean, I know
18 there's some distinction in cases in terms of the
19 authority that the Commission has. But to say it's a
20 case where it's a clear elimination of a product from
21 the FCC, then it's an easy task for the Commission to
22 look at that and make that determination.

23 Q. But my question is: Doesn't your phase-out
24 proposal presume that this Commission has authority
25 to decide whether to permit or require Qwest to keep
26

1 offering a product that the FCC has said Qwest no
2 longer needs to provide?

3 A. No, it doesn't. And I mean, I know you
4 said we're going to talk about these other proposals,
5 but there is, in the other proposals, I mean,
6 specifically we separated it out because of some of
7 the complaints you raised about the Department of
8 Commerce proposal.

9 Q. We'll talk about those. But within this
10 that we're talking about, isn't it a fact that this
11 Commission, under your language, could say, I see the
12 FCC has said widget A is no longer required, but
13 because it's in past interconnection agreements,
14 we're still going to require you to provide this.
15 Isn't that right?

16 A. No. I don't see where this language here
17 allows the Commission to violate the law. So I don't
18 agree with that. What this language here would say
19 is the Commission would look at that, and when
20 they're -- the Commission would look at this case.
21 If it's clear-cut as you're describing, which hardly
22 is ever the case, but if it's a clear-cut case, the
23 Commission would look at that and say, Yes, this
24 should be phased out, that would be enough.

25 Under these situations, I just would note

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1 there's a lot of things in this current contract
2 right now that the FCC has gotten rid of, and
3 Eschelon isn't trying to force a phase-out proposal
4 for. It's still in your contract with some other
5 carriers, as I understand.

6 But things like unbundled switching,
7 that's not even in this contract. We didn't -- when
8 it's clear-cut, Eschelon has never been in a
9 situation of trying to force Qwest to offer something
10 that's clear. This is really designed to protect
11 Eschelon in the case where Qwest is offering products
12 to certain carriers and not to Eschelon.

13 Q. Okay. If Qwest were required to go
14 through this phase-out process, am I correct that
15 under proposal number 2, there's no criteria set
16 forth as to how the Commission should decide whether
17 to allow Qwest to stop offering the product?

18 A. The criteria are not set here. That would
19 be up to the arguments the parties set forth before
20 the Commission, if there was even a debate.

21 I would just point out, I mean --

22 Q. There's no question.

23 A. -- there's nothing in the language --

24 Q. There's no question.

25 A. There was a question. There's nothing in
26

1 the language that would stop Eschelon and Qwest from
2 entering into an agreement, you know, to remove a
3 product from the contract.

4 Q. And also, one option that Eschelon or the
5 CLECs would have, if Eschelon wanted a product
6 removed from its interconnection agreement or kept in
7 its interconnection agreement, would be to go through
8 the arbitration process; isn't that right?

9 A. Well --

10 Q. For example, if Qwest comes to Eschelon
11 and proposes an amendment to remove widget A from the
12 interconnection agreement, Eschelon would have a
13 right to perhaps say no and then go through the
14 arbitration process, as opposed to a phase-out
15 proceeding; isn't that correct?

16 A. I don't think I would state it -- in
17 principle, somewhat I agree, but I wouldn't state it
18 the way that you're stating it, because if Qwest
19 wanted to amend Eschelon's contract, then I believe
20 the burden would be upon Qwest, not upon Eschelon.

21 Q. But again, the arbitration process is
22 available as an alternative to the phase-out
23 process --

24 A. Yes.

25 Q. -- is that correct?

26

1 A. That's correct. I was just taking
2 exception that it would be up to Eschelon to then go
3 to the Commission and try to keep something in its
4 contract.

5 Q. Fair enough. Let's look at proposal
6 number 3. On page 113 of your testimony, under
7 proposed section 1.7.3, again about five or six lines
8 down, the proposal says that: "Qwest must request and
9 obtain Commission approval" to stop -- I'm
10 paraphrasing now -- to stop offering a product or
11 service. And is it true there that Qwest would have
12 to, again, obtain Commission approval even though the
13 FCC had announced that it no longer had an obligation
14 to provide something?

