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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S COMPLIANCE)
WITH § 271 OF THE)
TELECOMMUNICATIONS ACT OF 1996)
_____)

Docket No. T-00000A-97-0238

**ESCHELON'S COMMENTS
ADDRESSING UNE
COMBINATIONS**

Dated: September 21, 2000

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Eschelon Telecom of Arizona (“Eschelon”) submits these Comments Addressing Combinations of Unbundled Network Elements (“UNEs”) for the First Amended Set of Workshops and in response to the Supplemental Affidavit of Karen A. Stewart (“Stewart Supp. Aff.”) and Third Revision of Qwest’s Statement of Generally Available Terms (“SGAT”) filed by Qwest on July 21, 2000. Factual assertions made in these Comments are verified in the attached Affidavit of Garth Morrisette. All exhibits referred to in these Comments are exhibits to the Affidavit of Garth Morrisette.

I. INTRODUCTION

Qwest Corporation (formerly known as U S WEST Communications, Inc., and referred to as “Qwest”) must comply with Section 271 of the federal Telecommunications Act to gain entry into the in-region interLATA long distance market. *See* 47 U.S.C. § 271 (“Section 271”). To comply with the requirements of checklist item 2 of Section 271, Qwest must demonstrate that it has fully implemented its obligation to provide nondiscriminatory access to combinations of UNEs. *See* FCC BANY Order ¶¶ 44, 229-30.¹ To fully implement this obligation, Qwest must provide nondiscriminatory access to UNE combinations of the type that Qwest provides to itself, its customers, or its end users, and not simply the “specific configuration for each of its individual customers.” *See* Sprint Arbitration Order at p. 9.² Qwest must support its claim that it provides such combinations of UNEs consistent with checklist item 2 “with *actual evidence*

¹ Memorandum Opinion and Order, *In re. Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State New York*, CC Docket No. 99-295, Federal Communication Commission (“FCC”) 99-404 (Dec. 22, 1999) [“FCC BANY Order”].

² Opinion and Order, *In re. Petition of Sprint Communications Company, L.P., for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with U S WEST Communications, Inc.*, Decision No. 62650, Docket Nos. T-02432B-00-0026, T-01051B-00-0026 (June 13, 2000) (“Sprint Arbitration Order”).

demonstrating its *present* compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior.” See FCC BANY Order ¶ 37 (emphasis added).

Eschelon’s real world experience in attempting to serve its customers in Qwest territory using combinations of UNEs shows that the right to order UNE combinations exists only on paper and not in practice. In Arizona, Qwest will not process a single order for UNE combinations placed by Eschelon at this time. Where Qwest has completed orders for UNE combinations, Qwest’s only available product offering is for UNE-Platform (“UNE-P”) with Plain Old Telephone Service (“POTS”). Even that product does not include all required switch features at this time.

Ordering that one product is a painful experience, in large part because Qwest either has no processes in place or does not follow them. Qwest has failed to provide information necessary for processing orders, given delayed or incorrect responses to inquiries, and appeared to fight processing of orders for UNE combinations nearly every step of the way. Unfortunately, this conduct is consistent with a warning that Qwest gave to Eschelon during a June 30, 2000, conference call. The purpose of the call was to discuss a contract amendment that Qwest has required Competitive Local Exchange Carriers (“CLECs”) to sign before it will begin processing orders for UNE combinations. Qwest has imposed this condition even when the CLEC has an existing contract in Arizona requiring Qwest to provide UNE combinations. During the conference call, Qwest said that, unless Eschelon signed its proposed contract amendment, Qwest could “guarantee” that Eschelon would have problems in processing such orders. That is one guarantee on which Qwest has made good.

The problems with Qwest's processes and policies not only cause unnecessary and anti-competitive delay and resource expenditures, but also they have resulted in adverse customer-impacting situations. Customers have experienced feature loss, disruption of long distance service, and *service outages* when Qwest has processed Eschelon's orders for UNE-P-POTS. Qwest cannot show present compliance with its obligation to provide combinations of UNEs or that "it has 'fully implemented the competitive checklist [item]... .'". See BANY Order at ¶¶ 37 & 44. Significant improvement is needed in Qwest's documentation, support, training, policies, methods, procedures, and systems with respect to UNE combinations.

II. ESCHELON'S EXPERIENCE IS VERY DIFFERENT FROM THE DESCRIPTION IN QWEST'S TESTIMONY AND SGAT.

Eschelon asks the Commission, in evaluating Qwest's compliance with Checklist Item 2, to look beyond the paper promises and analyze Qwest's actual practices and performance. Qwest places anti-competitive prerequisites on the availability of UNE Combinations, and even if a CLEC overcomes those obstacles, the provisioning process is in its infancy and fraught with problems.

A. ANTI-COMPETITIVE PREREQUISITES

Last week, Eschelon attempted to place a UNE-P-POTS order in Arizona. Qwest's Interconnect Mediated Access ("IMA") Graphical User Interface ("GUI") responded with the following error message:

RESALE Form: Service Details Section: Invalid USOCs - problems with Validity, Resellability, State or Contract: USR

Qwest has programmed its IMA-GUI to refuse to process any such order from Eschelon in Arizona. Qwest refuses to process any order for any combination of UNEs until two

prerequisites are met. First, Qwest has required the CLEC to sign a contract amendment, even when the CLEC has an existing contract requiring Qwest to provide UNE combinations. Second, Qwest will wait until after an amendment is negotiated to complete updates to its system (which apparently are needed to change the error message above). Qwest claims, in its testimony, to “offer” combinations of UNEs without mentioning that these strings have been attached to that offer. *See Stewart Supp. Aff.* at 46-65. Both of these pre-conditions cause lengthy, unnecessary delays and constitute anti-competitive barriers to market entry and expansion.

1. Unnecessary Contract Amendment

Qwest has told Eschelon that it will not accept orders for UNE combinations anywhere in its territory, except Minnesota, without a contract amendment. Qwest has taken this position even though Eschelon has an interconnection agreement with Qwest in every one of the states in which it operates, including Arizona,³ that requires Qwest to provide UNEs “in combination” in accordance with the Act, FCC rules, and state law.⁴ In all of those states, Eschelon has opted in to interconnection agreements of AT&T Communications, Inc. (“AT&T”), pursuant to Section 252(i) of the federal Act. Therefore, Eschelon, AT&T, and other opt-in CLECs should be able to order UNE

³ *See* Agreement for Local Wireline Network Interconnection and Service Resale Between Advanced Telecommunications, Inc. and U S WEST Communications, Inc., for the State of Arizona, Agreement No. CDS-000106-0212; Decision No. 62489 (Jan. 20, 2000) (“Agreement”). The Agreement deals specifically with issues such as the definition of “Combinations,” *see id.* Part A, p. 4; cooperative testing of combinations, *see id.* ¶ Att 3, Para 18.1; service order process requirements for combinations, *see id.* Att. 5, ¶ 2.2.2.1, and other issues.

⁴ *See* Eschelon-Qwest Interconnection Agreements: AZ, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; CO Part A, ¶ 8.1 & Att. 3, ¶¶ 2.4 & 15.1; MN, Part A, ¶ 20 & Att. 3, ¶ 14.1; OR, Part A, ¶¶ 19 & 36 & Att. 3, ¶ 14.1; UT, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1; WA, Part A, ¶ 21.1 & Att. 3, ¶¶ 1.2.2 & 18.1.

combinations pursuant to the terms of their existing interconnection agreements with Qwest.

They cannot do so in Arizona today, however, if they have not signed a contract amendment.⁵ For many months, the only state in Qwest's territory where Qwest has said that it will process orders for UNE combinations without a contract amendment is Minnesota. Although Qwest had previously required a contract amendment in Minnesota as well, Qwest changed its position after the Minnesota Public Utilities Commission issued a decision requiring Qwest to provide UNE Combinations.⁶

Although Eschelon has a right to order UNE combinations under its interconnection agreement and decisions of this Commission, the FCC, and the Ninth Circuit,⁷ Eschelon attempted to negotiate a multi-state amendment with Qwest on the belief that doing so would consume less time and fewer resources than mounting a legal challenge to Qwest's position. Qwest also told Eschelon that signing an amendment would benefit Eschelon by making ordering of UNE combinations easier and faster. Eschelon has been negotiating with Qwest since late May. Eschelon has spent substantial time and resources analyzing proposed terms and revisions, exchanging draft documents, and participating in conference calls with Qwest. During all of this time, Qwest failed to adequately answer two basic questions: (1) Given that the existing Agreements currently

⁵ Yesterday, Qwest indicated that it finally may have changed its position relating to requiring an amendment. *See infra* (Section II(A)(2)). Eschelon is awaiting confirmation of this position and notice that Qwest has updated its system accordingly to allow Eschelon to process UNE-P orders in Arizona.

⁶ *See* Order After Remand, *In re. the Federal Court Remand of Issues Proceeding from the Interconnection Agreements Between U S WEST Communications, Inc. and AT&T, MCI, MFS, and AT&T Wireless*, Docket No. P-421/CI-99-786 (March 14, 2000) ("MN Order After Remand").

⁷ *See* Sprint Arbitration Order, p. 9; FCC BANY Order ¶ 37; *see also* *USWC v. MFS*, Docket No. 98-35146 (9th Cir. Oct. 8, 1999) ("Ninth Circuit Order").

require Qwest to provide Combinations, why does Qwest require an Amendment before processing such orders? and (2) How does the language in the Amendment benefit Eschelon?

While Eschelon has found no practical benefit to signing the amendment as proposed, it has identified problems with Qwest's proposed language. *See* Ex. 1 (proposed Amendment). That language is, in many respects, similar to Qwest's SGAT. For example, Qwest's proposed Amendment also requires Eschelon to pay nonrecurring charges for "each unbundled network element that comprise the UNE Combination." *Compare* Ex. 1, ¶ 1.1.4.1.2, p. 17 *with* SGAT, ¶ 9.23.4.1.2. Eschelon has pointed out to Qwest that this language is inconsistent with this Commission's ruling in the Qwest-Sprint arbitration. *See* Ex. 2, p. 14 ("Eschelon Response"). In its Order, this Commission found that Qwest is "not entitled to a separate charge for each individual element combined" *See* Sprint Arbitration Order, p. 12. Nonetheless, Qwest has not deleted this language or confirmed that it will not require a separate charge for each individual element combined if Eschelon signs the proposed Amendment.

The proposed Amendment also contained an over-reaching provision regarding termination liability that was substantially the same as the following provision of the SGAT:

9.23.3.10 If a retail contract or tariff agreement exists between Qwest and the end user customer or reseller utilizing the combination of elements, all applicable Termination Liability Assessment (TLA) or minimum period charge whether contained within tariffs, contracts or any other applicable legal document, will apply and must be paid in full by the responsible Party before the combination of elements is available for conversion into a UNE Combination.

SGAT, p. 133.⁸ Under this provision, obtaining UNE combinations is conditioned upon payment of a debt to Qwest by a third party over which CLECs have no control. Qwest has no basis for placing this condition upon availability of UNE combinations. Even if this provision is changed to indicate that conversion of finished services to UNEs will not be delayed until after payment of these penalties, a provision relating to termination liability penalties between Qwest and third party does not belong in an interconnection agreement between Qwest and a CLEC. Not only are the appropriate companies not party to the contract, but also inclusion may be interpreted as approval of Qwest's termination liability penalties. *See* Ex. 1, pp. 14-15, ¶ 1.3.10 (proposed Amendment, redlined). The problem is that Qwest's termination liability provisions are often excessive and unrelated to cost. Before its merger with U S WEST, Qwest itself pointed out to the FCC the problem created when the monopoly carrier imposes excessive termination penalties:

For companies like Qwest that are not fully operational in the local market but are putting the processes into place to offer local services, excessive termination penalties are particularly problematic because they lock-in customers with the ILEC before Qwest has an opportunity to compete for their business.

Comments of Qwest Communications Corporation, FCC Docket No. 99-142 (June 3, 1999). Earlier this year, the Kansas Corporation Commission also recognized this when it adopted a "fresh look" policy regarding termination charges by the incumbent local exchange carrier ("ILEC"). It said:

⁸ Eschelon recognizes that the parties have continued to review Qwest's SGAT filed in July and that the SGAT may have changed. Because Eschelon has not participated in those phases of the process, however, Eschelon has to rely on the official version of the SGAT filed on July 21, 2000. Eschelon has selected this provision simply as an example of the type of issues that Eschelon has raised in discussing Qwest's proposed Amendment. If this language remains in the SGAT today, however, Eschelon believes that the SGAT should be revised for the reasons stated.

The threat of the full impact of the termination liability provided for in the contract will effectively eliminate the ILEC's customer as a potential customer of a facilities-based CLEC that begins offering the same service. This situation not only denies end users choice but may keep facilities-based providers from entering the market.

Order, *Re Long Term Contracts*, KCC Docket No. 99-GIMT-706-GIT, March 2, 2000.⁹

Including a termination liability provision relating to agreements with third parties in a contract amendment or an SGAT would only create confusion and help perpetuate Qwest's excessive termination liability penalties.

Other specific problems with the proposed Amendment are discussed below as part of Eschelon's response to Qwest's testimony and SGAT. More generally, the primary problem with Qwest's proposed Amendment is that it simply re-states Qwest's legal positions without addressing the practical problems that Eschelon confronts daily in attempting to provide service using UNE combinations. Given that it is of little practical use, the Amendment's purpose seems to be simply to delay Eschelon's ability to exercise its right to use UNE combinations. If this were not the case and Qwest actually wanted to clarify practical issues with an amendment, Qwest could simply have allowed Eschelon to place orders for UNE combinations while negotiations were pending.¹⁰ Because Qwest has not done so for the past several months, the resulting delay has been lengthy, and the process resource-intensive and costly.

⁹This Commission also has before it a request to review termination liability issues. *See In re. Application of Allegiance Telecom of Arizona, Inc, Association of Local Telecommunications Services, Cox Arizona Telcom, E.spire, Electric Lightwave, Inc., GST Net (AZ), Inc., McLeodUSA Incorporated, and NEXTLINK Arizona, Inc.* (Sept. 29, 1999).

¹⁰ In the line sharing context, Qwest has said that it is negotiating contract amendments, but CLECs "can continue to obtain line sharing from Qwest under that agreement until the interconnection agreement amendments have been executed." Stewart Supp. Aff. at p. 14, lines 1-4. Such a statement is absent from Qwest's testimony, and proceeding without an amendment has not been Qwest's practice for combinations.

2. Further Delay for Questionnaire and System Changes

Qwest's proposed Amendment provides that order processing may begin once the Amendment is effective, Eschelon updates a Customer Questionnaire, and Qwest completes "all system changes." *See* Ex. 1, ¶ 2, p. 23.

Regarding the Customer Questionnaire, Eschelon does not object to completing reasonable Customer Questionnaires, and it has completed one for Arizona. After months of being told by Qwest that it would not process UNE-P orders in Arizona without a contract amendment, however, Eschelon was surprised and frustrated to receive a message on September 14, 2000, from its account representative indicating that Qwest did not process Eschelon's trial order for Arizona because Qwest was "missing a little paperwork" from Eschelon. The message said that nothing in Qwest's tables or databases notifies Qwest that Eschelon wants to order UNE Combinations in Arizona. Qwest indicated that one of the reasons for that is that Eschelon "has decided" that it does not need a contract amendment for UNE combinations. Qwest said that Eschelon needs to update its Customer Questionnaire for Arizona, after which Qwest will "do the proper MCRs" (*i.e.*, Mechanized Change Requests) and "upload the rates in the USOCs [*i.e.*, "Universal Service Order Codes"] and the tables associated with Eschelon." Eschelon responded that it completed the Customer Questionnaire for Arizona on June 2, 2000, and it selected UNE-P as a type of service on that Questionnaire. Eschelon asked Qwest to let Eschelon know when it may proceed with placing UNE-P orders in Arizona.

Qwest's message either implied that Qwest's lengthy proposed Amendment is "a little paper work" or suggested that Qwest has changed its position, without notifying Eschelon, and now will process UNE-P orders in Arizona upon completion of the

Customer Questionnaire. As to the first possibility, Eschelon has explained the problems with the proposed Amendment. As to the second possibility, the implication that the inability to process orders is somehow Eschelon's fault because it failed to complete the appropriate paperwork is erroneous. This is particularly true because Eschelon requested UNE-P when it completed the Questionnaire in early June. After receiving this message, Eschelon reminded Qwest of this fact and asked Qwest to let Eschelon know when it may proceed with placing UNE-P orders in Arizona.

Eschelon attempted to place its UNE-P order in Arizona to determine whether Qwest's policy with respect to a contract amendment would be reflected in Qwest's systems. The IMA-GUI error message, which referred to "problems with . . . contract," seemed to confirm Qwest's policy. The message from Eschelon's account representative, however, was less than clear. If Qwest's policy has changed, this is a maddening way to discover it. To resolve this uncertainty, Eschelon asked Qwest at a meeting *yesterday morning* whether Qwest had changed its position with respect to requiring contract Amendments for UNE combinations in all of its states except Minnesota. After months of blocking Eschelon's right to place UNE combinations orders, Qwest responded that it has changed its position, but it just had not communicated that to Eschelon yet.

Apparently, Qwest has not communicated its policy change to other CLECs either. At the Co-Provider Industry Change Management Process ("CICMP") meeting yesterday afternoon, Eschelon mentioned this development, and other CLECs were unaware of the change. A WorldCom representative asked why Qwest has required it to spend resources on negotiating an amendment over the past several months if an amendment really is not required. The Qwest representatives involved in the CICMP

meeting were also unaware of the change in policy, or at least of the specifics of the situation, and said they would check on the status.

Meantime, another group at Qwest has requested an extension for responding to Eschelon's September 11, 2000 comments on the proposed amendment (*see* Ex. 2) until Monday, September 25, 2000. Because Eschelon has not received the written response to its September 11, 2000 comments, and Qwest just told Eschelon orally about this change in position yesterday, the status is still unclear. In any event, even if Qwest will finally allow Eschelon to place orders for UNE combinations in Arizona, the message received from its account representative indicated that Qwest has not yet done "the proper MCRs" or "upload[ed] the rates in the USOCs and the tables associated with Eschelon."

Assuming that Qwest has changed its position as indicated yesterday, Qwest's systems still will not accept Eschelon's UNE-P orders until those tasks are completed. Qwest needs to pro-actively notify Eschelon when this occurs, rather than waiting for Eschelon to inquire again.

Regarding system changes, Qwest has not communicated to Eschelon the specific nature of those changes. At a minimum, as indicated in the message from Eschelon's account representative at Qwest, before Eschelon may place orders for combinations of UNEs, Qwest has said that it must issue an MCR to place USOCs in Qwest's system for Eschelon. Eschelon submitted its Questionnaires for Arizona and Minnesota on June 2, 2000. In early June, Qwest said that it was pushing an MCR through for Eschelon. Today, Eschelon is still waiting for the ability to order certain features that will not be available until after an MCR is processed. These are features that should have been available with UNE-P-POTS from the start. Qwest has been obligated to provide these

features since 1996. See Local Competition First Report and Order ¶ 412.¹¹ Qwest should have identified and mechanized them much earlier. Nearly five months have passed since Eschelon's Arizona contract was approved, and Qwest has not completed the system changes. Moreover, the account representative's message suggests that Qwest has not even started changes for Arizona that should have been prompted at least by Eschelon's submission of its Questionnaire on June 2, 2000.

Based on experience to date, therefore, Eschelon is concerned that making system changes will cause further delay in Eschelon's ability to order even the basic UNE-P-POTS combination. Because Qwest has not provided additional information about the referenced "system changes," Eschelon also does not know what changes will be required or how long they may take. It is also unclear why the system changes could not be made now for all CLECs, instead of delaying them for each CLEC.

B. UNDEVELOPED PROCESS AND INADEQUATE SUPPORT

Eschelon is dependent upon Qwest to provision customers using UNE combinations. Therefore, to compete meaningfully in the local market, Eschelon needs to know not only that Qwest has processes in place but also that Qwest will adhere to those processes consistently over time.¹² Qwest has a legal obligation to demonstrate that it is "adequately assisting competing carriers to understand how to implement and use all of the functions available to them," as well as establishing that it has deployed the necessary systems and personnel to provide sufficient access to each Operations Support System

¹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, "First Report and Order," 11 FCC Rcd 15499 (rel. Aug. 8, 1996), *aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd.*, 525 US 366 (1999) ("Local Competition First Report and Order").

(“OSS”) function. *See* FCC Ameritech Michigan Order ¶ 136.¹³ In some cases, Qwest has no processes in place and, in others, it does not follow them or communicate them to Eschelon. Eschelon’s provisioners often get results that should be obtained routinely only through creativity and persistence. Sometimes the only way to resolve an issue is to circumvent the process and go directly to a Qwest employee found to have knowledge, even though that person is not technically allowed to deal directly with Eschelon. Inadequate staffing and inaccessibility of personnel with the appropriate subject matter expertise are problems, and they adversely affect timeliness and adequacy of responses to inquiries. Inadequate staffing is exacerbated by the lack of adequate processes, methods, and procedures, which creates a need for more assistance.

Even if staffing were sufficient, account managers are only as good as the internal support that they receive. The most talented account team cannot overcome regulatory or policy directives that hinder a competitor’s business. Unless the CLEC is truly viewed as a customer and sufficient resources are dedicated to supporting a customer account, no individual or team of individuals can adequately maintain a CLEC account. While Qwest may say that it considers Eschelon and other CLECs to be customers, such statements need to be backed by resources and actions that demonstrate this and allow the CLEC to do business properly.

1. Disarray in Processes Harms Competition and End-User Customers.

The disarray in Qwest’s processes directly affects Eschelon’s ability to compete because Eschelon is expending substantial time and resources attempting to extract

¹² *See, e.g.*, FCC BANY Order ¶ 101 (finding BA adheres to change management process over time).

needed information from Qwest. It also ultimately affects end users because orders inevitably run into problems when unsupported by adequate processes and personnel. Eschelon's experience in attempting to identify the features available with UNE-P-POTS and then to order that "product" from Qwest demonstrate that Qwest's policies and processes are a moving target, Qwest's adherence to processes is hit or miss, and the result is harm to competition and end-user customers.

a. *Identifying Features Available With UNE-P-POTS*

Qwest is legally obligated to provide all features, functions, and capabilities of the switch, including all vertical features that the switch is "capable of providing." Local Competition First Report and Order ¶ 412. Vertical features include custom calling features, such as call forwarding, call waiting, and 3-way calling; custom local area signaling service ("CLASS") features, such as caller i.d. and call return; and Centrex. *See* Local Competition First Report and Order ¶¶ 397, 400, note 873; 401, note 877; 410, note 908; 412. Qwest must provide all vertical features loaded in the switch, regardless of whether Qwest provides them on a retail basis. *See* BellSouth Louisiana II Order ¶ 217. Qwest must allow CLECs to order vertical features individually or in packages, including packages not offered to its own retail customers. *Id.* ¶ 219. When Qwest, for the *first* time, offers a feature that the switch is capable of providing but Qwest does not offer it to its own retail customers, Qwest may establish a BFR or ICB process to ensure that the request is technically feasible and a process is put in place. *Id.* ¶ 220.

¹³ Memorandum Opinion and Order, *In re. Section 271 Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137 (Aug. 19, 1997) ("FCC Ameritech Michigan Order").

When reading these clearly stated legal obligations, it would appear that a CLEC should be able to obtain a list of features, order any of those features individually or as a package, and place the order with Qwest. All of this should be done routinely, with a BFR or ICB process being required only if the feature is not offered by Qwest to its own customers and is being ordered for the first time. Perhaps naively, Eschelon approached this process, therefore, accordingly.

In reality the “process” has gone roughly like this:¹⁴

Eschelon needed to begin building a product set for UNE-P. In mid-May of 2000, Eschelon found the product description for UNE-P on Qwest’s wholesale web site. The description for UNE-P-POTS referred to “vertical features,” but it did not list them or indicate where to find them.¹⁵

Because the information on the web site was unclear, Eschelon asked the Qwest account team to assist in providing the information Eschelon needed to plan its product offerings necessary for placing UNE-P orders and preparing its billing systems. Eschelon also asked Qwest whether or to what extent the features available with UNE-P are the same as those available with resold services.

Qwest responded that Eschelon should identify which features it wants. This is a typical Qwest response – to turn the question around and shift the burden to the CLEC, even though Qwest has superior access to needed information.¹⁶ This approach is akin to a waiter, instead of providing a menu, asking customers to place an order before telling them which foods are available as choices. The customers may order soup, not knowing that their favorite pasta was an alternative.

Eschelon told Qwest, generally, that Eschelon would initially need at least the same features that it is providing now to its resale customers. Eschelon attempted on its own to determine which features (and USOCs) were available with UNE-P.

¹⁴ This summary relates simply to efforts to obtain features information. It does not include all of the problems with features encountered when actually ordering UNE-P lines. In some cases, the orders were completed successfully and Qwest later removed features, without notice to Eschelon. *See infra* (next section). Many of the problems in provisioning UNE-P orders could have been avoided if Qwest provided complete feature information up-front and had appropriate processes in place.

¹⁵ *See, e.g.*, http://www.uswest.com/wholesale/productsServices/irrg/une_p_c.html

¹⁶ From the start, therefore, Eschelon was limited to requesting features that Qwest offers to its retail customers, because Qwest has never indicated which additional features the switch is capable of providing.

To compile an initial list, Eschelon copied the most needed features from Qwest's product manual for resale.

On May 31, 2000, knowing that Qwest provides an "available for resale" feature list for resale services and features, Eschelon requested a similar document to help identify the features and services available for UNE-P. Because Qwest had not provided such a list, Eschelon provided to Qwest a list of features or feature packages and asked Qwest to identify which ones are available with UNE-P, which can be migrated from resale, and what are the applicable charges.

The list included approximately 120 features, which is only a small sub-set of the features listed on Qwest's available for resale list. Qwest's "available for resale" list includes more than 3,300 USOCs. Because Qwest would not identify which were available with UNE-P, Eschelon provided a list of the bare minimum of features needed to begin developing a product set for migration of resale customers to UNE-P.

On June 2, 2000, Qwest responded with a list of 24 features, with no associated USOCs. Qwest representatives said they would meet with the switch port engineers to discuss the availability of the other features on Eschelon's list. Qwest said the engineers were not available that week or until later the next week. Qwest agreed to provide a response later regarding the rest of the features.

On June 22, 2000, Qwest provided a list of "Features Available for UNE-P-POTS" with 36 USOCs.

Qwest also indicated that the UNE-P-ISDN and UNE-P-CTX feature lists and USOCs are under development and information regarding these products would be provided as it becomes available. No further information about these products has been provided. When asked about UNE-P-CTX, Qwest has said that it is not available.

Eschelon participated in meetings and conference calls with Qwest at which features were discussed, and Eschelon continued to request a definitive feature list in those calls and meetings, as well as in separate calls and emails. Eschelon also asked Qwest to explain its reasons for denying access to features not available, so the Eschelon could evaluate whether it agreed with Qwest's rationale.

Eschelon compiled a spreadsheet outlining its understanding of the features, by USOC, and Qwest's position on availability. The spreadsheet contained the same approximately 120 features listed in a different format in the list provided to Qwest at the end of May. On July 19, 2000, Eschelon provided the spreadsheet to Qwest and asked Qwest to respond to the questions reflected in the spreadsheet. The same day, Qwest indicated that, for features that Qwest had identified as not available but can be requested, Eschelon must submit a request for each particular

feature, along with a forecast of the number of customers for that feature and a priority of which features are more important to have available than others.

Eschelon provided the requested feature forecast and prioritization the next day.

Over the course of all of these communications, Qwest has made it clear that Qwest will verify whether features are available with UNE-P only after Eschelon specifically identifies them, formally requests them, provides a feature-specific forecast and prioritization, and asks that Qwest submit a MCR to implement them.

Eschelon again asked Qwest to explain why Qwest could not simply provide a list of all of the features available with UNE-P and a list of those not available, with the rationale for not making them available. Eschelon repeated its request for a list of features that Qwest identifies as Advanced Intelligent Network (“AIN”) features. Qwest agreed to provide lists of enhanced and AIN features that Qwest will not provide with UNE-P. Eschelon reiterated that Qwest’s list appears to be shorter than it should be. Eschelon again provided its spreadsheet to Qwest and asked for a response to the questions reflected in it. Eschelon separately told Qwest’s attorney that Qwest’s list appears to be too short and that perhaps the product personnel at Qwest have not compiled a complete list of features and may not know the reasons for denying certain features.

On September 13, 2000, Qwest finally provided a response to the spreadsheet that Eschelon provided to Qwest on July 19, 2000 (and which included the same features about which Eschelon asked on May 30, 2000). This was two months after Eschelon provided the spreadsheet and nearly four months after Eschelon identified the features for Qwest.

Also on September 13, 2000, Qwest provided to Eschelon a list of “vertical features associated with the unbundled switch port” by USOC. The list has three components: (1) Western Region, with approx. 119 USOCs; (2) Central Region, with approx. 111 USOCs; and (3) Eastern Region, with approx. 117 USOCs. In other words, there are less than 120 total USOCs, but the USOCs vary by region. Although Qwest provided no explanation or documentation with the list, Eschelon assumes that the different regions refer to the old Bell territories as reflected in Qwest’s systems. ***On its face, the list states that it is incomplete: “List is not exhaustive of all possible features of the unbundled switch port.”*** It also states “Additional features may be requested through the BFR process.”

Of the less than 120 USOCs provided by Qwest in its list on September 13, 2000, it is unclear which ones Qwest’s systems are prepared to accept at this time and on what date the others will be available. Through previous experience Eschelon has learned that, even when Eschelon has identified a particular feature that it would like to order with UNE-P and Qwest says it is available, it is not actually available until Qwest also submits an MCR. Therefore, Eschelon asked Qwest to ensure that an MCR, if not submitted already, is submitted as to all features on

Qwest's September 13, 2000 list. Qwest has not confirmed whether and when all of these features may actually be ordered with UNE-P.

Eschelon hopes that this summary conveys at least a sense of the pain-staking, frustrating, and resource-intensive nature of this series of events. All of this effort has been required to obtain information that, under the law, should be provided routinely and electronically to Eschelon and other CLECs. Instead, Qwest has taken more than four months to provide a list of features available with UNE combinations. Even now, the list Qwest has finally provided is admittedly incomplete and unclear as to whether all the included features are mechanized and, if not, on what date they will actually be available for order processing. Eschelon is not asking for anything novel or extraordinary. It is requesting a small number of the features that Qwest provides today to its retail customers. They are the very same features that Eschelon currently provides with resold service. Eschelon needs this information up-front to develop its product sets and then place orders. Eschelon would like to avail itself of more innovative possibilities available through use of UNE-P, but it cannot invest in those possibilities when Qwest's processes and practices are so undeveloped even for UNE-P-POTS orders.

Given that Eschelon is simply requesting features that are currently being used by its end-user customers through resale, there are no surprises associated with Eschelon's orders. They simply do not require BFR or ICB treatment. The burden should not be on Eschelon to specifically identify each feature, formally request it, provide a feature-specific forecast and prioritization, and ask that Qwest submit an MCR. The features should be mechanized and routinely available as part of Qwest's obligation to provide unbundled switching. CLECs should not have to incur lengthy delays waiting for MCR processing each time they request a feature available to Qwest's retail customers. Use of

a BFR process is also inappropriate because Qwest offers these features to its retail customers. *See* BellSouth Louisiana II Order ¶¶ 219-20.

b. *Service Disruption and Outages*

The need for information and processes is not theoretical. The absence of documented, accessible information and proven processes translates to real problems that ultimately affect end-user customers. Customers are harmed in the short-term by service disruption and in the long-term by denial of the full benefits of competition.

i. Denial and loss of features

In the absence of receiving a definitive list of available features for UNE-P from Qwest and in the process of compiling its own list of USOCs for ordering, Eschelon attempted to test availability of various features and USOCs by placing trial orders (using employee lines).¹⁷ When a trial order was completed successfully with a feature, Eschelon reasonably concluded that the feature was available with UNE-P. Eschelon then placed orders for actual customers using the same features. Qwest processed these orders. After customers were placed on UNE-P successfully, however, they later lost use of some features. Qwest actually went back into an Eschelon customer's account and deleted a feature *without notifying Eschelon*. Only when the customer called Eschelon did Eschelon learn of Qwest's activities. The customer's account was converted to UNE-P-POTS on August 11, 2000 without disruption. Almost a month later, on September 6, 2000, the customer lost some features. If Qwest had notified Eschelon of its activity,

¹⁷ Eschelon's UNE-P orders have been placed for Minnesota customers. Because of the barriers that Qwest has imposed on placing orders for UNE combinations in Arizona, Eschelon is prevented from relating to the Commission experiences in processing UNE combinations orders for Arizona customers. Eschelon's understanding, however, is that regardless of the customer's location, Eschelon's orders for UNE combinations will be processed by Qwest in Cheyenne, Wyoming. In any

Eschelon could have at least converted the customer back to 1FB service to avoid any service disruption. Instead, the customer lost features, and the time needed to correct the problem was extended because Eschelon did not know that Qwest was working on the account.

The following day, on September 7, 2000, Eschelon learned that Qwest had plans to change another of Eschelon's accounts. Qwest indicated that it had discovered that one of the trial UNE-P-POTS orders that Qwest completed successfully for Eschelon included Remote Call (or "Access") Forwarding (AFD). Qwest said that this feature is not available with UNE combinations because it is an Advanced Intelligent Network ("AIN") feature. Qwest's position is that it does not provide service software created within the AIN platform and architecture pursuant to the FCC's Unbundling Remand Order.¹⁸ Eschelon has requested, but Qwest has not provided, a complete list of AIN features that are not available with UNE-P.¹⁹ Eschelon has not yet been able to independently confirm whether Remote Call Forwarding (AFD) is an AIN feature.

It is unclear which features fall into the AIN category. For example, Qwest initially included the same feature, Remote Call Forwarding (AFD), on the list of "Features Available for UNE-P-POTS" that it provided to Eschelon on June 22, 2000. Consistent with that list, Qwest processed trial UNE-P-POTS orders with this feature.

event, Qwest has indicated that the process is the same for all of its states. Eschelon's experience with this ordering process, therefore, is applicable for orders for Arizona customers as well.

¹⁸ Qwest relies on *In re. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98 (Released November 5, 1999) at ¶402.

¹⁹ Last week, Qwest provided the list of features it will not provide with UNE-P on the grounds that they are enhanced features (Voice Messaging, Inside Wire and Maintenance, Enhanced Fax, and Versanet). With respect to Voice Messaging, Qwest indicated yesterday that it is re-evaluating whether and how Qwest will make Voice Messaging available. Qwest has also agreed to provide a list of features it will not provide with UNE-P on the grounds that they are AIN features. Eschelon has

Later, Qwest removed the Remote Call Forwarding (AFD) feature from the previously processed trial account and started to reject orders with this feature on the basis that the feature is an AIN feature. Qwest did not provide any explanation for its change in position or any basis for claiming that this feature is an AIN feature. Because Qwest has provided conflicting information, Qwest defeated the purpose of Eschelon's submitting trial orders to test how those orders would be processed. Instead, problems occurred later with trial orders thought to be successful and with actual customer orders. Eschelon has repeated its request for a list of AIN features several times. It needs to know which features are in issue so it can evaluate whether it agrees with Qwest's position and to avoid further service disruption.

When Eschelon contacted Qwest about the loss of features, Eschelon learned that Qwest's billing department had started an initiative to review Eschelon's completed UNE-P accounts and determine whether any of the orders contained features that Qwest does not make available with UNE-P. Qwest did so without discussing this effort with Eschelon. Only when Eschelon pointed out the obvious problems with this practice did Qwest create a process to notify Eschelon before deleting features from an account. To prevent completion of erroneous orders before customers were affected, Eschelon also asked to receive notice through the IMA-GUI if Qwest believed a feature was inappropriate. Qwest indicated that IMA-GUI does not screen to determine whether features or USOCs are available with UNE-P. IMA-GUI processes the orders, and the orders are completed with the requested features, unless a service representative happens to notice them. Qwest had not informed Eschelon earlier that IMA-GUI operates in this

requested this list several times over a period of time. If Eschelon receives it this week, Eschelon will need to review it.

manner. Although Qwest has started to notify Eschelon before changing an account, the problem should be corrected much earlier in the process. Also, Qwest needs to develop its UNE-P-POTS product so that CLECs can actually order the features that Qwest is legally obligated to provide.

CLECs cannot order such features now. For example, Qwest also deleted the “custom ringing” feature (RGG1A) on an Eschelon end-user account and, upon inquiry, told Eschelon that it did so because this feature is “not available” with UNE-P. Qwest has not identified this feature as an AIN feature. It was included on Qwest’s June 22, 2000 list of “Features Available for UNE-P-POTS” list (as “RGG++”). Also, since then, on September 13, 2000, Qwest provided to Eschelon its list of vertical features associated with the unbundled switch port. It identifies the same the “custom ringing” feature (RGG1A) as available with UNE-P. In reality, however, it is not available because Qwest has not processed an MCR for this feature. Until Qwest can show that it is really available, this particular customer was moved to 1FB lines rather than risk losing functionality.

In addition to Custom Ringing, Qwest has rejected Eschelon orders on the grounds that additional requested features are “not available” with UNE-P. These features have included Call Forwarding in several forms: Busy Line, Overflow (EVO); Busy Line, Don’t Answer (EVF); Busy Line, Expanded (FBJ); and Don’t Answer, Expanded (FDJ).²⁰ The FCC specifically identified Call Forwarding as a vertical feature

²⁰ Qwest rejected these orders even though Qwest included “Call Forwarding – Busy Line” and “Call Forwarding – Don’t Answer” on the list of 24 available features that it provided on June 2, 2000. After rejecting these orders in August, Qwest provided a list approximately a month later that includes these features with USOCs. Apparently, they will be available with UNE-P after Qwest finally processes an MCR to add these features. Although Qwest has said that it can process an MCR in 2-3

available as part of unbundled switching in its Local Competition First Report and Order in 1996 (¶ 410, note 908). It is unreasonable for Qwest to reject orders four years later on the grounds that these features are not available with UNE-P. Although Qwest now says it will make them available, there will be further delay while Qwest finally gets around to processing a change request to provide access to them. This situation demonstrates the need for established processes and ready availability of access to features and elements. An individual request basis (whether it is called “ICB” or “BFR” or something else) causes delay, consumes substantial resources unnecessarily, and exposes end-user customers to service disruption.

Qwest has either failed to provide necessary information or it has provided conflicting information. Its provisioning practices also conflict with its own policies. These problems have directly and adversely affected Eschelon’s customers. Qwest’s activities have ground Eschelon’s UNE-P-POTS order activity to a halt. Eschelon cannot risk additional customer service disruption while Qwest figures this out.

ii. Unclear, changing, and discriminatory processes

Before Eschelon placed UNE-P-POTS orders, Eschelon contacted Qwest about the proper processes for doing so. Much like the statements in Qwest’s testimony, Qwest said the process is about the same as the process for resale. *See* Stewart Supp. Aff., p. 59. Qwest provided little or no documentation or assistance before Eschelon started placing its UNE-P-POTS orders. To the extent Qwest has assisted Eschelon, the assistance has taken the form of trouble-shooting after the fact. For example, when IMA-GUI will not accept or rejects an order, Eschelon will ask Qwest for an explanation. Qwest may or

weeks, it either cannot do so, or it did not submit an MCR before it represented that these features were available in early June.

may not be able to respond and often has to re-contact Eschelon later with an explanation. Generally, the personnel at Qwest seem unfamiliar with UNE-P-POTS.

Initially, Qwest told Eschelon to place UNE-P-POTS orders using IMA-GUI on a "Conversion as Specified" basis. Qwest completed a few orders using this method. After those first trial orders, IMA-GUI would not accept additional orders on a Conversion as Specified basis. After discussions with Qwest representatives at the IMA Help Desk, Eschelon placed orders as Change Orders to test whether IMA-GUI would process such orders on a "Change" basis. IMA-GUI processed these orders. Eschelon told Qwest's account team of this and relied on the Change process to test processing of additional trial orders. Eschelon submitted orders on a Change basis. IMA-GUI accepted the orders, and Qwest processed them. Qwest processed approximately 16 orders on a Change basis. The end-user customers experienced no known downtime.

Shortly afterward, IMA-GUI began to reject orders placed on a Change basis. Qwest indicated that the orders must be placed on a Conversion as Specified basis. Eschelon was not given advance notice of this change. In addition to being more time-consuming and cumbersome, ordering on a Conversion as Specified rather than Change basis raises the possibility of disruption in customer service. During a conference call with Qwest to discuss this changing procedure, Eschelon requested a technical explanation for the requirement that Eschelon use Conversions as Specified, particularly after the trial on a Change basis had been successful. Qwest indicated that its expert was not on the call, so Qwest could not answer specific questions. Inaccessibility of the appropriate subject matter person at Qwest is a recurring problem.

Eschelon pointed out that, for a new POTs line, IMA-GUI has a "recap" feature that auto-populates certain information. For these orders, however, IMA-GUI did not allow use of the recap function and required manual re-typing of information. When an existing Qwest customer requests a change, however, the order would not be treated as a Conversion (and would be a Change). Similarly, when Eschelon submits an order to change a 1FB customer to Centrex 21 or 1FB to a Measured Line, Qwest requires this to be done in IMA-GUI via a Change Order. Qwest does not require submission of such orders as Conversions. QWEST indicated that the UNE-P change was a service type change. Eschelon responded that a 1FB to Centrex 21 or 1FB to Measured is also a service type change, and Qwest processes these as Changes. Nonetheless, Qwest maintains its position that Eschelon must place orders for UNE-P-POTS on a Conversion-as-Specified basis.

Therefore, although Qwest has since changed the recap function so that Eschelon can use it for these types of orders, Eschelon must individually address every USOC and its status on each UNE-P-POTS order. Qwest requires Eschelon to do so even when Eschelon is simply moving the customer from resale to UNE-P-POTS with no change in features and even though Qwest earlier processed such orders on a Change basis. In contrast, Bell Atlantic offers "Migration As Is" and "Migration As Is With Minor Changes" options for ordering UNE combinations.²¹ The "Migrate As Is" activity can be used to migrate either a Bell Atlantic retail end user or a Bell Atlantic resold account to a CLEC for retail end user service. Bell Atlantic's "Migration As Is" method can be used

²¹ See http://www.bell-atl.com/wholesale/html/handbooks/clec/volume_3/c3s2_2.htm

to migrate end users with hunting, billable listings, and custom calling packages.²²

Because Qwest does not offer such options, Qwest's procedure substantially increases the time needed to input an order, and each added manual keystroke introduces the potential for error.

Qwest also requires additional keystrokes and manual effort when Eschelon orders features that are available to Qwest's retail representatives as feature packages. When Eschelon inquired about the availability of features, Qwest indicated that features that are otherwise available as part of a feature package, if they are available with UNE-P, must be ordered separately and not as a package. These may include Centrex feature packages. The FCC, however, has said that Qwest must provide Centrex features with unbundled switching, and Qwest must provide features both individually and as packages. *See* FCC BellSouth Louisiana Order ¶¶ 217-19. If Qwest has a valid reason for its position, it has not communicated it to Eschelon.

iii. Process Problems Result in Service Problems

This series of events highlights several problems with Qwest's provision of UNE-P-POTS. The UNE-P-POTS "product" is poorly designed and apparently still evolving. Information is not available or is difficult to obtain. Processes and procedures do not exist, change without notice, have not been communicated properly, or are not being followed. Qwest has provided little or no training as to processing of UNE-P-POTS orders, either for Qwest or Eschelon personnel.

²² Hunting was not on Qwest's initial list of available features, and its position on the availability of hunting has changed over time. Eschelon believes it is available now, but cannot be ordered not on an "as is" basis.

These problems have resulted in customer-affecting service issues, despite Eschelon's testing of the process through processing of trial orders. Qwest's changes in its policies and practices rendered the trial orders meaningless. Both new customers and customers moving from resale to UNE-P-POTS have experienced service disruption when Qwest completes UNE-P-POTS orders. For example, customers have experienced:

- complete outages, with no dial tone, for a day or more
- inability to call out locally
- inability to place long distance calls
- loss of features
- inability to forward calls between central offices

Resolving these issues has been a time-consuming and frustrating experience. As soon as Eschelon determines a process or contact for addressing these issues, the process or contact person changes. In some cases, Eschelon has had to contact the account representative, the repair, interconnect, and escalations organizations, and the group in Cheyenne, Wyoming, that Qwest has designated as Eschelon's "single" point of contact for UNE-P-POTS orders. It is the classic "runaround." People different from those contacted return calls, and the facts must be re-explained. Numerous conversations and many delays occur before service is fully restored.

Qwest cannot always explain the cause of the service disruption or outage, which complicates addressing the problem to avoid its reoccurrence. Some of the reasons given by Qwest for the service problems have been that Qwest did not program the USOCs correctly in its switches, line class codes are incorrect, PICs are inaccurate, the feature has limitations not communicated to Eschelon, and similar explanations. In the case of

improper handling of line class codes, Qwest said that the situation with Eschelon's customer prompted it to identify the problem, establish a procedure for handling the codes properly, and train the appropriate personnel to handle the issue. Eschelon would have hoped that such activities had taken place before its customers were exposed to service disruption.

All of the problems that Eschelon has encountered with identifying available features and service disruption and outages have occurred with respect to Qwest's basic UNE-P-POTS offering that is allegedly "standard." All of the remaining UNE combinations, including the other standard products and different combinations, need to be analyzed.

2. With Layoffs, Problems May Get Worse Before They Get Better.

Inconsistency in Qwest's performance and the knowledge level of its employees suggest inadequate training. In some cases, Eschelon personnel actually train Qwest's personnel in the course of resolving issues. Once a particular Qwest representative becomes knowledgeable, that knowledge is lost if the person leaves the company or moves to a different position, because Qwest's process and training are insufficient to provide continuity. Last week, for example, Qwest finally identified for Eschelon a Qwest employee who seemed familiar with the process for UNE-P-POTS orders. The individual committed to personally take calls from Eschelon and work to resolve Eschelon's provisioning issues. The next day, that employee was no longer with the company. Eschelon's account representative indicated that Qwest laid off the employee. Due to her absence, one of Eschelon's provisioners lost more than a full day of time that could have been sent placing additional orders while trying to identify a knowledgeable

person at Qwest to help restore a customer's service. Widespread layoffs at Qwest have been reported in the news. *See, e.g.*, Ex. 3 (newspaper article). As this example shows, these layoffs have already directly affected service to Eschelon.

Significant improvement is needed in Qwest's provisioning of orders for UNE combinations. Qwest cannot show present compliance with its obligation to provide combinations of UNEs. *See* BANY Order at ¶ 37. With the current situation at Qwest, it is difficult to envision improvement in the short term. With the changing personnel and policies at Qwest, any test should ensure that the process tested is the one that will be employed by the new company.

III. RESPONSE TO QWEST'S TESTIMONY AND SGAT

Qwest filed testimony relating to UNE combinations, as well as its revised SGAT, on July 21, 2000. Eschelon's experience in attempting to order UNE combinations bears on how the SGAT provisions are being applied in practice. In addition, Eschelon responds to several of the issues raised in the testimony of Karen Stewart.

A. TYPES OF COMBINATIONS

In its testimony, Qwest claims to comply with the law by providing three types of UNE combinations: (1) "preexisting"; (2) "CLEC performed"; and (3) "new." *See* Stewart Supp. Aff. pp. 51-59.

1. **“Pre-existing” Combinations**

Qwest’s narrow definition of the term “pre-existing” should be rejected. Its SGAT also raises additional issues about the so-called “pre-existing” combinations of UNEs.

a. Unduly Narrow definition of “pre-existing”

Qwest claims that Rule 315(b) “requires ILECs to provide CLECs with pre-existing combinations of UNEs.” *See* Stewart Supp. Aff. p. 50. Likewise, paragraph 4.62 of Qwest’s SGAT defines “UNE Combination” to mean “a pre-existing combination of legally binding and effective Section 251(c)(3) unbundled network elements that have been defined to meet the necessary and impair requirements of Section 251(d)(1).” The SGAT does not define the term “pre-existing.” Qwest has made it clear in dealings with Eschelon and in other proceedings, however, that it defines “pre-existing” very narrowly.

The Arizona Corporation Commission recently described Qwest’s position:

U S WEST believes that the language in Rule 315(b) has a strict and narrow focus. U S WEST believes that the plain meaning of the language ‘currently combined’ is customer specific and suggests a condition that presently exists.