15 A. No, that's not true in this case. I
16 believe it's in the subparagraph there, 1.7.3.1, that
17 says if the basis of Qwest's request is that it's no
18 longer required to provide the product or service
19 pursuant to a legally-binding modification or change
20 of existing rules, in the case of a conflict, then --
21 now I'm paraphrasing -- section 2.2 of the agreement
22 applies. So this particular instance, I mean, this
23 was put in as a response to Qwest's criticism of the
24 Department of Commerce's proposed language that was
25 proposal number 2 we were discussing, that says if

26

1 there was a change in law, this would not apply.

2 Q. Well, I wanted to ask you about 1.7.3.1.

3 And again, to read the relevant language, it says:

4 "If the basis for Qwest's request is that Qwest is no
5 longer required to provide a product or service
6 pursuant to a legally-binding modification or change
7 in the existing rules, in the cases of conflict."

8 What does that mean, "in the cases of conflict"?

9 A. I believe that means that in conflict, in
10 terms of how things should be removed. If there's no
11 conflict, then the removal, the process, the contract
12 would be amended as needed. But section 2.2 is about
13 what happens under, you know, under changes of law.
14 And I should look at section 2.2.

15 Q. Before you turn to 2.2, I want to ask you,
16 I want to focus on those words, "in the cases of
17 conflict." Conflict between what?

18 A. (No audible or visible response)

19 Q. Did you hear my question?

20 A. Yes. I need to look at section -- I mean,
21 this is referring to section 2.2, so I want to make
22 my answers as appropriate as I can. Section 2.2 of
23 the contract deals with how changes in law will be
24 implemented.

25 Q. Yes, I understand. And --

26

1 A. And section 1.7.3.1 talks about if the
2 basis for Qwest's request is that Qwest no longer has
3 to provide this, you know, service pursuant to a
4 legally-binding modification. Then it says: "In
5 cases of conflict, the pertinent ruling," you know,
6 section 2.2 will apply, notwithstanding anything in
7 section 1.7.3. And what I believe that to mean there
8 is in conflict between whether this should be phased
9 out or whether it's a change in law.

10 Q. Is that defined anywhere? Is it defined
11 anywhere in your proposal what "cases of conflict"
12 means?

13 A. "Conflict," I believe, is not defined in
14 the contract, but it's a term that's defined.
15 "Conflict" would be a disagreement between the
16 parties as to how products would be removed from the
17 interconnection agreement.

18 Q. Okay, and if there is a conflict, who
19 would resolve it, under section 1.7.3.1?

20 A. This says: "If the basis of Qwest's
21 request is that it is no longer required to provide a
22 product or service," then section 2.2 is going to
23 govern. So it's -- so the basis of Qwest's request
24 would require section 2.2 to govern, section 2.2
25 to apply.

26

1 Q. Okay. And turn, if you would, to the next
2 page, 1.7.3.4.

3 A. This is still part of proposal number 3?
4 To be clear.

5 Q. Right. There you state: "Before Qwest
6 submits a request to phase out or cease offering a
7 product or service, Qwest must continue to offer the
8 product or service unless the Commission orders
9 otherwise." Do you see that?

10 A. Yes, I do.

11 Q. And again, if the FCC issued an order
12 saying Qwest doesn't have to provide something, and
13 if this phase-out process began during the duration
14 of the phase-out proceeding, until the proceeding is
15 resolved, Qwest would be required to still provide
16 that product; is that correct?

17 A. No. I mean, I disagree with many things
18 you said in that sentence. What this section says is
19 that if Qwest wants to remove a product due to a
20 change in law, this section doesn't apply. Section
21 2.2 applies. This is a case -- so that would cover
22 your FCC case. Other cases, then, where Qwest wants
23 to remove a product not due to a change in law, and I
24 think we give an example in the language -- say,
25 there's no demand for a product -- then this section,
26

1 1.7.3.4, would apply.