Sprint Arbitration Order, p. 8. Qwest has taken the position that “pre-existing” combinations are “limited to those elements actually combined at the time of the request on behalf of the specific customer to whom the CLEC intends to provide service.” MN Order After Remand, p. 10. If, for example, a customer with existing service desires a new line that is not active at the time, Qwest may determine that this is not a “pre-existing” combination for that specific customer. The Arizona Commission rejected Qwest’s position:

U S WEST’s rigid interpretation of the term ‘currently combined’ would undermine the competitive purposes of the Act and has the potential to affect the ability of competitive carriers to compete in Arizona. It is reasonable to conclude,

as the Minnesota Public Utilities Commission did, that ‘currently combined’ refers to the company’s normal business practices and ordinary operation of its network and not the specific configuration for each of its individual customers.

Id. p. 9 (citing MN Order After Remand). The Minnesota Commission said:

This is also the only reading that makes sense in light of network realities and the competitive purposes of the Act. For example, to permit U S WEST to refuse to combine paired loops for the provision of second-line service, or to refuse to combine single loops with SS7 switching software for the provision of Call Waiting, both routine combinations occurring ubiquitously throughout the U S WEST network, would be to permit U S WEST to inhibit competition by denying its competitors least-cost access to network element combinations that are so common that they are akin to single network elements.

MN Order After Remand, p. 10.²³ This reading is also consistent with the manner in which costs are calculated. Like the HAI model, Qwest’s own RLCAP model and the BCPM model anticipate growth in lines. All of these models build in excess capacity to account for growth. Qwest is being compensated for this growth and thus cannot deny access to new lines to CLECs.

Both the Arizona and Minnesota commissions based their rulings on Rule 315(b). Therefore, the distinction that Qwest attempts to draw between “pre-existing” combinations under Rule 315(b) and “new” combinations under Rules 315(c)-(f) is false. At a minimum, it causes confusion as to the status of new *lines* in combinations of the type ordinarily found in Qwest’s network. Rule 315(b) requires Qwest to provide combinations of UNEs of the type that Qwest provides in the “ordinary operation of its network,” including existing and new lines. *See* Sprint Arbitration Order, p. 9; MN Order After Remand, p. 10. Rules 315(c)-(f) apply to combinations that Qwest does not

²³ Qwest indicates that the Eighth Circuit’s July 18, 2000 decision may affect combination policies. *See* Stewart Supp. Aff. p. 50, note 45. On September 12, 2000, in Minnesota (which is within the Eighth Circuit), the Commission rejected Qwest’s argument based on the Eighth Circuit, along with Qwest’s

ordinarily combine anywhere in its own network. *Id.* Qwest does not interpret the term “pre-existing” in this manner. Therefore, Eschelon asks that all references to the term “pre-existing” be deleted from the SGAT and any document outlining Qwest’s obligation to provide UNE combinations. Any statement of Qwest’s obligation should include Qwest’s obligation to provide existing and new lines.

Qwest’s obligation must be stated explicitly. In discussing Qwest’s proposed Amendment with Qwest, Qwest has said that it will not provide UNE combinations in any manner unless it has been ordered to do so. For example, Qwest said that it will provide new lines with UNE combinations of the type available in its network in states within the Ninth Circuit region, but it will not do so in Utah (which is in the Tenth Circuit). Eschelon’s interconnection agreement with Qwest for Utah requires Qwest to provide UNE combinations.²⁴ The Utah Public Service Commission has not limited that provision. Nonetheless, Qwest refuses to provide this type of combination in Utah because it says the Utah Commission has not explicitly ordered it to do so. The SGAT should clearly define Qwest’s obligations to avoid this dispute in Arizona. A CLEC that has not been involved previously in the various proceedings relating to UNE combinations may not realize that it has a right to combinations or features not identified by Qwest as available.

proposed “pre-existing” language, and voted 4-0 to reaffirm its ruling. A written order has not yet been issued.

²⁴ Utah Interconnection Agreement, Part A, ¶ 21 & Att. 3, ¶¶ 3.3 & 18.1

b. *SGAT Terms for “pre-existing” combinations*

i. Service disruption

Qwest’s SGAT provides that Qwest will provide access to UNE combinations “with a minimum of service disruption.” SGAT 9.23.3.1 (*cited in* Stewart Supp. Aff. p. 52); *see also* Ex. 1, p. 5 (Qwest’s proposed Amendment, redlined). As discussed, orders that should be routine have resulted not only in service disruption but also service outages. Based on Eschelon’s experience, the language dealing with quality of service should be more specific. For example, Eschelon’s interconnection agreement with Qwest in Arizona provides:

When CO-PROVIDER orders combinations of currently connected Network Elements, U S WEST shall ensure that such Network Elements remain connected and functional without any disconnection or disruption.

Agreement, Att. 5, ¶ 3.2.15.3. There is no reason that service should be disrupted when changing a customer to UNE-P-POTS, which Qwest’s account team has indicated often involves only translations work. Disruption will occur, however, until Qwest improves its processes and trains its employees sufficiently to avoid unnecessary problems such as use of incorrect line class codes or USOCs when processing orders for UNE combinations. Addressing this issue in the SGAT, in addition to adopting appropriate measures and remedies, should provide an incentive to Qwest to make these improvements and eliminate unnecessary customer disrupting events.

ii. Product Offerings

From Qwest’s testimony, it appears that Qwest currently offers a variety of UNE combinations. *See* Stewart Supp. Aff. pp. 52-54; Ex. 1, pp. 5-7 (proposed Amendment). As indicated in the SGAT, however, all of the products except “UNE-P-POTS” are

“under development.” *See, e.g.*, SGAT ¶ 9.23.3.3 (“standard offering is under development”). In the meantime, Qwest does not “offer” them at all. As discussed in Section II above, with respect to certain features that Qwest’s SGAT claims are included in UNE-P-POTS and for all of the other UNE-P “products,” Qwest has told Eschelon that they are *not available* at all at this time. Qwest has not offered to provide them to Eschelon on a BFR, ICB, or any other basis. To the contrary, Qwest has told Eschelon that it may *only* order UNE-P-POTS, with a list of features that was initially very short and is constantly changing. *See supra* Section II.

In addition to the other features that should be available with UNE combinations, the FCC found that Centrex is a vertical feature that is part of unbundled switching. *See* Local Competition First Report and Order ¶ 412. On June 22, 2000, Qwest said that the Centrex feature lists and USOCs are under development and agreed to provide information on this product as it becomes available. Since then, Qwest has not provided information about UNE-P-CTX to Eschelon. Unlike other “standard” products that Qwest indicates are “under development,” UNE-P-CTX is not listed separately in the SGAT or Qwest’s proposed Amendment. *See* SGAT, pp. 128-132; Ex. 1, pp. 5-12. Qwest’s wholesale web site, however, contains the following description:

UNE-P Centrex

Description

Retail and/or Resale Centrex lines that are already in their preexisting combined state are available to Co-providers as UNE-P-CTX.

UNE-P-CTX is comprised of the following unbundled network elements 2 Wire Analog Loop, Analog Line Side Switch Port, Shared Transport and Features. Standard offering is under development.

Implementation

Qwest will begin making UNE-P-CTX preexisting combinations available to Co-

providers upon request. Qwest will accept orders for such UNE Combinations on an Individual Case Basis via a faxed LSR. After standard offering development is complete, Qwest will provide Co-providers with access to UNE-P-CTX preexisting combinations according to the standard intervals for the equivalent retail service. Please refer to the Service Interval Guide for Interconnection and Resale Services (<http://www.uswest.com/carrier/guides/interconnect/html/INT1-6.html>) and check the intervals associated with Centrex under Resale.²⁵

The description indicates that UNE-P-CTX includes “Features,” but it does not list the features or identify where to find them. The description also indicates that “Qwest will accept orders for such UNE Combinations on an Individual Case Basis via a faxed LSR.” *See id.* Qwest has not offered this option in response to any of Eschelon’s requests for Centrex with UNE-P. To the contrary, Qwest has stated flatly that Centrex is not available. Qwest has also indicated that it needs to take additional steps (such as developing the features lists and USOCs) before Centrex will be available. If the USOCs are unavailable, Eschelon would not have the information it needs to complete an LSR, regardless of whether the LSR is delivered by fax or interface. Certainly, Qwest has not offered or provided any instructions or documentation for doing so to Eschelon. Either the web site is incorrect, or the information provided by Qwest to Eschelon is inaccurate. In either case, this conflicting information is another example of the inconsistency and unreliability of Qwest’s processes and practices.

Instead of the above product description, the SGAT contains the following language regarding Centrex:

9.23.3.7 CLEC may request a service change from Centrex 21, Centrex Plus or Centron service to UNE-P-POTS. The UNE-P-POTS line will contain the UNEs established in 9.23.3.2.

9.23.3.7.1 Only vertical features may be added to the UNE-P-POTS line. Administrative controls specific to Centrex will not be converted.

²⁵ http://www.uswest.com/wholesale/productsServices/irrg/une_p_c.html

SGAT, p. 132. The first of these paragraphs appears consistent with Eschelon's understanding of the limitations on the system change that will take place in December with Release 6.0. The limitations of that offering are described below in Section III(B)(5). The second paragraph, and in particular the second sentence of that paragraph, is unclear. Eschelon is unaware of any basis for this limitation. Qwest should clarify the meaning of these provisions, and the Commission should ensure that the SGAT fully reflects Qwest's obligation to provide Centrex as part of unbundled switching. *See* Local Competition First Report and Order ¶ 412.

Qwest's SGAT generally outlines Qwest's obligation to provide unbundled switching. *See, e.g.*, SGAT, pp. 104-05, ¶ 9.11.1. In light of Eschelon's experience in attempting to obtain an accurate list of the features that are available with UNE-P, the SGAT should be more specific on this issue, at least with respect to UNE combinations. Qwest should commit in the SGAT to documenting and making readily available (preferably in electronic form) a list of the features that Qwest is obligated to provide. The list should expressly include Centrex. Qwest should provide the USOCs for those features, just as it does today for its "available for resale" list of features. Qwest should mechanize all of these features, so CLECs can actually order them with UNE combinations. Qwest should also commit to provide features either individually or in packages. For packages that Qwest offers to its retail customers, Qwest should commit to allowing CLECs to order packages with one USOC (as Qwest's own retail representatives do), instead of requiring CLECs to list the features separately. Qwest should also state in its SGAT that it will provide features that the switch is capable of providing, regardless of whether Qwest offers them to retail customers. The SGAT

should state that the use of the BFR process is only required when a feature is ordered for the first time, and Qwest does not offer it to its retail customers but the switch is capable of providing it. The BFR process cannot be open-ended, and it should not be used to delay the availability of the feature. The SGAT should be clear that these provisions apply to UNEs and UNE combinations. *See* BellSouth Louisiana II Order ¶¶ 216-20.

iii. Temporary FCC Constraint

Qwest explains in its testimony that it has attempted to memorialize the terms of the FCC's Supplemental Clarification Order in its SGAT. *See* Stewart Supp. Aff. pp. 54-55; SGAT 9.23.3.6 – 9.23.3.6.2.4; *see also* Ex. 1, pp. 7-12 (proposed Amendment). The FCC has stated expressly that the test for “Significant Amount of Local Exchange Traffic” is a “*temporary*” constraint until it resolves the issues in the Fourth NPRM. *See, e.g.*, FCC Supp. Order Clarification, ¶ 8 (June 2, 2000) (emphasis added). The FCC Order speaks for itself. If such terms are included in the SGAT, their temporary nature should be addressed.

iv. Bona Fide Request (“BFR”) Process

After listing its “standard” product offerings, Qwest indicates that, “if a CLEC desires access to a different UNE Combination, the CLEC may request access through the BFR process in SGAT Section 17.” Stewart Supp. Aff. p. 56; *see also* Ex. 1, p. 5 (proposed Amendment). Using a BFR process is time-consuming and can be costly. It also injects uncertainty and thus adversely affects a CLEC's ability to plan and speed to market. Therefore, use of a BFR process should be minimized as much as possible.

CLECs are not required to use a BFR process when they desire access to a different UNE Combination from the ones on Qwest's standard product list. Qwest

cannot unilaterally limit its obligation to provide UNE combinations by designating certain UNE combinations as “standard” and not offering others on a routine basis. Eschelon has already encountered this problem with Qwest. Qwest is unable or unwilling to provide the features that should be available with its most basic UNE-P-POTS product, or even to produce a complete list of them. *See supra* Section II(B). Although Qwest claims to offer “different” UNE Combinations through the BFR process, Qwest has told Eschelon that it cannot provide these features at all because the order is rejected when it “hits” Qwest’s billing system. As discussed above, Qwest then alters a completed order so that a customer may lose a feature. *See id.* Although Qwest has identified custom ringing as a feature of the unbundled switch port, for example, Qwest apparently has not yet completed an MCR to provide that feature with UNE-P-POTS. *See id.* Qwest basically requires CLECs to each submit individual BFR requests for every feature and UNE combination they desire (even though the law clearly requires Qwest to provide them) and then wait for Qwest to submit and complete an MCR. Such a procedure is entirely unworkable and will seriously delay development of competition.

Qwest indicates that it will expand its list of standard offerings “as demand materializes.” Stewart Sup. Aff., p. 56. Demand materialized some time ago for the features, functions, and capabilities of the switch, but Qwest is unable to provide them with its most basic UNE-P-POTS product. Demand also materialized some time ago for UNE-P-CTX (Centrex). Eschelon has provided to Qwest a list of its Centrex 21 customers in Minnesota whose lines need to be converted from resale to UNE combinations as soon as that product is available. Eschelon indicated that additional customers in other states will also need to be converted. Although Qwest lists a “UNE-P

Centrex” product on its wholesale website,²⁶ that product is not listed in the SGAT or Qwest’s proposed Amendment. *See supra* (previous section). Also, Qwest is unprepared to accept such orders at this time and will not even process some of the equivalent Centrex features with a 1FB line. Requiring CLECs to use the BFR process to fill gaps in Qwest’s compliance with the law is a barrier to market entry and expansion.

The SGAT language should accurately reflect Qwest’s obligations. This is not accomplished by requiring use of the BFR process whenever requested UNE combinations are “different” from those Qwest chooses to identify as “standard.” The BFR process should be used only in limited circumstances when Qwest demonstrates that it does not provide the requested combination in the ordinary operation of its network, and this is the first request to do so. The SGAT should also indicate that, if Qwest begins to combine elements differently, Qwest will provide such combinations to CLECs at the same time on a nondiscriminatory basis, without requiring use of the BFR process. *See* Sprint Arbitration Order, p. 11.

2. “CLEC Performed” Combinations

Qwest describes its methods for allowing CLECs to combine UNEs with their own facilities in its testimony. *See* Stewart Supp. Aff., pp. 56-58.²⁷ Eschelon has been forced to expend its resources on attempting to place routine UNE-P-POTS orders. Given the time delays and the customer-affecting problems that have occurred with

²⁶ *See* http://www.uswest.com/wholesale/productsServices/irrg/une_p_c.html

²⁷ With respect to methods offered by Qwest for combining UNEs with Eschelon’s own facilities, Eschelon understands that Qwest use of an intermediate frame is now optional. Although Qwest suggests that there has been “confusion” surrounding this issue, *see* Stewart Supp. Aff., p. 58, the facts are clear. At one time, Qwest refused to combine elements and instead offered only use of an intermediate frame that it called the “Single Point of Termination,” or “SPOT,” frame. This position was anti-competitive. For example, the Minnesota Commission adopted the administrative law judge’s finding that access resulting from use of the

supposedly routine UNE-P-POTs orders, initiating additional UNE combinations efforts, such combining UNEs with Eschelon's own facilities, may take time.

Because those methods involve collocation, however, Eschelon will point out that it has had problems with the collocation process in Qwest's territory. Problems with collocation have related primarily to availability of transport, LIS trunking, and tie pairs. Serious delays have occurred due to Qwest's capacity shortages. Even for a simple augment, Qwest takes 120 days to bring a cable to Eschelon's cage. Qwest deems this a new collocation with the same build-out time for a full collocation cage, and it requires a full quote preparation fee. In light of these issues, Eschelon is justifiably skeptical that the methods presented by Qwest will operate as smoothly in practice as described in Qwest's testimony and SGAT.

3. "New" Combinations

As Qwest concedes, Arizona is in the Ninth Circuit, where that Court has found that the "Supreme Court opinion [in *AT&T v. IUB*] . . . undermined the Eighth Circuit's rationale for invalidating" 51.315(c)-(f). *USWC v. MFS*, 193 F.3rd 112 (9th Cir. 1999) (*cited in* Steward Supp. Aff. p. 51). The Court said:

Although the Supreme Court did not directly review the Eighth Circuit's invalidation of §51.315(c)-(f), its interpretation of 47 U.S.C. §251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act. We must follow the Supreme Court's reading of the Act despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation.

Id. Since then, in Qwest's arbitration with Sprint, this Commission declined to order Qwest to provide combinations that are not part of its normal business practices in the ordinary operation of its network. *See* Sprint Arbitration Order, p. 11. Of course, Qwest

SPOT frame was "*discriminatory.*" Report of the ALJ, MPUC Docket No. P-442, 5231, 3167, 466,

may conclude that it must provide such combinations of UNEs to comply with the Ninth Circuit's order and gain entry into the interLATA market.

In any event, the distinction should be clarified between new *lines* in combinations that Qwest provides in the ordinary operation of its network and combinations that Qwest does not currently provide. At a minimum, Qwest is required to provide new lines with combinations of the type ordinarily found in Qwest's network pursuant to Rule 315(b).

B. PROVISIONING PROCESS

Qwest indicates that it has adopted a process for provisioning UNE combinations designed "to simplify the CLEC's ordering process for UNE combinations." Stewart Supp. Aff., p. 59. As described above, the provisioning process is undeveloped, and support is inadequate. In addition, Qwest's testimony and SGAT raise issues relating to ordering on a single order form, service intervals, project management support for Large Number of Conversions, billing, and Release 6.0, including Centrex conversions. *See id.* pp. 59-61.

1. Single Order Process "Similar to Resale"

Qwest indicates that it has simplified ordering of UNE combinations by adopting a process that uses a single order, or local service request ("LSR"). *See* Stewart Supp. Aff., p. 59. The Eschelon-Qwest interconnection agreement provides:

For Services for Resale or unbundled Network Elements, US WEST shall providethe capability to order local service, intraLATA and interLATA toll services by entering Co-Providers's choice of carrier on a single order.

421/CI-96-1540, p. 54 (Nov. 17, 1998) (adopted May 3, 1999) (emphasis added).

Att 5, ¶ 3.1.3.1, p. 10; *see also* Att 5, ¶2.2 & 3.2.2.6. Therefore, Eschelon may order not only all UNEs in a combination, but also all types of service (local and toll), on a single order. This Commission approved the interconnection agreement between Qwest and AT&T on July 31, 1997. It approved Eschelon's interconnection Agreement with Qwest, which is "essentially the same" as the AT&T contract, on April 28, 2000. *See* Decision No. 62489, p. 1. This requirement has been in place for some time.

Despite this language and the statements in Qwest's testimony, Qwest has suggested in discussions relating to Qwest's proposed Amendment that Qwest will require CLECs that have not signed its proposed Amendment to use multiple orders to request UNE combinations. *See* Ex. 2, p. 11, ¶ 1.3.9 (Eschelon's Response). The proposed Amendment does not discuss whether one or more orders will be required. *Id.* Qwest's testimony does not cite such a provision in the SGAT, and Eschelon could not find one. Because of the uncertainty created by Qwest's suggestion, however, the SGAT should include a provision that Qwest shall provision UNEs either individually or in combination using a single order.

Qwest states that it developed a single LSR process, similar to resale, "rather than process conversions from retail and/or wholesale as two orders (with a disconnect of the finished service and a new connect of a UNE Combination arrangement)." *See* Stewart Supp. Aff., p. 59. Eschelon selects a change in service by selecting change old/change new ("c" and "t") in IMA-GUI, instead of disconnect/add, on the resale form for the activity type Conversion as Specified ("z"). To Eschelon's knowledge, this selection was already in place for other types of orders, and now Eschelon uses it for UNE-P-POTS orders. Eschelon understands that, with its next release in December, Qwest plans to

change the code used for UNE orders from “E” for resale to “M” for UNEs. Eschelon hopes that this change does not alter the ability to continue to select change old/change new and does not otherwise limit the features, functions, and capabilities available with UNE combinations.

2. Service Intervals

Qwest indicates that the standard service intervals for each UNE combination are identified in the UNE-P and UNE Combination Resource Guide, which includes the Standard Interval Guide (“SIG”) for Interconnection and Resale Services. *See* Stewart Supp. Aff., p. 60. Qwest indicates that CLECs can use the interval in the SIG or separately agree to different intervals. *See id.* Eschelon’s interconnection agreement with Qwest in Arizona provides that the parties must mutually agree before intervals in the SIG may be applied. *See* Agreement, Att 5, ¶ 3.3.4.1, p 13.

Nevertheless, Eschelon learned recently that Qwest had plans to change its systems to automatically edit Eschelon’s desired due dates against Qwest’s SIG dates. Eschelon participates in a CLEC Forum that discusses issues that arise in Qwest’s Co-Provider Industry Change Management Process (“CICMP”). The CLEC Forum asked Qwest to give a presentation on upcoming IMA releases and other issues. When Qwest presented information about upcoming releases in response to the CLEC Forum’s request on July 19, 2000, Qwest indicated that IMA 5.02 would be deployed in August and would “Edit due date against standard interval guide.” Eschelon pointed out that it had not agreed to use the SIG intervals and that some of the intervals in its contract may be different from those in the SIG. Eschelon was particularly concerned about this issue, because it had only recently disputed a similar issue with Qwest. In that situation, Qwest

ultimately conceded that Eschelon's contract interval, and not the longer SIG interval, applied:

Although the contract specifies that DS0 loops be provisioned in a minimum of two (2) days, Eschelon has the option of requesting a longer interval period. For a variety of reasons, Eschelon desires to have its DS0 loops provisioned in five (5) days, regardless of order size, and it does not agree to submit to the 5-plus day interval provisions set forth in the separate U S WEST Standard Interval Guide.

After reviewing various provisions in the parties' Minnesota Interconnection Agreement, U S WEST concurs with Eschelon that, pursuant to section 9.1 of Attachment 5, it may submit to U S WEST DS0 loop orders with a desired due date based on a five (5) day interval and, assuming that such orders are otherwise compliant with the Interconnection Agreement, U S WEST will accept such orders.

See Ex. 4, p. 1 (Qwest intervals letter).

This dispute over unambiguous contract language took weeks to resolve. If Qwest had changed its system to automatically edit against the SIG without respect to the interconnection agreements, as it had planned to do before Eschelon happened to discover it, Eschelon would not only have had to fight this issue but also would have had to experience further delay while additional changes were made to un-do the earlier erroneous system changes.

After the CLEC Forum meeting, Qwest indicated that it would change its plans to include this change in the 5.02 Release in August and that, instead, Qwest would delay the change until October, when IMA will compare dates with the standard interval and contract dates. Eschelon has requested documentation in advance of implementation of this change to explain the change and how the system accounts for Eschelon's interconnection agreements. No process is in place for such notice or provision of such documentation. Eschelon does not know whether or when it will receive the requested information or when in October the change is to take place. With this history, Eschelon

has legitimate concerns about the practical implementation of the statements in Qwest's testimony and SGAT about standard service intervals.

3. Project Management Support for "Large Numbers" of Conversions

Qwest states that it "will work pro-actively with CLECs to provide project management support for processing large volumes of conversions." *See* Stewart Supp. Aff. p. 60.

a. *Need for Project Managers and Support*

Eschelon has a long-standing request, repeatedly made, for additional support, including additional account team personnel and project managers. Qwest's support for Eschelon to date has been inadequate. A single account manager is inadequate to handle Eschelon's account. One account manager cannot possibly have sufficient expertise even for coordination as to all necessary subjects and does not have sufficient time to address all issues in a timely manner. The account manager, no matter how talented and well meaning, can and does become a bottleneck. This is particularly true because the account manager currently acts as a liaison for many issues for which direct contact with the appropriate people would be preferable. Assigning dedicated, knowledgeable project managers to specific projects should alleviate some of the burden on the account manager and facilitate successful completion of major projects. This sort of arrangement has been used in the access environment and should be considered for local projects as well. Also, allowing more direct contact with individuals knowledgeable about specific subjects would facilitate better communication and earlier resolution of issues. Dedicated contacts for issues such as billing would also be an improvement.

Eschelon has requested both additional account team support and, for certain situations, project managers. To date, Qwest has not assigned the additional personnel needed to support Eschelon's account adequately. Eschelon repeated its request for additional account and project management support just yesterday. Qwest indicated that such resources are currently not available at Qwest. Qwest's commitment to provide project management support is stated in its testimony, but Eschelon could not find it in the SGAT.

b. *Delays and pricing associated with conversions*

Specifically with respect to project management for conversion of a large number of resold lines to UNE-P-POTS and UNE-P Centrex, Eschelon and Qwest have discussed this issue in the context of Qwest's proposed Amendment. *See* Ex. 1, p. 14 (proposed Amendment). Qwest has proposed establishing "a managed project for conversion of lines from resale to UNE-P" that requires Eschelon to "submit, via IMA, a maximum of ____ of those resold lines to UNE-P per month." *See* Ex. 1, proposed Amendment, p. 14 (with Qwest separately suggesting a cap of 500 orders per month). Qwest has indicated that it is unprepared to convert large numbers of POTS lines, or any Centrex lines, at this time.

At the 500 orders per month suggested by Qwest, Eschelon's resold POTS lines in Minnesota alone would not be fully converted for at least a year. And, any additional lines, including POTS and Centrex lines in Arizona and other states, would extend the time period even longer. Qwest's proposal demonstrates that Qwest is unprepared at this time to handle current demand for conversion orders even for basic UNE-P-POTS orders.

It would also force Eschelon to wait more than a year before receiving the full advantages of UNE combinations, including pricing, that it should be receiving today.

With respect to when pricing for UNE combinations begins to apply, Qwest's SGAT provides:

9.23.3.11 If CLEC requests that an existing resale end-user be converted into a UNE Combination, the resale rate will continue to apply until the date Qwest completes conversion of the order into UNE Combination pursuant to the standard provisioning intervals set forth in this Section. After placement of an order for UNE-P or UNE-C services, in the event the Parties anticipate significant delay past normal intervals due to high volumes or other issues, the Parties shall agree upon an appropriate implementation schedule and effective billing date.

This provision delays the availability of UNE-P pricing even longer than it has already been delayed. AT&T's interconnection agreement in Arizona, which Eschelon has adopted, requires Qwest to provide UNE combinations. *See* Agreement, Part A, ¶ 21 & Att. 3. The AT&T interconnection agreement was approved on July 31, 1997. During all of the time period when Rule 315(b) has been in effect, this requirement has been a part of Qwest's obligations under the interconnection agreement. Therefore, Eschelon, AT&T, and other opt-in CLECs should have been able to order combinations at the corresponding UNE-P rate over this time period.

Instead, Qwest publicly and repeatedly stated its policy that it would not provide UNE combinations to CLECs. This forced CLECs, where they had no facilities, to either forego entering the market or to act as resellers and thus pay higher rates. Qwest has taken the position that its actions were justified because its legal obligation to provide combinations was unclear until recently, when the United States Supreme Court issued an order on the issue in January of 1999 or even later when the FCC's unbundling rules became effective in February of 2000.

Given this background, CLECs should be entitled to the difference between the resale price and the UNE-P price for any resold lines (including 1FB, Centron, and Centrex) that they would have ordered as UNE-P had it been available from commencement of business to present and going forward. Even assuming rates would not apply retroactively back to commencement of business, other possible dates include January of 1999 (when the Supreme Court ruled), November of 1999 (when the FCC issued its unbundling order), February of 2000 (when the FCC's order became effective), or other dates. If any of these dates were applied, CLECs would receive compensation from Qwest retroactively. After all, CLEC orders would not need to be converted from resale to UNE-P at all, if Qwest had offered UNE combinations earlier pursuant to the interconnection agreements. Qwest should bear the responsibility for putting the lines in the position they would have been in had it not violated the interconnection agreements.

Nonetheless, Qwest does not identify any of these dates as the date when UNE-P pricing applies. Under its SGAT, the resale rate will continue to apply until the date Qwest completes conversion of the order into UNE Combinations pursuant to the standard provisioning intervals set forth in the SGAT. *See* SGAT ¶ 9.23.3.11. After all of the unnecessary and anti-competitive delays experienced to date, therefore, Qwest can continue to prevent CLECs from receiving the advantages of UNE combinations, including pricing, indefinitely while it continues to slow roll processing of orders. Eschelon believes that Qwest would have more incentive to process orders properly if an earlier date applied to pricing for UNE combinations, such as the date upon which a CLEC provides a valid request for conversions with no changes. After all, the customer's service is already in place as a resold service, so Qwest knows all of the details of each

customer's order. If the pricing were already in effect, Qwest would have less incentive to slow roll order processing.

If the resale rate will continue to apply until the date Qwest completes conversion of the order, as currently reflected in the SGAT, provisioning intervals should be clear, adhered to strictly, and promptly enforced with significant remedies. Instead, Qwest's SGAT anticipates "***extending*** standard provisioning intervals, if CLEC orders and/or projects orders for more than 500 UNE-P lines in any one month." SGAT, p. 133, ¶ 9.23.3.9.7 (emphasis added). In New York, Bell Atlantic had provided more than 152,000 network element platforms in service through August of 1999. *See* FCC BANY Order ¶ 231, note 740. The third party tester verified that Bell Atlantic can process more than 570,130 platform orders a year. *Id.* In processing this volume of orders, Bell Atlantic has been subject to performance measurements and remedies. In contrast, Qwest seeks relief from the intervals when orders reach a volume of only 500 UNE-P lines per month per CLEC. Eschelon's experience has shown that performance measures and remedies are needed especially with respect to UNE combination orders. Without them, Qwest has little, if any, incentive to improve its performance so that it may handle greater volumes of orders. At a minimum, the provision potentially extending intervals should be deleted from the SGAT.

4. Billing and Carrier Changes

Qwest briefly describes its billing practices in its testimony. *See* Stewart Supp. Aff., p. 60. Generally, the billing and repair centers are the least timely and responsive at Qwest. After efforts to resolve billing issues through Qwest's account team and Help Desk have failed, Eschelon has turned to the change management process and filed

several change requests through that process.²⁸ Eschelon needs accuracy, comprehensiveness, and timeliness in the billing process for all services and products, including combinations of UNEs.

Qwest also mentions carrier changes in its testimony. *See* Stewart Supp. Aff., p. 60. Eschelon has encountered situations in which Qwest does not provide timely notice to the long distance provider when a customer changes local carriers. To ensure a smooth transition to the new carrier, this issue should be addressed for all orders, including UNE combinations.

5. Release 6.0 and Centrex Conversions

Qwest indicates that it will add “Centrex conversions” in its December 6.0 release. Stewart Supp. Aff., p. 61; *see also* p. 56. In its presentation to the CLEC Forum on July 19, 2000, the list of “CRs” to be added in Release 6.0 also includes “UNE-P (Centrex).” Despite its inclusion on the list of CRs for Release 6.0, Eschelon’s understanding is that making UNE-P-Centrex available is not part of IMA release 6.0. Qwest has indicated that it is a conversion only candidate to allow conversion from Centrex 21 to UNE-P POTS. In other words, a customer’s service may be converted from resale to a combination, but that combination will be limited to UNE-P-POTS service without Centrex. The customer will actually change type of service. Other than this type of change, Qwest has indicated that Centrex is not available at this time with UNE combinations, and it has not provided a date when it will be available.

In its testimony, Qwest states: “at the request of Centrex resellers, Qwest has agreed to convert existing Centrex combinations on an ICB basis until such time as a

²⁸ *See* Change Request (CR) Nos. 5043086, 5043134, 5043149, 5043162, 5043176, 5043187, 5043197,

standard product can be developed.” Stewart Supp. Aff., p. 56. This is news to Eschelon, an authorized Centrex reseller in Arizona. Eschelon has made inquiry upon inquiry about how to convert Centrex lines to UNE combinations. These inquiries have been made in weekly meetings with the Qwest account team, in conversations and emails with the account representative, in escalations and meetings with executives, and every other context known to be available to Eschelon. Eschelon has provided spreadsheets to Qwest regarding available features confirming that Qwest has told Eschelon that such features are “not available at this time,” and Qwest has never responded that this is incorrect. In every case, Qwest’s position has been that Centrex is *not available* with UNE combinations. Qwest has not said that it is available under certain conditions, such as on an ICB basis. At some point, in numerous communications all dealing with the availability of Centrex with UNE combinations, Qwest might have mentioned that there is a way to obtain Centrex with UNE combinations, if that is in fact the case.

Instead, Qwest has claimed that its systems cannot either process such an order or bill for such a combination. If that claim is true, Eschelon does not understand how Qwest can provide Centrex even on an ICB basis. If it is not true, and Qwest is making Centrex available to other carriers but not to Eschelon, this is discriminatory. Once again, and now in this context, Eschelon asks Qwest to provide Centrex with UNE combinations and to simply tell Eschelon how this may be accomplished and at what rate.

C. MAINTENANCE PROCESS

In its testimony, Qwest describes a flowchart regarding tasks performed by Qwest to maintain UNE combinations. *See* Stewart Supp. Aff., p. 61. The best flow chart possible is not worth paper it is printed on if it is inadequately staffed and supported. Qwest's maintenance support for local orders is wholly inadequate. Generally, the centers are among the least timely and responsive at Qwest. This remains true for problems with UNE-P-POTS orders. As described earlier, the customer disruption and outages that have occurred with UNE-P-POTS were not resolved in a timely manner. Eschelon had difficulty simply finding the correct personnel at Qwest to assist with the issues. The Qwest personnel have been inadequately trained and are generally unfamiliar with UNE combinations.

D. PERFORMANCE MEASUREMENTS & RESULTS

Qwest indicates that it is participating in the Arizona Technical Advisory Group ("TAG") and the Arizona Third Party Operations Support System ("OSS") Test and Workshops. *See* Stewart Supp. Aff., p. 62. Eschelon's resources are limited, but it is attempting to monitor these issues. It is a daunting task for smaller CLECs. With respect to the performance measures that are being developed in those contexts, Eschelon notes that combinations of UNEs have been described simply as "UNE platform UNE-P POTS."²⁹ This seems to suggest that testing is limited to Qwest's basic UNE-P-POTS "product." For all of the reasons described in these Comments, Eschelon believes that the measurements should not be limited in this manner. The UNE-P-POTS combination suffers from numerous problems regarding availability of features and ability to provide

service without disruption or outages, and thus it should be tested until Qwest can demonstrate that these problems have been overcome. UNE-P-POTS is not the only UNE combination, however, that CLECs desire or to which they are entitled. A UNE combination with Centrex, for example, is desired by CLECs. Testing will be insufficient if it is limited to UNE-P-POTS, as Qwest defines that term.

Qwest also indicates in its testimony that, in the capacity test, Qwest has agreed to an incremental percentage increase to test volumes for September 2001 orders. *See* Stewart Supp. Aff., p. 62. The structure of any capacity test should account for Qwest's policy of refusing to allow CLECs to place orders for UNE combinations in Arizona without a contract amendment. Current demand would be larger if that requirement had not been in place for months. The numerous, serious provisioning problems and all of the uncertainties in the process have also affected demand.

With respect to the performance measures, Eschelon is unaware of any metrics with respect to the change management process. Eschelon and other CLECs have identified several issues with that process that the CLEC Forum has asked Qwest to address. *See* Ex. 5 (CICMP letters). The Bell Atlantic change control plan is enforced by metrics and self-executing remedies. *See* BANY Order ¶105. Intervals need to be established for the distribution of Qwest's change management notification and documentation, along with metrics to report Qwest's compliance with those intervals. Implementing metrics and self-executing remedies to enforce CICMP would greatly assist in improving that process. In turn, any improvements resulting from changes in the process and additional automation may help with the "moving target" and "hit and miss"

²⁹ *See, e.g.*, Qwest's Response to CLEC Proposals on Penalty Assurance Plan, Arizona Docket No. T-00000B-97-0238 (Aug. 21, 2000) (spreadsheet, at page 3).

nature of the policies and practices that Eschelon encounters on a daily basis in its dealings with Qwest.

E. BFR REQUESTS

Qwest again discusses BFR requests in its testimony and describes its proposed process. *See* Stewart Supp. Aff., pp. 62-64. As indicated above, using a BFR process is time-consuming and can be costly. The intervals described in Qwest's testimony show this can be the case. Qwest claims that it has processed some BFRs within two weeks. *Id.* at 64. Few, if any, of Eschelon's major concerns have been addressed within two weeks. The BFR process is difficult to monitor and may result in discriminatory treatment among carriers. For all the reasons discussed, use of a BFR process should be minimized as much as possible. Qwest should not be allowed to use the BFR process to fill gaps in its compliance with the law.

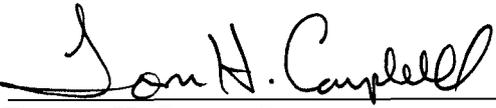
IV. CONCLUSION

Even with respect to UNE combinations that Qwest describes as "standard" products, Qwest cannot show present compliance with its obligation to provide combinations of UNEs or that "it has 'fully implemented the competitive checklist [item]... .'" *See* BANY Order at ¶¶ 37 & 44. Eschelon's experience to date demonstrates that Qwest's policies, practices, and systems are in early stages of development and need significant improvement. Qwest appears to be experimenting with Eschelon's UNE-P-POTS orders and attempting to develop processes as it goes along. Live customers are involved, however, and Qwest's failed attempts are adversely affecting end-user customers. Qwest should be required to show that it has documented

processes in place to which it has adhered over time. It cannot make any such showing with respect to UNE combinations.

Dated: September 21, 2000

LEWIS and ROCA LLP

By: 

Thomas H. Campbell
40 North Central Avenue
Phoenix, AZ 85004
Attorneys for Eschelon Telecom, Inc.

AND

Karen L. Clauson
Director of Interconnection
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ORIGINAL and ten (10)
copies of the foregoing filed
this 21st day of September, 2000,
with:

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Arizona Corporation Commission
Docket Control – Utilities Division
1200 W. Washington Street
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to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDEL
Commissioner

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

VERIFICATION OF GARTH MORRISETTE

I, Garth Morrisette, being duly sworn, state that I am the Manager of Regulatory Affairs for Eschelon Telecom, Inc. I have personally participated in meetings and discussions with Qwest representatives about combinations of unbundled network elements. By this affidavit, I verify the factual assertions as true and correct statements to the best of my knowledge in regard to the Comments Addressing UNE-Combinations filed today in this proceeding by Eschelon Telecom, Inc.

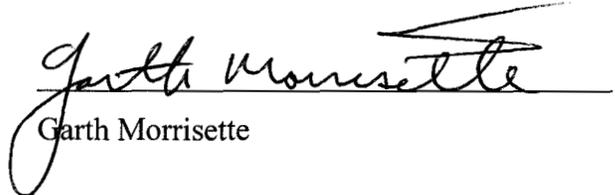
I also verify that the attached exhibits are true and correct copies of the following documents:

| <u>Exhibit</u> | <u>Description</u> |
|----------------|--|
| 1 | Qwest's Draft Amendment No. 5 to the Interconnection Agreement Between Eschelon Telecom of Minnesota and Qwest Corporation (July 10, 2000), with cover email ("proposed Amendment") |
| 2 | Eschelon 9/11/00 Comments on USWC's Proposed Amendment No. 5 to the Interconnection Agreement Between Eschelon Telecom and USWC (Sept. 11, 2000), with cover letter and exhibits ("Eschelon Response") |
| 3 | Newspaper articles |

- 4 Letter from Laurie L. Korneffel of Qwest to F. Lynne Powers of Eschelon (June 23, 2000) ("Qwest intervals letter")
- 5 Letters from F. Lynne Powers on behalf of CLEC Forum to Sydney Margul of Qwest and Denise Anderson of the Regional Oversight Committee ("ROC") (Aug. 28, 2000) ("CICMP letters")

FURTHER AFFIANT SAYETH NOT.

Dated this 20th day of September 2000.


 Garth Morrisette

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

SUBSCRIBED AND SWORN TO before me this 20th day of September, 2000 by Garth Morrisette, who certifies that the foregoing is true and correct to best of his knowledge and belief.



Witness my hand and official seal.


 Notary Public

My commission expires:

January 31, 2005

-----Original Message-----

From: Traci Byrne [SMTP:tbyrne@uswest.com]
Sent: Monday, July 10, 2000 10:34 AM
To: ddahlers@eschelon.com
Cc: Ronald O Van Zandbergen; James Gottschalk; Steve Denman; Cindy Orenstein
Subject: UNE-P Amendment

Dennis:

Attached below is our UNE-P Amendment as it stands today. We have kept the previously agreed-to changes in red-line and blue-line. We highlighted the changes agreed to in last week's meeting in gray. Also notice that I have also made our name change to "Qwest Corporation".

Call Ron (402-422-3938) or me with any questions.

(See attached file: eschelon une red line 7-7-00.doc)

Traci Byrne
Qwest Corporation CD&S



Mac Word 3.0

(303.793.6606)

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NOT FOR EXECUTION – FOR DISCUSSION PURPOSES ONLY
Amendment No. 5 to the Interconnection Agreement
Between Eschelon Telecom of Minnesota

And Qwest Corporation (f.k.a U S WEST Communications, Inc.) ~~U S WEST Communications, Inc.~~

This Amendment No. 5 (“Amendment”) is made and entered into by and between Eschelon Telecom of Minnesota (ESCHELON) (~~“CO-PROVIDER”~~) and Qwest Corporation ~~U S WEST Communications, Inc.~~ (QwestUSWG).

RECITALS

WHEREAS, ~~CO-PROVIDER~~ ESCHELON and QwestUSWG entered into an Interconnection Agreement for service in the state of Minnesota that was executed by ~~CO-PROVIDER~~ ESCHELON on August 6, 1999 and QwestUSWG on August 16, 1999 (the “Agreement”); and

USW Proposed Changes:

WHEREAS, the Federal Communications Commission (“FCC”) ~~recently released a new list of unbundled network elements (“UNEs”) that purportedly satisfies the “necessary” and “impair” standards of section 251(d)(2) of the Telecommunications Act of 1996. See in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Nov. 5, 1999). The effective date for implementation of the Order varies, with some provisions effective on February 17, 2000 and other provisions effective on May 17, 2000; and~~

WHEREAS, ~~CO-PROVIDER~~ ESCHELON desires to access certain combinations of unbundled network elements, ~~in accordance with the FCC’s November 5, 1999 Order and related federal regulations, and whereas, the Parties’ Agreement does not contain terms and conditions addressing such combinations; and~~

WHEREAS, ~~CO-PROVIDER~~ ESCHELON and QwestUSWG desire to amend the Agreement by adding the terms, conditions and rates contained herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Amendment Terms.

USW Accepts Eschelon Proposed Changes:

This Amendment is made in order to ~~expand and clarify, as set forth below, add the terms and conditions and rates for Unbundled Network Elements Combinations and Shared Interoffice Transport, as set forth in Attachment 1, attached hereto and incorporated herein. The rates were established in the generic cost case.~~

~~Attachment 3, Unbundled Network Elements, Section 6.4, “Customized Routing” is deleted from the original Agreement in its entirety and replaced with new language as set forth in Section 2 of Attachment 1. This amendment is intended to standardize and facilitate the order processing and implementation of services composed of Unbundled Network Elements (UNE’s). If there is a conflict between the language contained in this amendment and similar language found in the underlying interconnection agreement, the language found in the underlying agreement will govern.~~

2. Effective Date.

~~This Amendment shall be deemed effective upon execution.~~

3. Further Amendments.

~~Except as modified herein, the provisions of the Agreement shall remain in full force and~~

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effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both Parties.

The Parties, intending to be legally bound, have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

~~Eschelon Telecom of Minnesota, Inc.~~ ~~U.S. WEST Communications, Inc.~~

~~Authorized Signature~~

~~Authorized Signature~~

~~J. Jeffery Oxley~~

~~Pat Kline~~

~~Name Printed/Typed~~

~~Name Printed/Typed~~

~~Executive Director of Law and Policy~~

~~Director Eastern Region~~

~~Title~~

~~Title~~

~~Date~~

~~Date~~

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ATTACHMENT 4
UNBUNDLED NETWORK ELEMENTS COMBINATIONS
CUSTOMIZED ROUTING AND SHARED INTEROFFICE TRANSPORT

1.10 Unbundled Network Elements Combinations (UNE Combinations)

USW Accepts Eschelon's "but are not limited to" language and proposes the other changes as shown:

"UNE Combination" means a combination of legally binding and effective ~~(I don't know what this means)~~ Section 251(c)(3) Unbundled Network Elements ~~that have been defined to~~ meet the necessary and impair requirements of Section 251(d)(1). UNE Combinations are provided to ~~CO PROVIDERESCHELON~~ in its a combined state, and on an "as is" basis, and at ~~Section 252(d)(1) rates~~. UNE Combinations include, but are not limited to, UNE-P and Private Line Combinations when used to provide a "Significant Amount of Local Exchange Traffic." Where does the significant amount criteria come from?

1.1.1 General Terms

1.1.1.1 ~~Qwest~~USWG shall provide ~~CO PROVIDERESCHELON~~ with nondiscriminatory access to combinations of unbundled network elements ~~in accordance to 47 C.F.R. 51.315(b)~~, including but not limited to the UNE-Platform (UNE-P) according to the following terms and conditions.

USW Proposed Changes:

1.1.1.2 The Federal Communications Commission released its new list of unbundled network elements (UNEs) that purportedly satisfied the "necessary" and "impair" standards of Section 251(d)(2). ~~See in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Nov. 5, 1999) (hereinafter "UNE Remand Order").~~ According to the ordering clauses of the UNE Remand Order, some portions of this UNE list become effective on February 17, 2000 and others on May 17, 2000. ~~Unnecessary and we disagree.~~ QwestUSWG will, ~~upon request,~~ allow ~~CO PROVIDERESCHELON~~ to access combinations of such network elements, ~~in accordance with 47 C.F.R. 51.315(b).~~

USW Proposed Changes:

1.1.1.2.1 ~~Qwest~~USWG will ~~only~~ provide combinations of those unbundled network elements that are currently on the FCC's ~~then effective~~ list of UNEs or are properly added by the State Commission according to 47 C.F.R. 51.317. Therefore, if a court of competent jurisdiction, the FCC or Commission stays, vacates or modifies the effectiveness of any portion of the list of UNEs or any of the unbundling requirements, then this Amendment shall be amended to reflect such change, ~~and that element or elements will no longer~~

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be available as part of a combination of elements. Where the Parties fail to agree upon such an amendment within sixty (60) days from the effective date of the change, it shall be resolved in accordance with the dispute resolution provision in ~~CO PROVIDER~~ESCHELON'S Agreement.

USW Does Not Accept Eschelon Proposed Changes:

1.1.1.2.2 ~~UNE Combinations will not be directly connected to a USWC finished service, whether found in a tariff or otherwise, without going through a collocation.~~
Eschelon Question: Where does this requirement come from? **USW Response:** This is a requirement of all three options included in the FCC's 96-98 "Supplemental Order Clarification." If we include similar language in a new "Significant Local Use" section it may be possible to remove this section entirely. ~~Notwithstanding the foregoing, CO PROVIDER~~ESCHELON can connect its UNE Combination to ~~Qwest~~USWC's Directory Assistance and Operator Services platforms.