2 Q. Okay, thanks for that clarification. Am I
3 correct that Eschelon has never ordered UCCRE,
4 U-C-C-R-E?

5 A. To the best of my knowledge, that's
6 correct.

7 Q. Let's talk briefly about commingled
8 arrangements, issue 9-58. We've had discussions
9 already about what commingled arrangements are, so I
10 won't go through that. But this issue involves
11 Eschelon's proposals relating to ordering, billing
12 and provisioning of commingled arrangements; is that
13 correct?

14 A. It's really how are we going to treat the
15 UNE components in comparison with their non-UNE
16 components of a commingled arrangement.

17 Q. And a commingled arrangement includes -- I
18 think we covered this before with Ms. Stewart --
19 combinations of UNEs with non-UNEs, such as
20 commingled EELs, correct?

21 A. That's correct, and a lot of this language
22 here deals specifically with the point-to-point
23 commingled EEL, as opposed to what we would call a
24 multiplexed commingled EEL.

25 Q. And I take it you would agree that
26

1 different rates, terms and conditions apply to the
2 UNE components of a commingled EEL on the one hand,
3 versus the non-UNE component of a commingled EEL?

4 A. I'm thinking rates, terms, conditions, and
5 I'm not sure what falls in that category, but
6 certainly there are differences in rates, there's
7 difference in terms, intervals may be different for
8 those two products.

9 Q. And that's why the parties have agreed to
10 language, I believe, that the interconnection
11 agreement will set forth the terms and conditions of
12 the UNE component but not for the non-UNE component,
13 correct?

14 A. That's correct.

15 Q. Could you look at page 142 of your direct.
16 At the bottom of the page the question reads: "Will
17 Eschelon's proposal cause Qwest to incur significant
18 costs?"

19 And you respond: "No. Eschelon is not
20 asking Qwest to modify systems and incur costs."

21 And I want to focus on that statement.
22 The specific proposals that you have in this
23 proceeding are that for commingled EELs, for example,
24 instead of requiring two orders, one for the UNE
25 component and one for the non-UNE component, that
26

1 Qwest allow Eschelon to submit just one order; is
2 that correct?

3 A. That's correct.

4 Q. And similarly, instead of issuing two
5 bills, one for the UNE and one for the non-UNE
6 component, Eschelon is requesting that Qwest issue
7 just one bill, correct?

8 A. Right, one bill, and there's an
9 alternative proposal that says if it's not going to
10 be one bill, let's do something so that we can at
11 least relate these components on the bill so that at
12 least we can tell what goes with what when we're
13 doing bill verification.

14 Q. And Qwest's current practice is that if it
15 requires two orders, one for the UNE and one for the
16 non-UNE component, it issues two bills; is that
17 right? It's a yes or no answer.

18 A. Given those choices I would have to say
19 no, and then there's an explanation as to why. I
20 believe "no" is the right answer.

21 Q. Well, the other proposal you have is to
22 have -- require Qwest to use the same circuit ID for
23 both the UNE and the non-UNE component of a
24 commingled EEL; is that correct?

25 A. I've requested a single-circuit ID, and
26

1 there's an alternative proposal as well there that
2 says if you're not going to provide a single-circuit
3 ID, how about at least let's repair these circuits as
4 though they're a single circuit so the repair is
5 facilitated and done in a timely manner.

6 Q. Now, part of the reason that Qwest has
7 separate circuit IDs for UNEs versus non-UNEs is that
8 the UNEs are kept in one database inventory while
9 non-UNEs are stored in a separate database inventory;
10 isn't that correct?

11 A. You'd have to be more specific than that.
12 I believe circuits are all housed in the system
13 that's called TIRKs. I don't know that -- there's
14 not two separate systems, as I understand it, one
15 for, you know, two separate inventory systems, one
16 for UNEs and one for non-UNEs. It's the same. The
17 facility is identical in all cases. So the
18 facilities are -- the physical facilities where
19 they're housed and what's out there is in a single
20 system, as I understand it.