USW Accepts Eschelon Proposed Changes:

1.1.2.3 ~~If, at any time, a court, the FCC, the State Commission, or any other body of competent jurisdiction determines that a network element previously required to be unbundled under Section 251(c)(3) of the Act no longer meets the necessary or impair standards of the Act or otherwise is taken off of the UNE list, temporarily or permanently, then the 252(d)(1) prices for elements in CO PROVIDER'S Agreement or Exhibit A shall no longer apply to such network element. When this occurs, USWC shall have the right to increase the price of the network element according to any and all applicable law, rules and regulations. The element will also no longer be available to be included as part of a UNE Combination.~~ Agreement contains change of law provision

USW Accepts Eschelon Proposed Changes:

1.1.1.2.34 ~~As a result of a previous Commission decision, USWC defines Rule 315(b) combinations to require QwestUSWC must~~ willte combine unbundled network elements of the type that it currently combines in its network, but is not obligated to combine elements of the type it does not normally combine in its network. ~~en CO PROVIDER'S behalf of the type that USWC currently combines in its network. We disagree about when USWC's obligation to provide UNE combes arose.~~

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1.1.2 Description

USW Proposed Changes:

UNE Combinations are available in ~~at least~~ five categories: (i) 1FR/1FB Plain Old Telephone Service (POTS), (ii) Local Exchange Private Line (subject to the limitations set forth below) (iii) ISDN – either Basic Rate or Primary Rate, (iv) Digital Switched Service (DSS) and (v) PBX Trunks. ~~If additional combinations are made available by USW, they will be offered to ESCHELON under the same terms and conditions as the UNE elements shown in the five categories above. If CO PROVIDERESCHELON desires access to a different UNE Combinations that QwestUSWC does not provide to itself, its customers or its end users: pursuant to 47 C.F.R. 51.315(b), CO PROVIDERESCHELON may request access through the BFR Process set forth in CO PROVIDERESCHELON'S Agreement. I'm not comfortable with the BFR process for two reasons. One, once determine combo is feasible, no need to use BFR for that combo again. Two, BFR process is very time intensive. What is legal basis for claiming BFR process should be used?~~

1.1.3 Terms and Conditions

USW Proposed Changes:

~~1.3.1 USWC shall provide CO PROVIDER with nondiscriminatory access to UNE Combinations, meaning: (a) of substantially the same quality as the comparable services that USWC provides service to its own retail customers, (b) in substantially the same time and manner as the comparable service that USWC provides to its own retail customers and (c) with a minimum of service disruption. Issue of service quality standards already settled in interconnection agreement and settlement.~~

~~1.1.3.12 "UNE-P-POTS": Retail and/or Resale 1FR/1FB lines are available to CO PROVIDERESCHELON as a UNE Combination. UNE-P POTS is comprised of the following unbundled network elements: Analog - 2 wire voice grade loop, Analog Line Side Port, Shared Transport and, if desired, Vertical Features (For complete descriptions, please refer to the appropriate Unbundled Network Elements in this Amendment or CO PROVIDER'S Agreement).~~

~~1.1.3.23 "UNE-P-PBX": Retail and/or resale PBX Trunks are available to CO PROVIDERESCHELON as a UNE Combination. UNE-P-PBX includes the following combination of unbundled network elements: DS1 Capable Loop, Trunk Side Local Switch Port and Trunk Side Shared Transport. [STANDARD OFFERING UNDER DEVELOPMENT]. (For complete descriptions, please refer to the appropriate Unbundled Network Elements in this Amendment or CO PROVIDER'S Agreement).~~

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USW Proposed Changes:

1.1.3.23.1 ~~QwestUSWC will begin making UNE-P-PBX combinations available to CO-PROVIDERESCHELON upon request, beginning February 17, 2000. Until June 17, 2000, USWC will accept orders for such UNE Combinations on an Individual Case Basis. After this date, QwestUSWC will provide CO-PROVIDERESCHELON with access to PBX Trunk combinations according to the standard intervals set forth in Section 1.5 or in ESCHELONS agreement. If this paragraph implies anything about when USWC's legal obligation to supply these combinations commences, we disagree.~~

1.1.3.34 “UNE-P-DSS”: Retail and/or resale Digital Switched Service (DSS) are available to CO-PROVIDERESCHELON as a UNE Combination. ~~UNE-P-DSS is comprised of the following unbundled network elements: [STANDARD OFFERING UNDER DEVELOPMENT] (For complete descriptions please refer to the appropriate Unbundled Network Elements in this Amendment or CO-PROVIDER'S Agreement).~~

USW Proposed Changes:

1.1.3.34.1 ~~QwestUSWC will begin making UNE-P-DSS combinations available to CO-PROVIDERESCHELON upon request, beginning February 17, 2000. Until June 17, 2000, USWC will accept orders for such UNE Combinations on an Individual Case Basis. After this date, QwestUSWC will provide CO-PROVIDERESCHELON with access to UNE-P-DSS combinations according to the standard intervals set forth in Section 1.5. or in ESCHELONS agreement. Same comment at above.~~

1.1.3.45 “UNE-P-ISDN”: Retail and/or resale ISDN lines are available to CO-PROVIDERESCHELON as a UNE Combination. There are two types of UNE-P-ISDN: basic rate (UNE-P-ISDN-BRI) and primary rate (UNE-P-ISDN-PRI). UNE-P-ISDN-BRI is comprised of the following unbundled network elements: Basic ISDN Capable Loop, Digital Line Side Port and Trunk Side Shared Transport. ~~[STANDARD OFFERING UNDER DEVELOPMENT].~~ In addition, vertical features not already associated with the Digital Line Side Port are handled via ICB. ~~UNE-P-ISDN-PRI is comprised of the following unbundled network elements: [STANDARD OFFERING UNDER DEVELOPMENT] (For complete descriptions please refer to the appropriate Unbundled Network Elements in this Amendment or CO-PROVIDER'S Agreement).~~

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USW Proposed Changes:

~~1.1.3.45.1 QwestUSWG will begin making UNE-P-ISDN combinations available to CO-PROVIDERESCHELON upon request beginning February 17, 2000. Until June 17, 2000, USWG will accept orders for such UNE Combinations on an Individual Case Basis. After this date, QwestUSWG will provide CO-PROVIDERESCHELON with access to UNE-P-ISDN combinations according to the standard intervals set forth in Section 1.5 or in ESCHELONS agreement. Same comment as above.~~

1.1.3.56. "Private Line Local Exchange UNE Combinations" (UNE-PL-X): Retail and/or resale private line circuits are available to CO-PROVIDERESCHELON as a UNE Combination. There are many types of Private Line Local Exchange UNE Combinations. QwestUSWG will provide access to the following as standard offerings: UNE-PL-DS1 private line circuits are comprised of include the following unbundled network elements: DS1 Capable Loop and DS1 Unbundled Dedicated Interoffice Transport. ~~(REMAINING STANDARD OFFERINGS UNDER DEVELOPMENT)~~ (For complete descriptions please refer to the appropriate Unbundled Network Elements in this Amendment or CO-PROVIDER'S Agreement.) Other Private Line Local Exchange UNE Combinations (DS0 and DS3 with multiplexing) are under development.

USW Proposed Changes:

~~1.1.3.56.1 QwestUSWG will begin making Private Line Local Exchange UNE Combinations available to CO-PROVIDERESCHELON upon request beginning February 17, 2000. Until June 17, 2000, USWG will accept orders for such UNE Combinations on an Individual Case Basis. After this date, QwestUSWG will provide CO-PROVIDERESCHELON with access to Private Line Local Exchange UNE Combinations according to the standard intervals set forth in Section 1.5 or in ESCHELONS agreement. Same comment as above.~~

1.1.3.56.2 CO-PROVIDERESCHELON cannot utilize combinations of unbundled network elements that include unbundled loop and unbundled interoffice dedicated transport to create a UNE Combination when the combination of network elements is either a special access circuit or is otherwise used primarily as a basis to avoid payment of Switched Access charges unless CO-PROVIDERESCHELON establishes to QwestUSWG that it is using the

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combination of network elements to provide a significant amount of local exchange traffic to a particular customer. Where does significant amount and particular customer language come from?

1.1.3.56.2.1 No private line or other unbundled loop dedicated transport combination is available for conversion into a UNE Combination if it utilizes shared use billing, commonly referred to as ratcheting. I don't know what shared use billing is.

1.1.3.56.2.2 What is the legal authority for these conditions? To find that a private line is carrying a "Significant Amount of Local Exchange Traffic," one of the following three (3) conditions must exist¹:

1.1.3.56.2.2.1 ~~GO~~ PROVIDERESCHELON must certify to ~~QwestU S WEST~~ that it is the exclusive provider of an end user's local exchange service and that the loop transport combination originates at a customer's premises and that it must terminate at the ~~GO PROVIDERESCHELON's~~ collocation arrangements in at least one ~~QwestU S WEST~~ central office. This condition, or option, does not allow loop-transport combinations to be connected to ~~QwestU S WEST's~~ tariffed services.

1.1.3.56.2.2.2 ~~GO~~ PROVIDERESCHELON must certify that it provides local exchange and exchange access service to the end user customer's premises and handles at least one-third (1/3) of the end user customer's local traffic measured as a percent of total end user customer local dial tone lines; and for DS1 level circuits and above, at least fifty percent (50%) of the activated channels on the loop portion of the loop and transport combination have at least five percent (5%) local voice traffic individually; and the entire loop facility has at least ten percent (10%) local voice traffic; and the loop/transport combination originates at a customer's premises and terminates at the ~~GO PROVIDERESCHELON's~~ collocation arrangement in at least one ~~QwestU S WEST~~ central office; and if a loop/transport combination includes multiplexing, each of the multiplexed

The Parties agree that the language in Sections 1.1.3.56.2.2 through Section 1.1.3.56.2.5 conforms to the FCC's supplemental order in CC Docket NO. 96-98 (FCC 00-183, June 2, 2000) and is not subject to change as a result of a final decision by the FCC in a future proceeding.

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facilities must meet the above criteria outlined in this paragraph. (For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria outlined in this paragraph in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment). This condition, or option, does not allow loop-transport combinations to be connected to QwestU S WEST's tariffed services.

~~1.1.3.56.2.2.3~~ For the conversion of services to combinations of unbundled network elements, ESCHELON must certify that at least fifty percent (50%) of the activated channels on a circuit are used to provide originating and terminating local dial tone service and at least fifty percent (50%) of the traffic on each of these local dial tone channels is local voice traffic (measured based on the incumbent's local exchange calling area); and the entire loop facility has at least thirty-three percent (33%) local voice traffic; and if a loop/transport combination includes multiplexing, each of the multiplexed facilities must meet the above criteria. For example, if DS1 loops are multiplexed onto DS3 transport, each of the individual DS1 facilities must meet the criteria as outlined in this paragraph in order for the DS1/DS3 loop/transport combination to qualify for UNE treatment. This condition, or option, does not allow loop-transport combinations to be connected to QwestU S WEST's tariffed services. Under this option, collocation is not required. Under this option, ESCHELON does not need to provide a defined portion of the end user's local service, but the active channels on any loop-transport combination, and the entire facility, must carry the amount of local exchange traffic specified in this option.

~~1.1.3.56.2.3~~ What is the legal authority for this presumption? Why is the burden of proof on the GLEGESCHELON?—There is a legal presumption that any and all Special Access circuits purchased out of federal tariffs are not available as UNE Combinations.—If CO PROVIDERESCHELON can establish—certify—to QwestUSWG through documentary and, if available, other evidencea certification letter that the combination of elements is carrying a "Significant Amount of Local Exchange" Traffic, then QwestUSWG will convert the Special

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~~Access circuit to a UNE Combination. For each Special Access circuit, ESCHELON shall indicate in the certification letter under which local usage option, set forth in paragraph 9.23.3.6.2.2.1, 9.23.3.6.2.2.2, or 9.23.3.6.2.2.3, it seeks to qualify the circuit. For each Special Access circuit, ESCHELON shall maintain appropriate records that demonstrate that ESCHELON's unbundled loop-transport combination is configured to provide local exchange service. If after CO PROVIDER presents its evidence to USWC, CO PROVIDER and USWC disagree as to whether the special access circuit is carrying a Significant Amount of Local Exchange Traffic, CO PROVIDER can then go to the State Commission at which time CO PROVIDER has the burden to establish to the State Commission by a preponderance of the evidence that the special access circuit is carrying a "Significant Amount of Local Exchange Traffic." If CO PROVIDER meets its burden, the Special Access circuit will be converted to a UNE Combination. All rights of appeal will be preserved by both Parties.~~

~~1.1.3.56.2.4 ESCHELON's local service certification shall remain valid only so long as ESCHELON continues to satisfy one of the conditions or options set forth in this Agreement or in the FCC's Supplemental Order Clarification in CC Docket No. 96-98, released on June 2, 2000. ESCHELON must provide written notice to Qwest/USWEST within thirty (30) days if ESCHELON's certification on a given circuit is no longer valid. USWC has the right to verify CO PROVIDER's actual usage on a representative sample of CO PROVIDER's private line circuits to determine the percentage of local exchange usage. If USWC can establish to CO PROVIDER through documentary and, if available, other evidence that such a combination of unbundled network elements is not currently being used to carry a "Significant Amount of Local Exchange Traffic" then that combination of elements will not be available to CO PROVIDER as a UNE Combination. If after USWC presents its evidence to CO PROVIDER, USWC and CO PROVIDER disagree as to whether the circuit is carrying a "Significant Amount of Local Exchange Traffic," USWC can then go to the Commission at which time USWC has the burden to establish to the Commission by a preponderance of the evidence that the combination does not meet the requisite requirements is carrying less than a "Significant~~

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~~Amount of Local Exchange Traffic.” If USWC meets its burden, the combination of unbundled network elements will not be available as a UNE Combination. All rights of appeal will be preserved by both Parties.~~

~~1.1.3.56.2.5~~ In order to confirm reasonable compliance with these requirements, ~~Qwest~~USWC may perform ~~periodic~~ audits of ~~CO-PROVIDER~~ESCHELON's records according to the following guidelines:

(a) ~~Qwest~~USWC may, upon thirty (30) days written notice to a ~~CO-PROVIDER~~ESCHELON that has purchased loop/transport combinations as UNEs, conduct an audit to ascertain whether those loop/transport combinations were eligible for UNE treatment at the time of conversion and on an ongoing basis thereafter.

(b) ~~CO-PROVIDER~~ESCHELON shall make reasonable efforts to cooperate with any audit by ~~Qwest~~USWC and shall ~~collect, compile, maintain and, in connection with an audit, provide~~ ~~Qwest~~USWC with relevant records ~~(for example, call detail records)~~ (e.g., network and circuit configuration data, local telephone numbers) which demonstrate that ~~ESCHELON's unbundled loop-transport combination is configured to provide local exchange service in accordance with its certification)~~ for all traffic that has been transmitted over all loop/transport combinations subject to the audit. ~~CO-PROVIDER~~ must maintain auditable records for at least twelve (12) months, or, in the event of an audit or dispute, until such audit or dispute is resolved, whichever is longer.

(c) An independent auditor hired and paid for by ~~Qwest~~USWC shall perform any audits, provided, however, that if an audit reveals that ~~CO-PROVIDER~~ESCHELON's UNE-PL-X circuit(s) do not meet or have not met the certification requirements, then ~~Eschelon~~CO-PROVIDER shall reimburse ~~Qwest~~USWC for the cost of the audit.

(d) An audit shall be performed using industry audit standards during normal business hours, unless there is a mutual agreement otherwise.

(e) ~~Qwest~~USWC may not exercise its audit rights with respect to ~~a particular CO-PROVIDER~~Eschelon

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(excluding affiliates) more than ~~twice~~ once in any calendar year, unless an audit finds noncompliance.

(f) ~~At the same time that QwestU S WEST provides notice of an audit to ESCHELON under this paragraph, QwestU S WEST shall send a copy of the notice to the Federal Communications Commission.~~

(g) ~~Audits conducted by QwestUSWG for the purpose of determining compliance with certification criteria are “over and above” any audit rights that QwestUSWG may have pursuant to an the interconnection agreement between CO PROVIDERESCHELON and QwestUSWG.~~

USW Note: More Information Concerning Centrex Conversions and A Full List Of Vertical And Centrex Features Will Be Provided When Available.

~~1.1.3.67~~ ~~CO PROVIDERESCHELON~~ may request a service change from Centrex 21, Centrex Plus or Centron service to UNE-P-POTS. The UNE-P-POTS line will contain the UNEs established in Section 1.3.2.

~~1.1.3.6.1~~ ~~1.3.7.1~~ ~~Only vertical features may be added to the UNE P POTS line. Administrative controls specific to Centrex will not be converted. What is legal authority for this provision?~~

USW Proposed Language: Centrex features may be added to a UNE-P analog line side switch port. The Centrex UNE-P station line is composed of the following combination of unbundled network elements; an unbundled analog DS0 line, an unbundled analog line side switch port and Shared Transport [STANDARD OFFERING UNDER DEVELOPMENT]

~~1.3.8~~ ~~CO PROVIDER may request access to and, where appropriate, development of, additional UNE Combinations pursuant to the Bona Fide Request Process in CO PROVIDER'S Agreement. In its BFR request, CO PROVIDER must identify the specific combination of UNEs, identifying each individual UNE by name as described in this Amendment or CO PROVIDER's Agreement. Same concerns as previously noted with BFR process.~~

~~1.1.3.79~~ The following terms and conditions are available for all types of UNE-P:

~~1.1.3.79.1~~ UNE-P will include the capability to access long distance (interLATA and intraLATA) of ~~CO PROVIDERESCHELON's~~ customer's choice on a 2-PIC basis, access to 911 emergency services, capability to access ~~CO PROVIDERESCHELON's~~

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Operator Services platform, capability to access ~~CO-PROVIDERESCHELON's~~ Directory Assistance platform and ~~QwestUSWG~~ customized routing service; and, if desired by ~~CO-PROVIDERESCHELON~~, access to ~~QwestUSWG~~ Operator Services and Directory Assistance Service.

USW Proposed Changes:

1.1.3.79.2 If ~~QwestUSWG~~ provides and ~~CO-PROVIDERESCHELON~~ accepts operator services, directory assistance, and intraLATA long distance as a part of the basic exchange line, it will be offered with standard ~~QwestUSWG~~ branding. ~~CO-PROVIDER~~ is not permitted to alter the branding of these services in any manner when the services are a part of the UNE-P line without the prior written approval of USWC. ~~What is legal authority for this provision?~~ However, at the request of ~~CO-PROVIDERESCHELON~~ and where technically feasible, ~~QwestUSWG~~ will rebrand operator services and directory assistance in ~~CO-PROVIDERESCHELON's~~ name, in accordance with terms and conditions set forth in ~~CO-PROVIDERESCHELON'S~~ Agreement.

1.1.3.79.3 ~~CO-PROVIDERESCHELON~~ may order Customized Routing in conjunction with UNE-P for alternative operator service and/or directory assistance platforms. ~~CO-PROVIDERESCHELON~~ shall be responsible to combine UNE-P with all components and requirements associated with Customized Routing needed to utilize related functionality. For a complete description of Customized Routing, refer to Section 2.

1.1.3.79.4 ~~QwestUSWG~~ shall provide to ~~CO-PROVIDERESCHELON~~, for ~~CO-PROVIDERESCHELON's~~ end users, E911/911 call routing to the appropriate Public Safety Answering Point ("PSAP"). ~~QwestUSWG~~ shall not be responsible for any failure of ~~CO-PROVIDERESCHELON~~ to provide accurate end-user information for listings in any databases in which ~~QwestUSWG~~ is required to retain and/or maintain end-user information. ~~QwestUSWG~~ shall provide ~~CO-PROVIDERESCHELON's~~ end user information to the ALI/DMS ("Automatic Location Identification/Database Management System"). ~~QwestUSWG~~ shall use its standard process to update and maintain, on the same schedule that it uses for its end users, ~~CO-PROVIDERESCHELON's~~

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end user service information in the ALI/DMS used to support E911/911 services. QwestUSWG assumes no liability for the accuracy of information provided by CO-PROVIDERESCHELON.

1.1.3.79.5 CO-PROVIDERESCHELON shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its end users for interLATA and intraLATA services. CO-PROVIDERESCHELON shall follow all applicable laws, rules and regulations with respect to PIC changes and QwestUSWG shall disclaim any liability for CO-PROVIDERESCHELON's improper PIC change requests.

1.1.3.79.6 Feature and interLATA or intraLATA PIC changes or additions for UNE-P, will be processed concurrently with the UNE-P order as specified by the CO-PROVIDERESCHELON.

1.1.3.7.7 ~~1.3.9.7~~ CO PROVIDER agrees to work in good faith with USWG, on all issues, including, if necessary, extending standard provisioning intervals, if CO PROVIDER orders and/or projects orders for more than 500 UNE-P lines in any one month. ~~Standard provisioning intervals is problematic for three reasons. One, agreement already contains DMOQ intervals. Two, our settlement does too. Three, what is legal basis for these conditions.~~

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| <p>USW Proposed language: <u>QwestUSWG</u> and <u>CO-PROVIDERESCHELON</u> will establish a managed project for conversion of lines from resale to UNE-P existing as of the date this Amendment becomes effective. Effective thirty (30) days after execution of this Amendment, <u>QwestUSWG</u> will process, and <u>CO-PROVIDERESCHELON</u> will submit, via IMA, a maximum of of those resold lines to UNE-P per month. If <u>QwestUSWG</u> fails to process UNE-P POTS conversion orders within five (5) business days, the Effective Bill Date will reflect the 6th business date after the UNE-P POTS conversion was requested. Lines that <u>CO-PROVIDERESCHELON</u> migrates from <u>QwestUSWG</u> or other local service providers after the effective date of this Amendment shall be handled pursuant to Section 1.5 or as shown in <u>ESCHELONS</u> agreement.</p> |
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1.1.3.840 If a retail contract or tariff agreement exists between QwestUSWG and the end user customer or reseller utilizing the combination of elements, all applicable Termination Liability Assessment (TLA) or minimum period charge whether contained within tariffs, contracts or any other applicable legal document, will apply and must be paid in full

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by the responsible party. ~~The conversion of finished services to UNE's will not be delayed. The TLA will be assessed after the conversion of the service to UNE's.~~ before the combination of elements is available for conversion into a UNE Combination. What is the legal basis for this?

~~1.3.11~~ If CO PROVIDER requests that an existing resale customer be converted into a UNE Combination, the resale rate will continue to apply until the date USWC completes conversion of the order into UNE Combination pursuant to the standard provisioning intervals set forth in Section 1.5. After placement of an order for UNE P or UNE G services, in the event the Parties anticipate significant delay past normal intervals due to high volumes or other issues, the Parties shall agree upon an appropriate implementation schedule and effective billing date. ~~We have been entitled to UNE combinations and rates since the interconnection agreement was approved. Same comment on provisioning intervals as above.~~

~~1.1.3.912~~ CO PROVIDERESCHELON shall provide QwestUSWC with an ~~twelve~~eighteen (18) month forecast of its expected UNE Combination orders within thirty (30) calendar days of requesting service pursuant to CO PROVIDERESCHELON'S Agreement and this Amendment. The forecast shall be updated every six months for the first year of the contract and each November CO PROVIDERESCHELON shall provide a forecast for the following calendar year. Each forecast shall provide: (a) proposed volumes by month for each type of UNE Combination (by city and/or state); (b) CO PROVIDERESCHELON's anticipated number of UNE Combination service orders; and (c) the name and identifying information of CO PROVIDERESCHELON's key contact personnel. The information provided pursuant to this paragraph shall be considered Proprietary Information under the Nondisclosure Section. What is legal authority for this requirement? **USW Note:** An accurate forecast is beneficial to both Parties to assist in Network and Operational Planning to Meet The Anticipated Demand.)

~~1.3.13~~ When end users switch from USWC to CO PROVIDER, or to CO PROVIDER from any other competitor and is obtaining service through a UNE Combination, such end users shall be permitted to retain their current telephone numbers if they so desire.

~~1.1.3.104~~ In the event QwestUSWC terminates the provisioning of any UNE Combination service to CO PROVIDERESCHELON for any reason, ~~including CO PROVIDER'S non-payment of~~

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~~charges~~, ~~CO-PROVIDERESCHELON~~ shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall ~~QwestUSWG~~ be responsible for providing such notice to ~~CO-PROVIDERESCHELON~~'s end users. ~~QwestUSWG~~ shall only be required to notify ~~CO-PROVIDERESCHELON~~ of ~~QwestUSWG~~'s termination of the UNE Combination service on a timely basis consistent with Commission rules and notice requirements.

1.1.3.115 ~~CO-PROVIDERESCHELON~~, or ~~CO-PROVIDERESCHELON~~'s agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. ~~CO-PROVIDERESCHELON~~'s end users contacting ~~QwestUSWG~~ will be instructed to contact ~~CO-PROVIDERESCHELON~~; however, unless specifically provided otherwise, nothing in this Amendment shall be deemed to prohibit ~~QwestUSWG~~ from discussing its products and services with ~~CO-PROVIDERESCHELON~~'s end users who call ~~QwestUSWG~~ to ~~inquire about QwestUSWG products and services.~~

1.1.3.126 Local circuit switching is not available as a UNE in certain circumstances. Where unbundled local circuit switching is one of the elements in a combination of elements, ~~CO-PROVIDERESCHELON~~ will not request UNE-P where the following conditions exist: The customer to be served with the UNE Combination is a customer with four access lines or more and the lines are located in density zone 1 in specified MSAs as defined in the UNE-P and UNE Combination Resource Guide concerning Unbundled Local Switching. **ESCHELON Note:** We need to verify this corresponds with FCC rule.

1.1.4 Rates and Charges

1.1.4.1 The rates and charges for the individual unbundled network elements that comprise UNE Combinations can be found in ~~CO-PROVIDERESCHELON~~'s Agreement and Exhibit A for both recurring and non-recurring application.