21 Q. Well, I'll put it this way: For UNEs,
22 Qwest has to access certain OSS systems for billing
23 and provisioning that it does not have to access for
24 non-UNEs. The same for non-UNEs. It has to access
25 certain billing and provisioning systems that are

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1 unique to non-UNEs; isn't that correct?

2 A. I mean, I disagree with that because
3 you're saying what Qwest has to do.

4 Q. Well, that's what Qwest does today.

5 A. Qwest does have separate ordering systems
6 for, you know, for access service requests, which
7 are, in some cases -- not all cases -- non-UNEs,
8 though some UNEs are ordered that way in a separate
9 system for local service requests.

10 Q. And the circuit ID number helps Qwest
11 determine which systems to access, because the
12 circuit ID contains information about whether it's a
13 UNE or a non-UNE and which systems it should go to;
14 isn't that correct?

15 A. I mean, there's usually a code in the
16 circuit ID that identifies whether the circuit is --
17 you know, whether it's been classified as a UNE or a
18 non-UNE. I believe it's a single character in that
19 circuit ID. Otherwise, I do not believe there would
20 be any difference in the circuit ID.

21 Q. And going back to your proposals, if Qwest
22 were required to now begin altering its processes and
23 systems so that just one order could be submitted for
24 both the UNE component and the non-UNE component of a
25 commingled EEL, that would require Qwest to incur

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1 costs, wouldn't it?

2 A. No. I mean, where I disagree is what
3 Qwest is going to be required to do. The world we
4 came from was where there was a UNE EEL, a
5 single-order, single-circuit ID, single repair,
6 single bill. And the change that happened is one
7 component of that is no lower a UNE, which is going
8 to be priced at a higher rate.

9 To Eschelon's perspective, the change that
10 took place was a simple change in the rate and not,
11 as in Qwest's perspective, that it needs, suddenly
12 now, to break these apart and create separate circuit
13 IDs. So I disagree that this change is required, and
14 I disagree that it would incur significant cost to do
15 that because you do that already, today.

16 Q. Well, we talked before about how rates,
17 terms and conditions differ from the UNE to the
18 non-UNE component, and that's what drives Qwest's
19 need to tap into different systems through UNES
20 versus non-UNES. And if Qwest were to provision
21 commingled EELs just through one order, through the
22 same circuit ID and issue just one bill, is it your
23 testimony that Qwest could do that without incurring
24 any costs whatsoever?

25 A. Well, my testimony is that it would not
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1 incur significant costs to do that. Qwest does have
2 the ability to do that with a single order. You can
3 place a single order for a UNE EEL today. You can
4 place a single order for a special-access channel
5 termination and transport combination. And certainly
6 this ability exists within Qwest. There's been
7 historical cases where Qwest has, you know, gone from
8 EEL circuits to a combination, say, of a private line
9 and EEL where Qwest did not require changes in
10 circuit IDs. We know Qwest has done this
11 historically.

12 Q. Mr. Denney, you've talked about how Qwest
13 accepts an order for a UNE deal, but there's a
14 fundamental difference. A UNE deal is two UNES.
15 It's not a combination of a UNE and a non-UNE; isn't
16 that right?

17 A. I agree with that a UNE EEL is -- a UNE
18 EEL is a combination of two UNES. I agree with that,
19 and I agree that a commingled EEL is a combination of
20 a UNE and a non-UNE.

21 Q. And you testified before that you're not
22 an OSS expert, you have not designed or developed or,
23 I think, modified OSS systems; is that correct?

24 A. That's correct.

25 Q. And as you sit here today and say that
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1 Qwest could suddenly begin receiving one order
2 issuing one bill and using one circuit ID, you're not
3 saying that as an OSS expert, are you?

4 A. I'm saying it because that's what we've
5 seen Qwest had. Qwest has historically placed single
6 orders for combinations of these circuits, and
7 there's no -- I haven't seen any reason why Qwest
8 would not continue to do that.

9 Q. And you've not conducted any analysis of
10 Qwest systems to determine what it would take for
11 Qwest to begin changing its systems or processes to
12 accommodate Eschelon's demands in this case; is that
13 correct?

14 A. I disagree that there's changes that are
15 necessary. So, I mean, I disagree with that. I have
16 to say no to that question because you put too many
17 assumptions in there that I already disagree with.

18 Q. So your bottom line is that Qwest could
19 begin accepting one order, using one circuit ID,
20 issuing one bill without making any changes to its
21 systems; is that right?

22 A. I didn't say there wouldn't be any
23 changes, but what I said is it should not be a
24 significant cost. There's certain billing changes
25 that are going to have to occur because one of the

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1 components of the circuit is no longer going to be
2 priced at a TELRIC rate. We know that Qwest can
3 raise rates. We've seen that.

4 Q. And have you analyzed what costs would be
5 incurred? Have you been able to quantify that in any
6 way?

7 A. No, I have not quantified those costs.

8 Q. And would Eschelon, as you sit here today,
9 be willing to agree to this Commission that whatever
10 reasonable costs Qwest incurs to respond to these
11 demands, that Eschelon will compensate Qwest by
12 paying them a reasonable rate?

13 A. Section 5.1.6 of the contract already
14 accounts for that, and so I don't believe there's
15 anything additional Eschelon needs to agree to.

16 Q. And we've had a discussion on that
17 section. That section allows Qwest to seek to
18 recover its costs, correct?

19 A. Yes.

20 Q. And my question for you is: If these
21 obligations were being imposed on us, we'd like more
22 than an ability to seek our costs. We'd like a
23 commitment from Eschelon that you will compensate us
24 for costs you incurred to make these changes. Is
25 that something that Eschelon is willing to give?

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1 A. It's clear that there's a disagreement
2 about what those costs are, so I'm going to hand over
3 to Qwest a blank check and say I'm going to pay
4 whatever you claim the costs are. "Seek cost
5 recovery" basically means that you would come either
6 to Eschelon or you would come to the Commission and
7 say, Here are the costs, and that would be
8 investigated as to whether those costs were
9 reasonable, whether that was the most efficient way
10 to incur those costs, and what would be appropriate
11 for cost recovery.

12 Q. It's actually conceptual, then. Is
13 Eschelon willing to agree to reasonable costs of the
14 changes it's asking Qwest to make?

15 A. Eschelon has already agreed to section
16 5.1.6 of the contract.

17 Q. And just answer my question.

18 A. What we've agreed to is that Qwest
19 believes that there were costs that it needs to
20 recover; that Qwest has the right to come, seek, you
21 know, it says "its costs and expenses, if any, that
22 it may incur complying with and implementing its
23 obligations under this agreement, the Act, and rules,
24 regulations and orders of the FCC and Commission."

25 That's what's referring to this. That

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1 would fall -- that falls under this category, the
2 section we've been discussing with commingled.

3 Q. One last try. This section says that
4 Qwest can seek to recover its costs and expenses that
5 it incurs by going to the Commission. And I'm asking
6 if Eschelon is willing to agree to contract language
7 that says, in addition to this, that says if our
8 changes for coding are accepted, that is if Qwest has
9 to provide one order, provide just one circuit ID and
10 submit and issue just one bill, will Eschelon agree
11 to pay for the reasonable costs Qwest incurs to make
12 those processing systems changes?

13 A. First, we've never seen any language like
14 that from Qwest, so there hasn't been consideration
15 of that from the Eschelon negotiating team. But I
16 would recommend against that, because I believe
17 section 5.1.6 allows Qwest to recover -- seek to
18 recover those costs if they're reasonable. That
19 would be my position.

20 MR. DEVANEY: Thank you. Nothing further.

21 THE COURT: Mr. Denney, just to revisit on
22 issue 9-53, proposal number 3, the question
23 Mr. Devaney was asking you about the phrase "in the
24 cases of conflict." I just want to try to understand
25 that a little bit better, because this is proposed

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1 language. Does that phrase mean in the event of a
2 dispute between CLEC and Qwest? Is that what we're
3 getting at there? I'm not asking for any legal
4 conclusion, just is that your understanding of that
5 language?