1.1.4.1.1 Recurring monthly charges for each unbundled network element that comprise the UNE Combination shall apply when a UNE Combination is ordered. The recurring monthly charges for each UNE, including but not limited to, Unbundled 2-wire Analog Loop, Analog Line Side Port and Shared Transport,

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are described in ~~CO PROVIDERESCHELON's~~ Agreement and Exhibit A.

- 1.1.4.1.2 Nonrecurring charges for each unbundled network element that comprise the UNE Combination shall apply when a UNE Combination is ordered. These non-recurring charges are described in ~~CO PROVIDERESCHELON's~~ Agreement and Exhibit A.

USW Accepts Eschelon Proposed Change

- 1.1.4.2 If the State Commission takes any action to adjust the rates previously ordered, QwestUSWG will make a compliance filing to incorporate the adjusted rates into Exhibit A. Upon the compliance filing by QwestUSWG and its approval by the Commission, the parties will abide by the adjusted rates on a going-forward basis unless the Commission order provides otherwise.

USW Proposed Changes:

- 1.1.4.3 ~~CO PROVIDERESCHELON~~ shall be responsible for billing its end user customers served over UNE Combinations for all miscellaneous charges and surcharges required by statute, regulation or otherwise required. ~~These charges and surcharges will be consistent with the charges and surcharges for equivalent services ordered by USWG end users. Why and what does "consistent" mean?~~

- 1.1.4.4 ~~CO PROVIDERESCHELON~~ shall pay QwestUSWG the PIC change charge associated with ~~CO PROVIDERESCHELON~~ end user changes of interLATA or intraLATA carriers. Any change in ~~CO PROVIDERESCHELON's~~ end users' interLATA or intraLATA carrier must be requested by ~~CO PROVIDERESCHELON~~ on behalf of its end user.

- 1.1.4.5 If a customer is served by ~~CO PROVIDERESCHELON~~ through a UNE combination, QwestUSWG will not charge, assess, or collect Switched Access charges for interLATA or intraLATA calls originating or terminating from that customer's phone after conversion to a UNE Combination is complete.

- 1.1.4.6 QwestUSWG shall have a reasonable amount of time to implement system or other changes necessary to bill ~~CO PROVIDERESCHELON~~ for Commission-ordered rates or charges associated with UNE Combinations. ~~From our perspective, USWG has had years to get ready to do UNE P.~~

1.1.5 Ordering Process

USW Proposed Changes:

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1.1.5.1 All UNE Combinations and associated products and services are ordered via an LSR. Ordering processes are contained in ~~CO PROVIDERESCHELON'S Agreement, and in the UNE P and UNE Combination Resource Guide. What is the legal status of the guides? We don't want to incorporate a guide that can change without notice to or input from us into our agreement.~~

1.1.5.2 Prior to placing an order on behalf of each end user, ~~CO PROVIDERESCHELON~~ shall be responsible for obtaining and have in its possession a Proof of Authorization as set forth in ~~CO PROVIDERESCHELON'S Agreement.~~

1.1.5.3 ~~Standard sService intervals for each UNE Combination will be identified in the agreement, UNE P, and UNE Combination Resource Guide, which includes the Standard Interval Guide for Interconnection and Resale Services. When the standard agreement interval does apply, CO PROVIDERESCHELON and QwestUSWG will use the standard provisioning interval for the equivalent retail service. Standard intervals shown in the agreement may not apply when certain circumstances exist as specifically set forth in other aspects sections of this UNE Combination section Amendment agreement. In those circumstances, CO PROVIDERESCHELON and QwestUSWG can separately agree to due dates other than the standard interval shown in the agreement. Same issues as above.~~

1.1.5.4 Due date intervals are established when ~~QwestUSWG~~ receives a complete and accurate Local Service Request (LSR) made through the IMA or EDI interfaces or through facsimile. The date the LSR is received is considered the start of the service interval if the order is received on a business day prior to 3:00 p.m. The service interval will begin on the next business day for service requests received on a weekend day or after 3:00 p.m. on a business day. This interval may be impacted by order volumes and load control considerations.

~~1.5.5 CO PROVIDER shall provide USWG with complete and accurate end user listing information for Directory Assistance, Directory Listings, and 911 Emergency Services for all customers served by UNE Combinations.~~

USW Note: (If Eschelon's Merger Settlement Agreement Includes a Requirement For Notification 48 Hours Prior to Disconnect, QwestUSW will comply based on that agreement. We will not include that language in this agreement.)

~~1.5.6 When USWG's end user or the end user's new service provider orders the discontinuance of the end user's existing service in anticipation of moving to another service provider, USWG will render its closing bill to the end user effective with the disconnection. If USWG is not the local service~~

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~~provider, USWC will issue a bill to CO PROVIDER for that portion of the service provided to CO PROVIDER should CO PROVIDER's end user, a new service provider, or CO PROVIDER request service be discontinued to the end user. USWC will notify CO PROVIDER by FAX, OSS interface, or other agreed upon processes when an end user moves to another service provider. We want advanced notice of disconnection. USWC will not provide CO PROVIDER with the name of the other service provider selected by the end user.~~

~~1.5.7 For UNE Combinations, CO PROVIDER shall provide USWC and USWC shall provide CO PROVIDER with points of contact for order entry, problem resolution, repair, and in the event special attention is required on service request.~~

1.1.6 Billing

~~Qwest~~USWC shall provide ~~CO PROVIDER~~ESCHELON, on a monthly basis, within 7-10 calendar days of the last day of the most recent billing period, in an agreed upon standard electronic billing format as detailed in ~~CO PROVIDER~~ESCHELON'S Agreement, billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples available for ~~CO PROVIDER~~ESCHELON review.

1.1.7 Maintenance and Repair

USW modifies Eschelon's Proposed Change:

~~Qwest~~USWC will maintain facilities and equipment that comprise the service provided to ~~CO PROVIDER~~ESCHELON as a UNE Combination. ~~CO PROVIDER~~ESCHELON or its end users may not rearrange, move, disconnect or attempt to repair ~~Qwest~~USWC facilities or equipment, other than by connection or disconnection to any interface between ~~Qwest~~USWC and the end user, without the written consent of ~~Qwest~~USWC, which consent shall not be unreasonably withheld. ~~USWC must reply to such a request within three days from its receipt.~~

2.0 Customized Routing

2.1 Description

2.1.1 Customized Routing permits ~~CO PROVIDER~~ESCHELON to designate a particular outgoing trunk that will carry certain classes of traffic originating from ~~CO PROVIDER~~ESCHELON's customers. Customized routing enables ~~CO PROVIDER~~ESCHELON to direct particular classes of calls to particular outgoing trunks which will permit ~~CO PROVIDER~~ESCHELON to self-provide or select among other providers of interoffice facilities, operator services and

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directory assistance. Customized routing is a software function of a switch. Customized Routing may be ordered as an application with Resale or Unbundled Local Switching.

- 2.1.2 ~~CO PROVIDERESCHELON~~ may elect to route its end-user customers' traffic in the same manner as QwestUSWG routes its end-user customers' calls using existing QwestUSWG line class code(s). This option eliminates assignment and deployment charges applicable to new ~~CO PROVIDERESCHELON~~ line class code(s) required for custom or unique ~~CO PROVIDERESCHELON~~ routing requests.

2.2 Terms and Conditions

- 2.2.1 Customized Routing will be offered on a first-come, first-served basis.
- 2.2.2 ~~CO PROVIDERESCHELON~~ has two options by which to route its end-user customers' calls:
- (a) ~~CO PROVIDERESCHELON~~ may elect to route all of its end-user customers' calls in the same manner as QwestUSWG routes its end-user customers' calls. This option allows ~~CO PROVIDERESCHELON~~ to use the same line class code(s) used by QwestUSWG and thus eliminates line class code(s) and deployment charges to the ~~CO PROVIDERESCHELON~~.
- (b) ~~CO PROVIDERESCHELON~~ may elect to custom route its end-user customers' calls differently than QwestUSWG routes its end user traffic. ~~CO PROVIDERESCHELON~~ may choose different routing by traffic type, by prefix, etc. In this option, there will be a charge for the establishment and deployment of a new ~~CO PROVIDERESCHELON~~ line class code(s). If a ~~CO PROVIDERESCHELON~~ line class code(s) was previously established and deployed at a particular end office, only a deployment charge will apply per new end office location.
- 2.2.3 In both option (a) and (b) above, ~~CO PROVIDERESCHELON~~ shall provide comprehensive routing information associated with any routing request. QwestUSWG will provide line class code(s) to the ~~CO PROVIDERESCHELON~~ for inclusion in the ~~CO PROVIDERESCHELON~~'s LSR (Local Service Request).

2.3 Rate Elements

- 2.3.1 Charges for development of a new ~~CO PROVIDERESCHELON~~ line class code(s) for routing of

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Directory Assistance and Operator Services traffic is included in ~~GO PROVIDERESCHELON~~'s Agreement or Exhibit A. All other custom routing arrangements shall be billed on an individual case basis for each custom routed request.

- 2.3.2 Charges for the installation of new line class codes for custom routing arrangements for directory assistance and operator services traffic is included in ~~GO PROVIDERESCHELON~~'s Agreement or Exhibit A. Installation charges for all other custom routing arrangements shall be billed on an individual case basis for each switch in which the code is deployed.

2.4 Ordering Process

- 2.4.1 ~~GO PROVIDERESCHELON~~ shall issue a Service Inquiry form detailing its routing and facility requirements prior to a pre-order meeting with QwestUSWG. Refer to the New Customer Questionnaire contained in the Interconnect & Resale Resource Guide for a copy of the Service Inquiry.
- 2.4.2 After the Service Inquiry form is completed and provided to QwestUSWG, the pre-order meeting will be jointly established to provide QwestUSWG with the comprehensive network plan, specific routing requirements and desired due dates.
- 2.4.3 QwestUSWG will provide ~~GO PROVIDERESCHELON~~ a detailed time and cost estimate thirty (30) business days after the pre-order meeting.
- 2.4.4 If custom routing is requested, ~~GO PROVIDERESCHELON~~ shall submit a 50% deposit for the establishment and deployment of a new ~~GO PROVIDERESCHELON~~ line class code(s). QwestUSWG will assign a new ~~GO PROVIDERESCHELON~~ line class code(s) and provide it to ~~GO PROVIDERESCHELON~~ for inclusion in the LSR (Local Service Request) which ~~GO PROVIDERESCHELON~~ will subsequently issue for deployment of the line class code(s) by QwestUSWG.
- 2.4.5 If ~~GO PROVIDERESCHELON~~ elects to route their end-users' calls in the same manner in which QwestUSWG routes its end-user customers' calls, establishment and deployment charges for new ~~GO PROVIDERESCHELON~~ line class code(s) will not apply. QwestUSWG will assign existing QwestUSWG line class code(s) and provide to ~~GO PROVIDERESCHELON~~ for inclusion in the LSR (Local Service Request).

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2.4.6 ~~CO PROVIDER~~ESCHELON must place the associated trunk orders prior to the establishment or deployment of Line Class Codes in specific end offices.

2.5 Maintenance and Repair

Maintenance and repair are the sole responsibility of QwestUSWG.

3.03-0 Shared Interoffice Transport

QwestUSWG shall provide Shared Interoffice Transport in a non-discriminatory manner according to the following terms and conditions. ~~We believe shared interoffice transport is an element under our existing interconnection agreement.~~

3.1 Description

Shared Transport is defined as interoffice transmission facilities shared by more than one carrier, including QwestUSWG, between end office switches, between end office switches and tandem switches, and between tandem switches.

3.2 Terms and Conditions

3.2.1 Shared Transport is only provided with Unbundled Local Switch Ports and Unbundled Network Element-Platform (UNE-P), as described in this Amendment. The existing routing tables resident in the switch will direct both QwestUSWG and ~~CO PROVIDER~~ESCHELON traffic over QwestUSWG's interoffice message trunk network.

3.2.2 ~~CO PROVIDER~~ESCHELON may custom route operator services or directory assistance calls to unique operator services/directory services trunks.

3.3 Rate Elements

Shared Transport will be billed on a minute-of-use basis in accordance with the rate described in Exhibit A.

3.4 Ordering Process

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Shared Transport is ordered with Unbundled Line Port and Unbundled Local Switching via the LSR process. Shared transport is assumed to be the choice of routing when ordering a port, unless specified differently by ~~CO PROVIDER~~ESCHELON. Ordering processes are contained in Section 1.5 ~~or in~~ ESCHELONS agreement. Installation intervals are incorporated in the Unbundled Line Port and are listed in the Interconnect and Resale Resource Guide. Same provisioning interval issues.

3.5 Maintenance and Repair

Maintenance and repair are the sole responsibility of QwestUSWG.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

2. Effective Date.

This Amendment shall be deemed effective upon approval by the appropriate state Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, ESCHOLON must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. ESCHOLON will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

3. Further Amendments.

The provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this Amendment may be further amended or altered except by written instrument executed by an authorized representative of both parties.

| | |
|---|--------------------------------|
| <u>Eschelon Telecom of Minnesota, Inc.</u> | <u>Qwest Corporation</u> |
| <u>Authorized Signature</u> | <u>Authorized Signature</u> |
| <u>J. Jeffery Oxley</u> | <u>Elizabeth J. Stamp</u> |
| <u>Name Typed or Printed</u> | <u>Name Typed or Printed</u> |
| <u>Executive Director of Law and Policy</u> | <u>Director – Interconnect</u> |
| <u>Title</u> | <u>Title</u> |
| <u>Date</u> | <u>Date</u> |

September 11, 2000

Via Facsimile, Email, and U.S. Mail

Mr. Ron Van Zandbergen
Qwest Corporation
1314 D.O.T.M. – 6th Floor
Omaha, NE 68102

Re: Qwest's Proposed UNE-P Amendment

Dear Mr. Zandbergen:

We have been reviewing and negotiating Qwest's proposed amendment for combinations of unbundled network elements (UNEs) since late May. We have spent substantial time and resources reviewing and analyzing proposed revisions, exchanging draft documents, and participating in conference calls. Meanwhile, we have been attempting to proceed with placing UNE-P orders in Minnesota without an amendment but have encountered great difficulties.

Enclosed is an updated version of our comments on Qwest's proposed amendment. In Eschelon's comments, an asterisk (*) indicates added information. ALL CAPS indicate a statement of Eschelon's understanding of Qwest's position. (If Eschelon's understanding is incorrect, please let us know.) For questions in bold and italics, in particular, Eschelon asks Qwest to respond in writing. Although we discussed Eschelon's previous comments during conference calls, several of the questions remain unanswered. We have reached a point at which written responses to our questions are necessary to gain an understanding of Qwest's position and evaluate a course of action.

Also enclosed is Eschelon's attempt to re-draft Qwest's proposed Amendment to reflect Eschelon's comments. As you can see, once the disputed provisions are removed, all that remains is a series of paragraphs that refer to the underlying Agreement and the FCC rules. The existing interconnection agreements, however, require Qwest to accept orders for combinations (which, under the contract definitions, include UNE-P) in accordance with the FCC Rules. *See* AZ, Part A, para. 21 & Att. 3, para. 3.3; CO Part A, para. 8.1 & Att. 3, para. 2.4; MN, Part A, para. 20, p. 19; OR, Part A, paras. A, 19 & 36; UT, Part A, para. 21 & Att. 3, para. 3.3; WA, Part A, para. 21.1 & Att. 3, para. 1.2.2.

While Eschelon may be willing to agree to sign this version of the proposed amendment (depending on Qwest's answers to our questions), doing so begs the question initially asked by Eschelon but not yet answered by Qwest: Given that the existing Agreements currently require Qwest to provide Combinations, why does Qwest require an Amendment before processing such orders? You have said that the process for obtaining UNEs will be much easier and faster if we have an amendment, but we have been unable to ascertain what language in the proposed Amendment accomplishes this ease and speed.

EXHIBIT 2

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Qwest's proposed Amendment contains very little practical information that would enhance ordering Combinations. Also, Qwest has indicated that it will not agree to the same provisions across its region when state commissions have not ordered it to do so. (For example, Qwest will not provide new lines with UNE-P in Utah, but it will do so in states where expressly ordered to do so. The proposed Amendment does not appear to specifically address this issue either way.) Therefore, the Amendment does not appear to add to ease of ordering or standardization.

If Qwest continues to maintain that the Amendment will assist the ordering process, please provide examples and indicate which provisions in Qwest's proposed Amendment further these goals. To date, the only example that Qwest has given is that of the single order. You said that, with the Amendment, Qwest would allow orders for combinations on a single order (as opposed to ordering each element on a separate order), but would not do so without an Amendment. Therefore, Qwest argued that ordering will be easier if a CLEC signs the proposed Amendment. The contracts already provide for placing orders for combinations on a single order, however. Moreover, the proposed Amendment does not address single orders one way or the other. We do not understand, therefore, how signing the Amendment addresses this issue. Has Qwest given its provisioners direction to handle orders in one manner for CLECs signing the Amendment and another for CLECs not signing it? If so, what form has that direction taken (documents, system changes, *etc.*)?

We are very frustrated with this lengthy process, and our experience attempting to process orders in Minnesota only heightens our frustration. Qwest said that we could proceed in Minnesota without an amendment, and we have attempted to do so. Our experience so far has shown that the right to order combinations exists on paper but not in practice. Most orders have been rejected and, even if processed, the orders are not completed properly. Features have been dropped and, in some cases, customers have even experienced **outages**. There is no reason why a customer should lose features or service for changes that should involve simple translations work. We placed trial orders to avoid such problems, but the same issues were handled differently for the trial orders, indicating that Qwest either has no procedures in place or applies them inconsistently. Qwest has failed to provide information necessary for processing orders, given delayed or incorrect responses to inquiries, and appeared to fight processing of orders for combinations every step of the way. It appears that this conduct is consistent with the warning you gave to us during our June 30, 2000, conference call. You said that, without a signed amendment, you could "guarantee" that we would have problems in processing orders. Unfortunately, that is one guarantee on which Qwest has made good. However, as far as we can determine, nothing in the proposed Amendment addresses the kind of problems we have been experiencing in Minnesota or would in any way make that process easier.

If Qwest continues to require a proposed amendment in any of its states, please provide written responses to the questions in the enclosed comments. (If Qwest has dropped this requirement, please let us know.) Most of the highlighted questions in the enclosed Comments simply either re-state or provide more detail about the comments we previously made either in

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writing or in our previous conversations. Therefore, it seems that Qwest should be able to respond in a week (by September 18, 2000). If that is not workable, however, please let me know the date by which Qwest will provide a response.

Sincerely,

Dennis D. Ahlers
Senior Attorney

Enclosures

cc: Garth Morrisette (with enclosures)
F. Lynne Powers (with enclosures)

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**ESCHELON 9/11/00 COMMENTS ON USWC'S PROPOSED
AMENDMENT NO. 5 TO THE
INTERCONNECTION AGREEMENT BETWEEN
ESCHELON TELECOM AND USWC:
FOR DISCUSSION PURPOSES ONLY**

**NOTE: INITIAL CITES TO "AGREEMENT" ARE TO THE MN AGREEMENT;
OTHER CONTRACTS HAVE SIMILAR
PROVISIONS: *SEE ATTACHED EXHIBITS¹**

***OVERALL**

**Eschelon's primary question remains the same: Given that the existing Agreements currently require Qwest to provide Combinations, which include UNE-P, why does Qwest require an Amendment? Also, why does Qwest distinguish between Minnesota (where an amendment is not required) and other states? (In its July 20, 2000, letter to Qwest, Eschelon asked Qwest to inform Eschelon if it had changed its position that, with respect to states other than Minnesota, Qwest will not provide UNE-P at all, unless Eschelon signs a contract amendment. As Qwest has not responded differently, Eschelon understands that this remains Qwest's position.) Negotiations have taken substantial time and resources and so far have not resulted in an agreement. Although Qwest has stated generally that the provisioning of orders will be easier and more consistent if Eschelon signs an Amendment, Qwest's proposed Amendment contains very little practical information that would enhance ordering Combinations. Also, Qwest has indicated that it will not agree to the same provisions across its region when state commissions have not ordered it to do so. (For example, Qwest will not provide new lines with UNE-P in Utah, but will do so in states where expressly ordered to do so.) Therefore, the Amendment does not appear to add to ease of ordering or standardization.*

During the June 30th conference call, Qwest indicated that, if Eschelon does not have an Amendment, Eschelon will run into problems that will not occur if Eschelon signs the Amendment. **Specifically, what problems will occur? Will signing the Amendment solve any of the problems that Eschelon is currently experiencing when attempting to place UNE-P orders and, if so, which ones?*

FIRST SENTENCE/PARTIES DEFINED/CONVENTIONS

Need to use the same terminology as the Agreement because this is an amendment, not a standalone agreement. The conventions of the Agreement should be used throughout the Amendment to avoid ambiguities.

¹ An asterisk (*) indicates additional information. ALL CAPS indicate a statement of Eschelon's understanding of Qwest's position. (If Eschelon's understanding is incorrect, Qwest should so inform Eschelon.) For questions in bold and italics, in particular, Eschelon asks Qwest to respond in writing.

9/11/00; Draft for Discussion Purposes Only

For example, the term “Co-Provider” is used in the Amendment (and some of the contracts) but not defined in the Agreement.

***ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO CHANGE THE TERM “CO-PROVIDER” TO “ESCHELON” TO AVOID THIS ISSUE.**

RECITALS

Simply state that the parties desire to amend the Agreement as set forth in Attachment 1.
--not “by adding”; *see* below (#1).

USWC’s proposal states: “CO-PROVIDER desires to access certain combinations of UNEs in accordance with the FCC’s November 5, 1999 Order and related federal regulations.” USWC’s proposed language is unnecessary.

--Under the existing Agreement, USWC is already required to “accept orders for Local Service, Network Elements or Combinations in accordance with the FCC Rules. . . .” Part A, para. 20, p. 19. *See* **Exhibit A**.

--The other Interconnection Agreements similarly require USWC to provide Combinations and to do so in accordance with the law and, specifically, FCC rules. *See, e.g.*, AZ, Part A, para. 21 & Att. 3, para. 3.3; CO Part A, para. 8.1 & Att. 3, para. 2.4; OR, Part A, paras. A, 19 & 36; UT, Part A, para. 21 & Att. 3, para. 3.3; WA, Part A, para. 21.1 & Att. 3, para. 1.2.2.

***ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO DELETE THIS WHEREAS CLAUSE, BUT QWEST HAS NOT DELETED THE PREVIOUS ONE THAT REFERS TO THE FCC’S ORDER. THIS SHOULD BE DELETED FOR THE SAME REASON.**

*--Otherwise, it may appear that Eschelon agrees with Qwest that Eschelon did not have a right to combinations before that order was issued. Eschelon believes that it has had the right to combinations for a long time, but Qwest has refused to process such orders.

There is no need to recite each party’s legal position. (Eschelon does not believe that the Amendment is required or prompted by the FCC Order, as currently stated in the proposed Amendment. Eschelon’s position is that it has had the right to order combinations for some time. If USWC states its position, then Eschelon’s position would also need to be stated.)

--If more language is desired, indicate that Eschelon believes that the existing Agreement requires USWC to provide combinations of unbundled network elements. Therefore, while this Amendment may be useful to clarify that obligation, it in no way limits the obligation.

***ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO STATE THAT, IF THERE IS A CONFLICT BETWEEN LANGUAGE CONTAINED IN THIS AMENDMENT AND SIMILAR LANGUAGE FOUND IN THE UNDERLYING INTERCONNECTION AGREEMENT, THE LANGUAGE FOUND IN THE UNDERLYING AGREEMENT WILL GOVERN.**

*--If this language is added, Eschelon believes it should clarify that either party merely needs to assert a conflict for the underlying agreement to govern.

*--Eschelon remains concerned that this language shifts the burden to Eschelon. It allows Qwest to simply unilaterally interpret the Amendment (which actually contains little practical guidance) and then force Eschelon to litigate any disagreement with Qwest's interpretation.

*--Although Qwest's proposed language states that the Amendment "is intended to standardize and facilitate the order processing and implementation of services composed of UNEs," little if anything in the Amendment addresses practical implementation issues and how they will be accomplished in a standardized manner. Also, Qwest has indicated that the Amendment will not actually be standardized across states. For example, although no language in the Amendment expressly addresses new lines, Qwest has stated that new lines will be allowed in MN but not UT. ***Please explain the process by which this will occur, given that Qwest's proposed Amendment does not address new lines one way or the other. See above ("Overall" section).***

PROPOSED AMENDMENT NO. 5

1. Amendment Terms.

Change from: "This Amendment is made in order *to add* the terms and conditions . . ."