6 THE WITNESS: It is. I'm glad you're not
7 asking for a legal concluding. I don't know if
8 Mr. Devaney asked me that, but I am not a lawyer.
9 And I actually haven't had a question specifically on
10 that phrase before, but as I read that, that was in
11 proposal number?

12 THE COURT: Three.

13 THE WITNESS: Proposal number 3. I mean,
14 as I read that, "in cases of conflict," between --
15 really between parties in terms of how a product
16 would be removed, there's no reason to either go to
17 section 2.2 and 1.7.3, if there's agreement among
18 parties in terms of how to remove products from the
19 contract. So what we're really -- I believe what
20 this language was attempting to point to there was
21 where to go, you know, under these various situations
22 when Qwest seeks to remove something from the
23 contract where there is disagreement as to how that's
24 going to happen.

25 THE COURT: Okay. Mr. Merz?

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1 MR. MERZ: I think maybe just one
2 question.

3 REDIRECT EXAMINATION

4 BY MR. MERZ:

5 Q. Do you recall that Mr. Devaney asked you
6 some questions about your review of the design change
7 costs study?

8 A. Yes.

9 Q. And he asked you about whether there was
10 engineering and technician time. And you started to
11 say something about how that impacted your
12 conclusions regarding the application of that cost
13 study to CFA changes. Do you recall that?

14 A. Yes.

15 Q. And I think that Mr. Denney kind of cut
16 off your answer, so I just wanted to make sure you
17 had a chance to explain the relationship between
18 those two things.

19 A. Well, I mean, what Qwest has testified to
20 and that I agree with, that a CFA change takes some
21 technician activity, but basically what -- I think of
22 it in simple terms of where the loop, or actually
23 where the interconnection tie pair is plugged into,
24 so it knows where to go on the Eschelon colocation.
25 And sometimes the CFA doesn't work, so we have to

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1 unplug it and plug it into a new CFA. That's where
2 the technician would be involved.

3 Qwest's position is that these are covered
4 in this design change cost that was ordered
5 previously by the Commission, but there is no
6 technician time in that cost study. The cost study's
7 included with Ms. Million's testimony, and you can
8 look. There is no averaging of different activities
9 together in that cost study. It's just one generic
10 activity, which is the basis for -- in part, the
11 basis for why we believe that just applies to -- this
12 cost just applied to transport design changes.

13 Also the fact that that's the way Qwest
14 charged it to us for a number of years, and we were
15 surprised when they started charging it to us for
16 design changes for loops and CFA changes.

17 MR. MERZ: Nothing further. Thank you.

18 THE COURT: Mr. Devaney?

19 MR. DEVANEY: Thank you.

20 RE-CROSS-EXAMINATION

21 BY MR. DEVANEY:

22 Q. With respect to the answers you just gave
23 concerning the engineering and technician time, the
24 central office for CFA changes, are you aware of
25 Ms. Million's testimony reporting that the costs for

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1 that time are included in the installation change,
2 not in the CFA or design change charge?

3 A. I believe that Ms. Million has said that,
4 but I believe the depositions of, I think it was
5 Mr. Jeppson in Minnesota said that there is cost in
6 those studies for the single -- for connecting the
7 circuit to the CFA, but that the cost, that in his
8 time -- and he's the one who did the time estimates
9 for those cost studies, if they had to do a CFA
10 change, that additional cost he did not include.

11 Q. What's Mr. Jeppson's title?

12 A. Let me see if I've got the right person
13 there.

14 Q. Mr. Denney, he's a central office
15 technician, right?

16 A. Yes, he's one who supported the loop
17 installation times in -- at least in Minnesota, but
18 those times haven't changed for the last some-odd
19 years, so presumably he's done that for a number of
20 years.

21 Q. Do you know if he was involved in
22 preparing the design change cost study that this
23 Commission used to set a rate? Do you know that?

24 A. No, I don't believe that he did. What I
25 believe he was involved with is doing the cost

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1 studies which Ms. Million was referring to for --
2 that this rate was recovered in another study. I'm
3 saying that other study is the one that he did, and
4 he said it's not there.

5 Q. And you're saying that Mr. Jensen did the
6 cost study for installation rates used here in Utah;
7 is that correct?

8 A. I don't know. Qwest didn't have that
9 documentation. But I believe he testified that he's
10 been doing the input to those studies for a number of
11 years. And this is in -- I put the transcript, part
12 of the transcripts from the Minnesota deposition is
13 attached to my testimony, as well as the, you know,
14 kind of the relevant things that he said under the
15 design change.

16 Q. So your testimony is that Ms. Million is
17 incorrect in stating that engineer time for CFA
18 changes is included in the installation change and
19 not a design change charge; is that correct?

20 A. I do not see it there in the installation
21 charges. Actually, I should just clarify, as I think
22 about that answer, that there's no explicit recovery
23 of that cost in installation, and oftentimes
24 activities that routinely occur are not covered
25 explicitly, but are covered implicitly through cost

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1 factors. That would take a further investigation in
2 both Utah and in Minnesota to determine whether those
3 are being recovered in cost factors. But there's not
4 an explicit charge within that study.

5 Q. You've answered my question.

6 A. Okay.

7 THE COURT: Anything further for Mr.
8 Denney?

9 MR. MERZ: Nothing further.

10 MR. DEVANEY: Nothing, Your Honor.

11 THE COURT: Thank you. Anything further,
12 Mr. Merz?

13 MR. MERZ: No, Your Honor. That concludes
14 Eschelon's case.

15 THE COURT: Do the parties desire any sort
16 of closing or anything?

17 MR. MERZ: I'm sorry?

18 THE COURT: Any sort of closing that you'd
19 like to make?

20 MR. MERZ: No.

21 MR. DEVANEY: No.

22 THE COURT: I just wanted to check real
23 quick with counsel. The Division of Public Utilities
24 has filed on August 27th the issue matrix dated
25 August 16, 2007. And I know we've had some issues

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1 close and so forth. I just want to make sure that
2 the parties are in agreement that this latest issue
3 matrix fairly encompasses and reflects all the issues
4 that are still open in this matter.

5 MR. MERZ: I believe that's the case.

6 MR. DEVANEY: As do we. And if we could
7 throw in just the caveat, probably for both parties,
8 that we'll do one more review after this hearing, and
9 if we see any issues that have closed that are on
10 there or otherwise not accurately set forth, we will
11 let you know promptly.

12 THE COURT: Okay, good. Anything further
13 we need to take up today, then?

14 MR. MERZ: We should -- and we don't
15 necessarily need to be on the record to do this, but
16 we should talk about a briefing schedule.

17 THE COURT: Let's go ahead and go off the
18 record for a minute and maybe come back on to state
19 that.

20 (Brief discussion held off the record.)

21 THE COURT: Back on the record. While we
22 were off the record just briefly we discussed the
23 briefing schedule for this docket, and the parties
24 agreed that we'll have one round of briefing, briefs
25 to be due November 16th. And I indicated that the

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1 Commission will remain open to the parties if they
2 desire at that time to request any further briefing
3 on this issue. Otherwise, I think we can adjourn.

4 Okay, thank you.

5 MR. DEVANEY: Thank you, Your Honor.

6 MR. MERZ: Thank you, Your Honor.

7 (Whereupon, the proceedings were
8 concluded at 3:21 p.m.)

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C E R T I F I C A T E

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

 This is to certify that the foregoing Public Service Commission hearing held before Administrative Law Judge Steven Goodwill was held in the State of Utah;

 That the above-named proceedings were taken by me in stenotype, and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages.

 I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

 Witness my hand and official seal at Salt Lake City, Utah, this 19th day of September, 2007.

 My commission expires:
 May 24, 2011

Kathy H. Morgan, CSR, RPR