Change to: This Amendment is made in order to *expand and clarify, as set forth in Attachment 1 (which is attached hereto and incorporated hereto)*, the terms and conditions for Unbundled Network Element Combinations and Shared Interoffice Transport in the Agreement.

The Agreement already contains provisions relating to combinations, shared transport, and customized routing. Therefore, changes in those terms would be amending that language, not adding new concepts.

*Essentially, this language is unnecessary and may just be confusing. The Amendment should simply state that it amends the Agreement, unless a party asserts a conflict and then the Agreement controls (see above).

Indicate where the changes are to be inserted in the Agreement (either here, at the outset of the Amendment, or at various points in the Amendment, if the provisions will be inserted in different places). For example, the proposed Amendment contains various provisions relating to provisioning and billing. The Amendment needs to identify where such provisions are inserted (e.g., a specific points in Att. 5 for provisioning and Att. 7 for billing) or to otherwise clarify the relationship between the proposed language and the language that is already in the Agreement with respect to the same issue. (Examples of where the Agreement already addresses the same issues are given throughout this document.) Otherwise, ambiguities will be inserted which could result in disputes and delay.

The proposed Amendment suggests deleting the existing customized routing section and substituting new language. See "Customized Routing" discussion, below.

2. Effective Date

Part, A, Para. 26 (p. 22) of the MN Agreement provides: “No amendment . . . under this Agreement shall be effective without approval of the Commission.” *See also* Section 252(e)(1) of the federal Act.

Therefore, change to: This Amendment shall be effective after execution by authorized officers of the Parties and upon approval by the Commission.

*Qwest has moved this provision to the end of the proposed Amendment, with the following addition: “however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, ESCHELON must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. ESCHELON will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.”

**What does “to accommodate this need” mean? What about completing a Customer Questionnaire accommodates the need to implement the contract upon execution?*

**When is an updated Customer Questionnaire necessary?*

**What system updates does Qwest need to complete? Are these system updates part of the CICMP process and have CLECs received notice and documentation about them?*

**Are these updates completed on an individual CLEC basis and, if so, is there any reason that they could not be done for all CLECs?*

**Qwest has indicated previously that it will not process UNE-P orders in all states, except Minnesota, until Eschelon signs Qwest’s contract amendment. Now, it appears that there are additional conditions before Qwest will process UNE-P orders. If so, how does this affect pricing?*

3. Further Amendments

All Amendments (including any further Amendments) are governed by Part A, para. 26 (p. 22) of the Agreement. Execution in counterparts is covered by Part A, para. 30.1 (p. 24).

Eschelon does not agree that “Neither the Agreement nor this Amendment may be further amended or altered except by written instrument by an authorized representatives of both Parties.” The Agreement provides for other methods to alter the contract, such as a change in law (Part A, para. 20, pp. 19-20). **See Exhibit B*. Such terms of the Agreement apply, and additional terms are not needed and will only create ambiguities.

*Qwest has moved this provision to the end of the document but has not deleted the language about amendments or alterations. At a minimum, Qwest needs to the end of its proposed sentence, “or as otherwise provided by the Agreement.”

AMENDMENT NO. 5

Title: The title "Attachment 1" will create confusion, because the attachments to the existing Agreement are numbered. These terms and conditions modify the contract, and the documents should indicate where the provisions will be added to the modified Agreement.

*ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO DELETE THE REFERENCE TO ATTACHMENT 1.

1.0 Unbundled Network Elements Combinations (UNE Combinations)

Definition of "UNE Combination" (1.0): The Agreement already defines "Combinations." See MN Agreement, Att. 12, page 3. *See also **Exhibit C**. USWC's obligation to provide Combinations is then referenced throughout the Agreement, for example, to require USWC to provide UNEs "in combination" (Part A, para. 37, p. 28), to provide Combinations "in accordance with the FCC Rules" (Part A, para. 20, p. 19), to provide branding for combinations (Part A, para. 15, p. 17), to require cooperative testing of UNEs "in combination with each other" (Att. 3, para. 14.1.1., pp. 64-65; *see **Exhibit D**), to provide performance sufficient to provide specified applications (Att. 2, para. 14.2.4, p. 71), to order combinations (Att. 5, para. 8, pp. 10-11), etc.

--Introducing a new definition (particularly without deleting and replacing the old one) injects ambiguity into the Agreement.

--Use of the phrase "have been" (*i.e.*, past tense) also creates an issue because it does not recognize that additional elements may be defined in the future.

--Referring to Section 252(d)(1) rates is unnecessary. The Agreement already provides that rates will be set "in accordance with all applicable provisions of the Act and the rules and orders of the FCC and any state public utility commission having jurisdiction over this Agreement." Part A, para. 41.1, p. 39. (And, the state commissions have ordered prices.) The existing language is more clear and comprehensive than the proposed language.

--In USWC's web site, USWC distinguishes between "UNE-P" and "UNE-C." Does this distinction have relevance, and if so, where is this reflected in the proposed Amendment?

****Qwest uses the term "UNE-Platform (UNE-P)" in its Amendment but does not define that term. Does Qwest mean to exclude UNE-C? It would be less confusing to simply use the term "combinations," which is already defined in each of the Agreements. See Exhibit C.***

****At a recent meeting, Qwest indicated that the "products" listed under "terms and conditions" reflect the FCC's definition of UNE-P and UNE-C. Where does the FCC discuss and/or define these terms?***

--To convince Eschelon to substitute a new definition in Att. 12 for the existing definition of Combinations, USWC would need to establish a benefit to Eschelon

from doing so. It is not a benefit to either party to refer to recent orders, because the Agreement already deals with compliance with such orders (*see* next section).

USWC's proposed references to statutes and FCC rules/orders (*e.g.*, 1.0; 1.1.1; 1.1.2)

--**Duty to comply with the law and FCC rules:** USWC's current proposed definition refers to the law (and incorporates or re-states portions of it) unnecessarily. Both parties are already required to comply with the law, and USWC is specifically required to provide "Combinations in accordance with the FCC Rules." *See* MN Agreement, Part A, para. 20; **see also* Exhibit A. There is no need to single out certain laws here (especially as this may lead to the question of why other laws were not referenced, *etc.*).

Significant Amount of Local Exchange Traffic (1.0 & 1.1.2.2, 1.3.6.2): The FCC has stated expressly that the test for "Significant Amount of Local Exchange Traffic" is a "temporary" constraint until it resolves the issues in the Fourth NPRM. *See, e.g.*, para. 8, FCC Supp. Order Clarification (June 2, 2000). USWC is bound to provide Combinations in accordance with the FCC rules. *See* MN Agreement, Part A, para. 20; **see also* Exhibit A.

--Even if the proposed language were included, it would need to be designated as temporary, with re-negotiation after the FCC resolves the issues in the Fourth NPRM. This would create additional work for everyone unnecessarily.

*Therefore, this language should be deleted. While entirely unnecessary to add language referring to an FCC order, if this became the only issue preventing the parties from moving forward, perhaps language such as this could be added:

*"The parties recognize that, at the time of execution of this Amendment, the Federal Communications Commission ("FCC") has adopted a "temporary mechanism to avoid a reduction in contributions to universal service prior to full implementation of access charge and universal service reform" under certain circumstances that are described in the Supplemental Order Clarification, *In re. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (June 2, 2000), at ¶4 ["Supplemental Order Clarification"]. Qwest shall provide Combinations in accordance with FCC rules and regulations, including the Supplemental Order Clarification, while it is in effect, pursuant to the Agreement."

FCC Rules 51.315(c)-(f) (1.1.1 & 1.1.2): USWC limits its agreement to provide combinations to those "in accordance with 47 CFR 51.315(b)." (1.1.2) (emphasis added). The Ninth Circuit has found, however, that the "Supreme Court opinion [in *AT&T v. IUB*] . . . undermined the Eighth Circuit's rationale for invalidating" 51.315(c)-(f). *USWC v. MFS*, Docket No. 98-35146 (9th Cir. Oct. 8, 1999). The Court said: "Although the Supreme Court did not directly review the Eighth Circuit's invalidation of §51.315(c)-(f), its interpretation of 47 U.S.C. §251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act. We must follow the Supreme Court's reading of the Act despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation." *Id.*

--Of USWC's states, Arizona, Oregon, and Washington (as well as Idaho and Montana) are in the Ninth Circuit.

***ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO DELETE REFERENCES TO SPECIFIC RULES, SUCH AS 315(B).**

51.315(b) (*e.g.*, 1.1.2.4)

Additionally, in the past, USWC and CLECs have not agreed as to interpretation of Rule 51.315(b). For example, in the Minnesota remand case (P421/CI-99-786), USWC attempted to define the rule very narrowly, and the MN PUC rejected that attempt. *See* Order After Remand, MPUC Docket No. P421/CI-99-786 (Mar. 14, 2000) at p. 10 ("The Commission rejects U S WEST's claim that its obligation to combine network elements is limited to those elements actually combined at the time of the request on behalf of the specific customer to whom the CLEC intends to provide service. This is an unreasonably narrow reading of the language of the FCC rule and would undermine the purposes of the Act.").

--With respect to the MN Order After Remand, USWC, AT&T and WCOM have filed proposed language with the MN PUC to conform to that Order. Specifically, AT&T and WCOM had asked the MN PUC to add the following language to the definition of Combinations in Attachment 12 and to Part A, Paragraph 37 (fifth paragraph):

"USWC must combine elements of the type that it currently combines in its network, but is not obligated to combine elements of the type it does not normally combine in its network."

Cf. 1.1.2.4.

--*Rule 51.315(b) already applies, by Order of the United States Supreme Court (*i.e.*, a final and nonappealable order) and Part A, para. 20.2 of the Agreement. If the proposed Amendment is to add anything (in terms of clarification, *etc.*), it needs to go beyond a duplicative cite to the Rule and state specifically how USWC intends to implement that rule.

-To be more specific and add clarification, USWC could state specifically that its product offerings will include, but not be limited to, combining paired loops for the provision of second-line service, and combining single loops with SS7 switching software for the provision of Call Waiting (both specifically identified in the MN Order After Remand at pages 10-11). If USWC will not provide these combinations, please provide legal authority for refusal.

Change in law/dispute resolution (1.1.2.1 & 1.1.2.3): USWC's proposed sections deal with the same issues that the Agreement already address in Part A, paragraphs 11 and 20, but they deal with them somewhat differently. It is unnecessary to address issues already addressed in the Agreement. Moreover, differences in language create ambiguities.

--Part A, para. 37, p. 28, allows the parties to identify additional network elements. The FCC created only a "minimum" lists of elements, which allows the

parties or state commissions to expand the list. If a dispute arises, paragraph 37 already addresses how to proceed.

1.2 Description

Section 1.2 provides additional description about specific Combinations.

--The descriptions need to be given by way of example and in no way limit the underlying duty of USWC to provide combinations.

--Any Amendment needs to state that the stated list of combinations is not exhaustive or exclusive and that the Amendment does not limit the right to combinations under the Agreement and the law.

--Eschelon is still reviewing the technical aspects of the listed products.

****--Why do the various "product offerings" begin with "Retail and/or resold." Isn't a 1FR/1FB line the same in any case? unnecessary.***

****--Qwest currently rejects orders on the grounds that it doesn't have a product offering for the combination yet (for example, for Centrex with UNE-P). Eschelon has a right to order that combination at this time, however, regardless of whether Qwest has identified it separately as a product. See Exhibit E. Therefore, any Amendment needs to state that Qwest must provide a Combination to Eschelon, regardless of whether Qwest has identified the particular Combination as a product offering. Will Qwest agree to such a provision?***

Is a contract amendment is the proper place for these descriptions? What happens when the products change? The Agreement addresses new and revised product offerings generally (without requiring delay-producing negotiation of amendments to the Agreement every time a product is introduced). For example:

--Part A, paragraph 37, p. 28 states that USWC "shall offer" each Network Element individually and in combination with any other Network Element. *See also* Att. 3, para. 14.2.4.1, p. 71. To do so, USWC must have a process in place to notify CLECs of the offerings and allow them to order the offerings. The Agreement does not require an amendment to the contract each time that USWC "offers" or revises a combination.

--Part A, paragraph 37, p. 28, provides a process for notifying a party of a new or revised network elements and their technical characteristics "to improve network or service efficiencies or to accommodate changing technologies, customer demand, or regulatory requirements."

--Paragraph 2.6 of Att. 2 provides that USWC will notify CLECs at least 45 days in advance of any changes in the terms and conditions under which it offers its services at retail, and USWC will provide CLECs with 30 days advance notice of the availability of new products for market testing. Although Att. 2 deals with resale, this provision does not indicate that it is limited to resale.

--Overall, USWC must comply with the law (Part A, para. 20, p. 19). The law requires USWC to provide nondiscriminatory access at least to combinations that it provides to itself, and USWC must do so regardless of whether the Agreement is amended or not. CLECs do not have to use a BFR process to get combinations.

USWC must offer them routinely, without an expensive and time consuming BFR process.

-The Agreement provides that the BFR process is used only when elements, services, and functions are materially or substantially DIFFERENT from those ALREADY PROVIDED BY USWC TO ITSELF, ITS CUSTOMERS, OR END USERS, and then it is used only at Eschelon's discretion. Part A, para. 37.13.2, pp., 33-34.

*-Instead of referring to the BFR process, the Amendment could simply state that

1.2: If 1.2 is included, add "at least" before "five categories" and delete references to the BFR process (*see above*). The terms and conditions for additional combinations are already set forth in the Agreement.

*ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO INSERT "AT LEAST" HERE.

1.3 Terms and Conditions

1.3.1 nondiscriminatory access/quality: The Agreement already requires USWC to provide nondiscriminatory access, and it requires a level of quality higher than that stated in the proposed Amendment. *See, e.g.*, Part A, paras. 9.1, 9.3 & 37.

1.3.2, 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.3.7:

"For complete descriptions, please refer to the appropriate Unbundled Network Elements in this Amendment or the CO-PROVIDER'S Agreement.": Unnecessary.

--The Agreement already has a structure in place under which defined terms are capitalized and used as defined in the Agreement. Particularly if the Amendment is clear as to where any amending language is placed, this is not an issue.

1.3.3 (UNE-P-PBX), 1.3.4 (UNE-P-DSS), 1.3.5 (UNE-P-ISDN), 1.3.6 (UNE-PL-X), 1.7 (CENTREX):

"STANDARD OFFERING UNDER DEVELOPMENT": Eschelon cannot commit to agree to something that it has not seen yet. This is why the Agreement provides for fundamental rights and does not deal with each product as it is developed. Such products are already available pursuant to the general principles outlined in the Agreement.

*ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO DELETE THE REFERENCES TO THE OFFERING BEING UNDER DEVELOPMENT.

1.3.3.1 (UNE-P-PBX), 1.3.4.1 (UNE-P-DSS), 1.3.5.1 (UNE-P-ISDN), 1.3.6.1 (UNE-PL-X), 1.3.11 (conversions from resale):
available “upon request”:

--Does “upon request” indicate a difference in availability from the other combinations (which state that they are available, but do not use the term “upon request.”)

“standard intervals set forth in Section 1.5”:

--Paragraph 9.1 of Att. 5 of the Agreement specifically provides that: “Standard intervals do not apply to orders under this Agreement.” *See **Exhibit F**.

--The Agreement (and, in some states, Commission proceedings and orders) deal with applicable intervals. *See, e.g.*, 9.5 of Att. 5 & Att. 11.

1.3.6.2 – 1.3.6.2.5 (“Significant Amount of Local Exchange Traffic”):

USWC notes: “This entire section has been re-written to conform with the FCC’s Supplemental Order in CC Docket No. 96-98 (FCC 00-183, June 2, 2000).”

--The FCC has stated expressly that the test for “Significant Amount of Local Exchange Traffic” is a “*temporary*” constraint until it resolves the issues in the Fourth NPRM. *See, e.g.*, para. 8, FCC Supp. Order Clarification (June 2, 2000). Although USWC indicates that its language “conforms” to the Supp. Order, the proposed language does not reflect the temporary nature of the FCC’s Order. (*see above*).

--USWC’s language is different from the FCC’s requirements. For example, USWC’s proposed language does not provide a process for obtaining a waiver of the FCC’s safe harbor provisions, as does the FCC’s Order (para. 23). Also, 1.3.6.2.5(g) provides that the audit provisions of the proposed Amendment are “‘over and above’ any audit rights that USWC may have” under the Agreement, whereas the FCC Order simply states that the parties are not restricted from using the existing audit rights under the Agreement (para. 32). These are just examples.

--Under the existing Agreement, USWC is already required to “accept orders for Local Service, Network Elements or *Combinations in accordance with the FCC Rules. . .*” Part A, para. 20, p. 19 (emphasis added). USWC’s proposed language is unnecessary. (*see above*); **see* Exhibit A.

1.3.7 & 1.3.7.1 (Centrex; conversion to UNE-P-POTS)

USWC states: “More information concerning Centrex conversions and a full list of vertical and Centrex features will be provided when available.”

*--Use of the term “UNE-P-POTS” is confusing, because POTS is often used to refer to basic service, with no features. *Also, Qwest’s 7/19 presentation to the CLEC Forum lists “UNE-P-CENTREX” as part of Release 6.0. Is this a separate product, or part of “UNE-P-POTS”? If separate, should it be listed separately in the Amendment?*

--Eschelon has requested a list of all available features and needs confirmation from USWC as to when the list is complete. Eschelon also needs to know the status, availability, and capabilities of hunt features.

**Eschelon continues to need the list of features. Eschelon has requested this information multiple times and has escalated the request, to no avail. The very*

short list of features available with UNE-P provided by Qwest simply cannot meet Qwest's obligations to provide to us all of the features and functions of the switch and to provide us nondiscriminatory access. For any feature that Qwest claims is not available with UNE-P, please provide the reason for Qwest's position.

--The Agreement requires USWC to provide "a listing, by switch CLLI, of all services and features technically available from each switch that USWC may use to provide a Local Switching Element" and "a listing of all technically available functionalities for each Network Element and Combination." Att. 5, sec. 6; * **See Exhibit G.**

1.3.8(BFR): USWC must make all combinations required by law available. CLECs do not need to go through a time-consuming BFR process to obtain something already granted to them by law.

--The Agreement provides that the BFR process is used only when elements, services, and functions are materially or substantially DIFFERENT from those ALREADY PROVIDED BY USWC TO ITSELF, ITS CUSTOMERS, OR END USERS, and then it is used only at Eschelon's discretion. Part A, para. 37.13.2, pp., 33-34. (see above)

1.3.9 (terms and conditions applicable to all UNE-P)

*When asked as to why this Amendment is necessary or would be useful, Qwest indicated that it will use the Amendment to indicate whether and how to process a CLEC's orders. Qwest gave as an example that, with the Amendment, it would allow orders for combinations on a single order, but would not do so without an Amendment. Therefore, Qwest argued that ordering will be easier if a CLEC signs the proposed Amendment. The contracts already provide for placing orders for combinations on a single order, however. *See Exhibit H.* Nonetheless, given Qwest's argument, any Amendment should include a provision that Qwest shall provision UNEs either individually or in combination on a single order.

****-- Has Qwest given its provisioners direction to handle orders in one manner for CLECs signing the Amendment and another for CLECs not signing it? If so, what form has that direction taken (documents, system changes, etc.)?***

1.3.9.1 (UNE-P capability): Still reviewing capabilities. *All of these subjects are already covered in the Agreement. What does this add?

1.3.9.2 (Branding):

This provision refers to the Agreement, so it is, on its face, redundant.

The Agreement deals with branding. *See, e.g.,* Att. 3, paras. 7.2.2.1.15 & 7.3.2.2; *AZ Agreement, Part A, Sec. 8; CO Agreement, Part A, Sec. 26.

1.3.9.3 (Customized Routing): Agreement provides for customized routing in Att. 3, para. 6.4. *See below, re. Section 2.*

1.3.9.4 (E911/911):

Agreement addresses E911/911 much more comprehensively than the proposed Amendment. *See, e.g.*, Agreement, Att. 3, paras. 7.2.2.1.8, 7.2.2.9, 12.6 (ALI/DMS), 13.2.1.7, 13.2.1.8 (PSAP), 13.3.1 (PSAP), 14.2.5.12 (databases), 14.7 (basic 911 and E911), *etc.* USWC is required to provide the Network Elements described in Att. 3 individually or in combination. Part A, para. 37.

1.3.9.5 (PIC):

This section does not add any additional terms not provided by the Agreement for CLECs. (It refers to the law governing PICs, but the Agreement already requires the parties to follow the law. Part A, para. 20.) *See, e.g.*:

--Att. 5, provides: 4.3 "When ordering a Local Switching Element, CO-PROVIDER may order from USWC separate interLATA and intraLATA capabilities (i.e., 2 PICs where available) on a line or trunk basis.

Att. 5, 4.4 Unless otherwise directed by CO-PROVIDER, when CO-PROVIDER orders an Element or Combination, all pre-assigned trunk or telephone numbers currently associated with that Network Element or Combination shall be retained without loss of feature capability and without loss of associated Ancillary Functions including, but not limited to, Directory Assistance and 911/E911 capability.

Att. 5, 4.5 When CO-PROVIDER orders Elements or Combinations that are currently interconnected and functional, such Elements and Combinations will remain interconnected and functional without any disconnection or disruption of functionality. This shall be known as Contiguous Network Interconnection of network elements. There shall be no charge for such interconnection."

1.3.9.7 - 1.3.11 (Conversion from Resale to UNE-P)

Would it be better to deal with the issue of conversion, at least the initial conversion, separately?

--1.3.11 is an agreement to agree; therefore do not include until there is an agreement.

--With respect to the rate, why would the resale rate apply, particularly if the failure to convert is due to USWC's conduct or delay?

*ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO DELETE THIS PROVISION.

--USWC notes that the 8th Circuit Court stayed combinations, but USWC does not recognize that combinations were available before that time under the contract. Moreover, USWC's interpretation of the 8th Circuit's decision is not universally agreed upon. For example, the MN PUC indicated that the fact that the FCC struck down certain rules did not automatically mean that provisions of the interconnection agreement were void and unenforceable. *See* Order Finding Breaches of State Law and Interconnection Agreement, MPUC Docket No. P-

421/C-97-1348, pp. 10-11 (July 29, 1998). The pertinent point is that, for at least long periods of time since the arbitrations ended in 1996, CLECs have had the right to order combinations, and yet to date USWC has not processed such orders. *Eschelon should have been able to place its orders earlier as combinations. Therefore, pricing for combinations should apply since then, and not after the many months that it would take to complete the managed project that is suggested in this paragraph. Eschelon will work with Qwest to process orders over any time period necessary to ensure completion without customer disruption, provided that Qwest does not deprive Eschelon of the appropriate UNE-P pricing in the meantime.

1.3.10 (Termination Liability): ****Is Qwest willing to delete this provision?***

--Termination liability is between USWC and its customer. It should not be addressed in a co-provider agreement.

--If any such language were included, the information in USWC's note would need to become language that is part of the Amendment.

1.3.12 (Forecasting):

Why 18 months? What is the mutual benefit?

***ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO CHANGE THE 18 MONTHS TO 12 MONTHS.** Eschelon already provides forecasts.

****Will Qwest ensure delivery if forecasts are substantially accurate? If not, what is the benefit to Eschelon of these forecasts?***

1.3.13 (retention of current telephone numbers):

Part A, para. 9.10 addresses dialing parity, and Att. 9 of the Agreement addresses Local Number Portability.

***ESCHELON UNDERSTANDS THAT QWEST IS WILLING TO DELETE THIS PROVISION.**

1.3.14 (notice of termination to end users):

Agreement and Commission rules govern.

--Att. 7 (billing) refers to late payment for charges, but does not state that USWC may terminate service for non-payment of charges. What is USWC's basis for including this?

*--The Agreements already provide that Eschelon is the customer of record. The only thing that Qwest has added is language to give Qwest additional assurances that it will not be held liable. This language is unnecessary and one-sided.

1.3.15 (contact with end users):

The contract already recognizes that the coprovider is the customer of record. There is no basis for USWC to add that nothing prohibits it from discussing its products and services with coprovider's end users. There may be circumstances when USWC should not discuss its products with an end user, such as when an end user erroneously calls USWC and should be calling the coprovider.

Att. 5, para. 2.7: “USWC will recognize CO-PROVIDER as the customer of record of all Elements or Combinations ordered by CO-PROVIDER and will send all notices, invoices and pertinent information directly to CO-PROVIDER.”

1.3.16 (Local Circuit Switching):

This provision refers to some, but not all, of the terms of the FCC’s unbundling order. Also, as the two supplemental orders since publication of that order have demonstrated, the law is still developing (*i.e.*, it is not a final and nonappealable order). In any event, under the existing Agreement, USWC is already required to “accept orders for Local Service, Network Elements or Combinations in accordance with the FCC Rules. . . .” Part A, para. 20, p. 19. USWC’s proposed language is unnecessary.

--1.3.16 also refers to the “Resource Guide,” to which Eschelon cannot agree without, at a minimum, seeing it and reviewing provisions governing the impact of any changes to it, *etc.* Unlike many technical specifications (to which the “Referenced Documents” paragraph of Part A applies), the Resource Guide is prepared unilaterally by USWC. USWC cannot unilaterally amend the contract by revising its Resource Guide.

1.4 Rates and Charges

Section 1.4, in its entirety, contemplates attaching the Compliance Run (or parts of it) from the Cost Case as an exhibit *to the Amendment*. This is unnecessary, however, because the Compliance Run is part of the *Agreement* by virtue of the Commission’s Orders (*see* Schedule 2); Att. 7 para. 2 (“USWC shall bill co-provider for each element, combinations, or local service supplied to co-provider pursuant to this Agreement at the rates set forth in the Agreement.”). Placing the rates in two different places in the Agreement would only cause confusion.

1.4.1 (all): *See* Agreement, Part A, para. 42.2 & Schedule 2 & Commission order. *Specifically with respect to NRCs, Qwest has not established a basis for stating that an NRC applies for each element. In Minnesota, the rates do not include an NRC for each element in a combination. In Arizona, the Commission found that Qwest is “not entitled to a separate charge for each individual element combined . . .” in the Sprint-Qwest arbitration (Decision No. 62650, p. 12).

****At the July 6th meeting, Qwest indicated that it would check on NRCs and get back to us. Will Qwest delete this section, including the statement about NRCs, and simply state that the rates set forth in the Agreement apply?***

****Separately, Eschelon has requested several times to get from Qwest its rates for Combinations, an accurate sample bill, and for those UNE-P orders already placed, an actual bill. Eschelon needs an understanding of Qwest’s position on which rates, including NRCs, apply. Eschelon would appreciate it if you could facilitate obtaining this information for Eschelon.***

1.4.2 (changes in rates): already covered by Agreement. *See* Part A, para. 41.1.

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1.4.3 (billing): already covered by Agreement. *See* Att. 7 & Part A, para. 35.4(c)
--“miscellaneous charges” is vague and could lead to confusion

1.4.4 (charges for PIC changes): Pricing for PIC changes is governed by other law.

1.4.5 (switched access charges): access charges are governed by other law.

1.4.6 (billing for UNE-P): *See* above re. when duty to combine went into effect. USWC should not need additional time to implement billing changes.

--what are the changes, and what does USWC consider a “reasonable” amount of time?

1.5 Ordering Process

1.5.1 (ordering processes) & 1.5.2: As USWC points out in its proposed language, ordering processes are already contained in the Agreement. *See* Att. 5. So, they are unnecessary here. (If there is some benefit to repeating them here, then the Amendment should cite to the provision and make it clear that the provision controls.)

--USWC states that combinations “are ordered via an LSR.” The FCC’s June 2nd Suppl. Order allows conversion from circuits ordered using an Access Service Request (“ASR”) to unbundled loop-transport combinations without placing a new order and without disconnection and re-connection. FCC Order, para. 30.

1.5.3 (standard service intervals): (*see* above); **See* Exhibit F.

--Paragraph 9.1 of Att. 5 of the Agreement specifically provides that: “Standard intervals do not apply to orders under this Agreement.” **See* Exhibit F.

--The Agreement (and, in some states, Commission proceedings and orders) deal with applicable intervals. *See, e.g.*, 9.5 of Att. 5 & Att. 11.

1.5.4 (due date intervals): Due Date Intervals are addressed in the Agreement. *See* Atts. 5 & 11.

--Refers to LSR (see above re. ASRs).

--The contract does not currently allow USWC to limit receipt of orders to before 3pm on a business day. *Nonetheless, Qwest is unilaterally imposing the 3:00 time period. Qwest needs to abide by the contract, which provides that orders can be received until, at a minimum, 5:00 pm. *See* Att. 5, para. 2.4. ***Please confirm that Qwest will change its practice to comply with the existing Agreement in this respect.***

--USWC states that “This interval may be impacted by order volumes and load control considerations.” Does USWC mean to suggest that, therefore, the intervals and any penalties don’t apply? If not, what is the purpose of this language?

1.5.5 (end user listing information): Para. 5 of Att. 4 addresses Directory Listings. It already requires coprovider to provide end user information to USWC for directory listings. *See* para. 5.1 of Att. 4.

1.5.6 (closing bill at disconnection): Disconnects are addressed in the Agreement in Att. 5 and Att. 7. For example, para. 2.2 of Att. 7 (billing), provides that USWC will give coprovider a monthly connectivity bill that includes charges, credits, and adjustments, including those for “Combinations discontinued. . . .”

1.5.7 (points of contact): *See* Agreement Att. 5, para. 2.5, requiring USWC to provide points of contact for ordering and provisioning. Att. 5, para. 7.3 requires each order, including orders for combinations, to include contact information. Att. 6 (maintenance), para. 7, requires USWC to establish “a single point of contact responsible for initiating and coordinating the restoration of all Local Services and Network Elements or Combinations.” It also requires the parties to develop “a mutually agreeable process for escalation of maintenance problems, including a complete, up-to-date list of responsible contacts, each available twenty-four (24) hours per day, seven (7) days per week. Said plans shall be modified and up-dated as needed.” Att. 7, para. Att. 7 (billing), para. 2.6,

1.6 Billing

USWC’s proposed language states that USWC will provide billing information “on a monthly basis, within 7-10 calendar days of the most recent billing period” to include summary information and end-user sub account information.

- The Agreement addresses billing information. *See, e.g.*, Att. 7, para. 2.2.
- Certain information is required in less than 30 days (such as meet point billing information, Att. 7, para. 3.6).
- “Billing information” is not defined in USWC’s proposal and thus ambiguities/confusion could result.
- How do billing provisions here relate to those in the Agreement? At a minimum, any Amendment needs to state where each provision is inserted into the Agreement. If there are conflicting provisions in the Agreement, it needs to state which language controls.

1.7 Maintenance and Repair

USWC’s proposed language: “USWC will maintain facilities and equipment that comprise the service provided to CO-PROVIDER as a UNE Combination. CO-PROVIDER or its end users may not rearrange, move, disconnect or attempt to repair USWC facilities or equipment, other than by connection or disconnection to any interface between USWC and the end user, without the written consent of USWC, which consent shall not be unreasonably withheld.”

- Maintenance and Repair are covered at some length in the Agreement. *See* Att. 6.
- USWC’s proposed language does not contain the quality guarantees provided by the Agreement. *See, e.g.*, Att. 6, para. 1: “USWC shall provide repair, maintenance, testing and surveillance for all Local Services and unbundled Network Elements and Combinations at parity with the level USWC provides itself.” *See also* Part A, para. 9 (warranties). It also does not contain some of the

advance notice and time deadlines that are contained in the Agreement. *See* Att. 6.

--The last sentence of USWC's proposed language, which restricts conduct of the co-provider, is not contained in the Agreement.

--How do maintenance provisions here relate to those in the Agreement? At a minimum, any Amendment needs to state where each provision is inserted into the Agreement. If there are conflicting provisions in the Agreement, it needs to state which language controls.

2.0 CUSTOMIZED ROUTING

GENERALLY: The current Agreement provides a basic right to customized routing (Att. 3, para. 6.4).

*Qwest has not yet explained why this section is needed. As indicated above, because Eschelon is not yet using customized routing, Eschelon would prefer to deal with this issue, if any changes are needed, at the time when it commences use of customized routing. At that time, Eschelon will know more about its needs and whether the contract provisions adequately address those needs.

2.1.1:

From MN Arb. Order (p. 26): "Customized routing permits new entrants to designate the particular ILEC outgoing trunks that will carry certain classes of traffic originating from the CLEC's customers. Customized routing will enable a new entrant to self-provide, or select among providers of interoffice facilities. . . . The FCC Interconnection Order at Paragraph 418 requires incumbents to provide customized routing as part of the functionality of the local switching element when the switch is capable of performing customized routing." (adopted language of USWC's final offer)

See also FCC First Report and Order, para. 418.

USWC added: "Customized routing is a software function of the switch. Customized routing may be ordered as an application with Resale or Unbundled Local Switching." (2.1.1.)

--Why was this language added? Does it affect ordering or pricing?

2.1.2:

USWC also added: "CO-PROVIDER may elect to route its end-user customers' traffic in the same manner as USWC routes its end-user customers' calls using existing USWC line class code(s). This option *eliminates assignment and deployment charges applicable* to new CO-PROVIDER line class code(s) required for custom or unique CO-PROVIDER routing requests." (2.1.2) (emphasis added)

--Where is it established that such charges are otherwise applicable?

2.2 Terms and Conditions (for Customized Routing)

2.2.1 (first come, first served basis): USWC has deleted the sentence from the Agreement that states that the reason for this is “because there is a limitation in the technical feasibility of offering custom routing beyond the capacity of the 1A ESS switch.” See Att. 3, para. 6.4.2. To the extent that technical feasibility issues have been worked out or do not apply, it is not clear that the “first come, first served” rule applies.

2.2.2 & 2.2.3 (listing two options by which to route end-user calls)

To the extent that USWC is attempting to incorporate any rulings of the FCC, under the existing Agreement, USWC is already required to “accept orders for Local Service, Network Elements or *Combinations in accordance with the FCC Rules. . .*” Part A, para. 20, p. 19 (emphasis added). USWC’s proposed language is unnecessary.

--What is the basis for the proposed language?

2.3 Rate Elements (for Customized Routing)

What is the basis for USWC’s proposal, and what benefit to Eschelon see to its proposed language?

2.4 Ordering Process (for Customized Routing)

Ordering processes are addressed in Att. 5 of the Agreement.

--Under Part A, para. 2.2, “USWC may require a suitable deposit to be held by USWC as a guarantee for payment of USWC’s charges for companies which cannot demonstrate sufficient financial integrity based on commercially reasonable standards, which may include a satisfactory credit rating as determined by a recognized credit rating agency reasonably acceptable to USWC.”

2.5 Maintenance and Repair (for Customized Routing)

USWC’s language states: “Maintenance and repair are the sole responsibility of USWC.”

--Att. 6 of the Agreement addresses maintenance and repair and applies to custom routing as well.

3.0 SHARED INTEROFFICE TRANSPORT

USWC notes: “The Cost Docket in MN appears to have eliminated Common Transport and established a price for Shared Transport.”

--No. This is just a semantic difference. In 1996, when the Agreement was arbitrated, CLECs referred to transport shared with others, including the ILEC, as Common Transport. Since then, the term Shared Transport has been used for this type of sharing between two local offices. Comparing the definition of Common Transport in the Agreement (section 8 of Att. 3) with the FCC’s definition shows that CLECs have had the right to Shared Transport since the Agreement was

adopted in 1996. They have not been able to enforce it, however, until the FCC upheld the CLECs' definition.

FCC definition: "transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the incumbent LEC's network." 11/5/99 Order at paras. 370-72 (rejecting ILEC argument that shared transport is not an unbundled network element).

Agreement definition: "Common Transport is an interoffice transmission path between USWC Network Elements This includes, but is not limited to, *shared* interoffice transmission paths between USWC's End Offices, between USWC's Serving Wire Centers, between USWC's End Offices and Serving Wire Centers, between USWC's Tandem Switches and End Offices and/or Serving Wire Centers, and between such other points within USWC's network as may be designated by CO-PROVIDER." Att. 3, para. 8.1 (emphasis added).

-Pursuant to this definition, co-providers can designate the points outlined by the FCC for shared transport.

USWC states that it will provide shared transport on a nondiscriminatory basis.

--The Agreement already provides that USWC must provide nondiscriminatory access to all UNEs, which includes shared transport (formerly known as common transport). Part A, para. 9.3. It also requires USWC to provide each UNE on a priority basis, at any technically feasible point. Att. 3, para. 1.2.

3.1 Description

The Agreement defines shared transport at Att. 3, para. 8.1. Although it uses the term "Common Transport," the Orders of the Commission and FCC make clear that the Agreement gives CLECs nondiscriminatory access to shared transport. Eschelon can order shared transport, as defined in the FCC Order, at this time, pursuant to section 8 of Att. 3 of the Agreement.

3.2 Terms and Conditions (for Shared Transport)

To the extent that USWC is attempting to incorporate any rulings of the FCC, under the existing Agreement, USWC is already required to "accept orders for Local Service, Network Elements or *Combinations* in *accordance with the FCC Rules*. . ." Part A, para. 20, p. 19 (emphasis added). USWC's proposed language is unnecessary.

3.3 Rate Elements (for Shared Transport)

Rather than attach a redundant Exhibit to this Amendment, simply refer to the price list that is otherwise attached to the Agreement (Schedule 2). *See* above re. pricing.

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--If USWC is suggesting different prices from those already established, USWC should delineate the charges it is attempting to address.

The HAI documentation, and orders approving the HAI pricing, establish the definition and components of shared transport for pricing purposes.

3.4 Ordering Process (for Shared Transport)

Ordering is addressed in Att. 5 of the Agreement, and intervals are addressed in Atts. 5 and 11. *See* above discussion. The reference to the Resource Guide just adds confusion.

3.5 Maintenance and Repair (for Shared Transport)

USWC's language states: "Maintenance and repair are the sole responsibility of USWC."

--Att. 6 of the Agreement addresses maintenance and repair and applies to custom routing as well.

Qwest's Exhibit A (Price List from cost case)

The Agreement already provides that rates will be set "in accordance with all applicable provisions of the Act and the rules and orders of the FCC and any state public utility commission having jurisdiction over this Agreement." Part A, para. 41.1, p. 39. (And, the state commissions have ordered prices.)

--If USWC is suggesting different prices from those already established, USWC should delineate the charges it is attempting to address.

Rather than attach an Exhibit to this Amendment, simply refer to the price list that is otherwise attached to the Agreement (Schedule 2). Attaching the Compliance Run (or parts of it) from the Cost Case as an exhibit *to the Amendment* is unnecessary, because the Compliance Run is part of the *Agreement* by virtue of the Commission's Orders (*see* Schedule 2); Att. 7 para. 2 ("USWC shall bill co-provider for each element, combinations, or local service supplied to co-provider pursuant to this Agreement at the rates set forth in the Agreement."). Placing the rates in two different places in the Agreement would only cause confusion. Doing so would incorrectly treat the Amendment as a standalone document, when it simply modifies portions of the existing Agreement. As the prices have been set, they need no modification as part of this Amendment.

**ACCEPTANCE OF ORDER OF COMBINATION IN ACCORDANCE
WITH FCC RULES (EX. A)**

| | | |
|----|---|--|
| AZ | Part a, Para 21, p 20 Att 3, Para 1.1, p 1 | Agreement governed by and construed in accordance with the Act and the FCC rules and regulations USWC shall provide unbundled Network Elements in accordance with this Agreement, the Act and FCC rules and regulations |
| CO | Part a, Para 8.1, p 5-6 Att 3, Sec. 1, p 1 | Agreement governed and construed in accordance with the Act and the FCC rules and regulations USWC shall provide unbundled Network Elements in accordance with this Agreement, the Act and FCC rules and regulations |
| MN | Part a, Para 20, p 19 | USWC must accept orders for Local Service, Network Elements or Combinations in accordance with the FCC Rules. |
| OR | Part a, Para 36, p 26 | ILEC will offer Network Elements to CLEC on an unbundled basis.....with the terms of this Agreement, the Oregon Statutes and Regulations and the requirements of Sec. 251 and 252 of the Federal Act. |
| UT | Part a 3, Para 21, p 21 Att 3, Para 1.1, p 1 | Agreement governed and construed in accordance with the Act and the FCC rules and regulations USWC shall provide unbundled Network Elements in accordance with this Agreement, the Act and FCC rules and regulations |
| WA | Part a, Para 21, p20 Att. 3, Para 1.1, p 1 | Agreement governed and construed in accordance with the Act and the FCC rules and regulations USWC shall provide unbundled Network Elements in accordance with this Agreement, the Act and FCC rules and regulations |

ALTERING OF CONTRACT - CHANGE OF LAW (EX. B)

| | | |
|----|--|---|
| AZ | Part a, Para 24.3, p 21; <i>see also</i> Part a, Paras 17.1 & 23.3 | In the event the Act or FCC or Commission, franchise authority and other regulatory applicable to this Agreement are held invalid, this Agreement shall survive, and the Parties shall promptly renegotiate any provisions of this Agreement which, in the absence of such invalidated Act, rule or regulation, are insufficiently clear to be effectuated, violate, or are either required or not required by the new rule or regulation |
| CO | Part a, Para 7.3, p 5 | Same as AZ |
| MN | Part a, Para 20, p 19 | In the event any final and nonappealable legislative, regulatory, judicial or other legal action materially affects terms of this agreement.....may require terms be renegotiated.... |
| OR | Part a, Para 19.5, p 19 | Same as MN |
| UT | Part a, Para 24.3, p 22 | Same as AZ |
| WA | Part a, Para 24.3, p 21 | Same as AZ |

DEFINITION OF COMBINATIONS (EX. C)

| | | |
|----|----------------|---------|
| AZ | Part a, Page 4 | Defined |
| CO | Part b, Page | Defined |
| MN | Att 12, Page 3 | Defined |
| OR | Att 12, Page 3 | Defined |
| UT | Part a, Page 4 | Defined |
| WA | Part a, Page 4 | Defined |

REQUIRES COOPERATIVE TESTING OF UNE “IN COMBINATION” (EX. D)

| | | |
|----|------------------------|--|
| AZ | Att 3, Para 18.1, p 47 | Definition and Requirements of Cooperative Testing |
| CO | Att 3, Para 15.1, p 46 | Same |
| MN | Att 3, Para 14.1. p 64 | Same |
| OR | Att 3, Para 14.1, p 60 | Same |
| UT | Att 3, Para 18.1, p 43 | Same |
| WA | Att 3, Para 18.1, p 42 | Same |

USW MUST PROVIDE UNE'S "IN COMBINATION" (EX. E)

| | | |
|----|----------------------------|--|
| AZ | Att 3, Para 1.2.2, p 1 | USW shall offer each Network Element individually and in combination with any other Network Element..... |
| CO | Att 3, Para 2.4, p 1 | Same |
| MN | Part a, Para 37, p 28 | Same |
| OR | Part a, Para 36, p 26 | Same |
| UT | Att 3, Para 1, p 1 | Same |
| WA | Att 3, Para, 1.2.2, p 1 | Same |

STANDARD INTERVALS (EX. F)

| | | |
|----|--|---|
| AZ | Att 5, Para 3.3.4.1, p 13 | Mutually agree on which services and circumstances are subject to Standard Interval |
| CO | Att 8, Para 2.2.21, p 16; 2.2.21.3 p 17 | Mutually agree on which services and circumstances are subject to Standard Intervals ...within this agreement |
| MN | Att 5, Para 9.1, p 11 | Standard Intervals do not apply to orders under this Agreement |
| OR | Att 5, Para 9.1, p 11 | Standard Intervals do not apply to orders under this Agreement |
| UT | Att 5, Para 3.2.4.1, p 13 | Mutually agree on which services and circumstances are subject to Standard Interval. |
| WA | Att 5, Para 3.2.4.1, p 12 | Mutually agree on which services and circumstances are subject to Standard Interval |

USW MUST PROVIDE LIST OF FEATURES (EX. G)

| | | |
|----|--|--|
| AZ | Att 5, Para 2.3.2.5, p 7 Att 5, Para 2.3.3.1, p 8 | USW shall provide...a list of all current features and functions technically available from each switch, by switch CLLI USW shall provide, upon reasonable request, sufficient engineering design and layout information for Network Elements for specific applications |
| CO | Att 8, Para 2.1.9.3 p. 12 | USW shall provide a list of all Telecommunications Services features and functions...shall also provide definitions and explanations of the features and functions available |
| MN | Att 5, Para 6.1.1,p 5-6 | USW shall provide a listing, by switch CLLI, of all services and features technically available from each switch that USWC may use to provide a Local Switching Element |
| OR | Att 5, Para 6.1.1, p 6 | Same as MN |
| UT | Att 5, Para 2.3.2.5, p 8 Att 5, Para 2.3.3.1, p 8 | Same as AZ |
| WA | Att 5, Para 2.3.2.5, p7 Att 5, Para 2.3.2.1, p7 | Same as AZ |

SPECIFIC UNBUNDLING REQUIREMENT – SINGLE ORDER (EX. H)

| | | |
|----|--|---|
| AZ | <p>Att 5, Para 2.2, p 6</p> <p>Att 5, Para 3.1.3.1 p. 10</p> | <p>When ordering...shall have the option of ordering all features, functions and capabilities of each Network Element</p> <p>For Services for Resale or unbundled Network Elements, US WEST shall providethe capability to order local service, intraLATA and interLATA toll services by entering Co-Providers’s choice of carrier on a single order.</p> |
| CO | <p>Att 8, Para 2.2.30, P 19</p> <p>Att 8, Para 2.14 P 10</p> | <p>USW shall provision unbundled Network Elements either individually or in any combination on a single order.</p> <p>For Services for Resale or unbundled Network Elements, US WEST shall providethe capability to order local service, intraLATA and interLATA toll services by entering Co-Providers’s choice of carrier on a single order.</p> |
| MN | <p>Att. 5, Para 2.3, p 1</p> | <p>Multiple individual Elements may be ordered by CLEC from ILEC on a single order without the need to have CLEC send an order for each Element.</p> |
| OR | <p>Att. 5, Para 2.3, p 1</p> | <p>Multiple individual Elements may be ordered by CLEC from ILEC on a single order without the need to have CLEC send an order for each Element</p> |
| UT | <p>Att 5, Para 2.2.2, p 6</p> <p>Att 5, Para 3.1.3.1 P 9</p> | <p>When ordering...shall have the option of ordering all features, functions and capabilities of each Network Element</p> <p>For Services for Resale or unbundled Network Elements, US WEST shall providethe capability to order local service, intraLATA and interLATA toll services by entering Co-Providers’s choice of carrier on a single order.</p> |
| WA | <p>Att 5, Para 2.2.2, P 6</p> <p>Att 5, Para 3.1.3.1 P9</p> | <p>When ordering...shall have the option of ordering all features, functions and capabilities of each Network Element</p> <p>For Services for Resale or unbundled Network Elements, US WEST shall providethe capability to order local service, intraLATA and interLATA toll services by entering Co-Providers’s choice of carrier on a single order.</p> |

CUSTOMIZED ROUTING (EX. I)

| | | |
|----|--------------------------------|--|
| AZ | Att 3, Para 10.3, p 31 | Direct particular classes of calls to particular outgoing trunks |
| CO | Att 3, Para 7.2.3, p 18 | Same |
| MN | Att 3, Para 6.4, p 23 | Same |
| OR | Att 3, Para 6.2.1.17.5.9, p 20 | Similar |
| UT | Att 3, Para 10.3, p 28 | Same |
| WA | Att 3, Para 6.4, p 23 | Same |

DRAFT
NOT FOR EXECUTION – FOR DISCUSSION PURPOSES ONLY
Amendment No. 5 to the Interconnection Agreement
Between Eschelon Telecom of Minnesota (f.k.a. Cady Telemanagement Inc.)
And Qwest Corporation (f.k.a. U S WEST Communications, Inc.)

This Amendment No. 5 (“Amendment”) is made and entered into by and between Eschelon Telecom of Minnesota (“Eschelon”) and Qwest Corporation (“Qwest”).

RECITALS

WHEREAS, Eschelon and Qwest entered into an Interconnection Agreement in the state of Minnesota that was executed by Eschelon on August 6, 1999, and Qwest on August 16, 1999; and

WHEREAS, Eschelon and Qwest desire to amend the Agreement as set forth in this Amendment.

AMENDMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Amendment Terms.**

This Amendment amends the Interconnection Agreement in the state of Minnesota that was executed by Eschelon on August 6, 1999, and Qwest on August 16, 1999 (“Agreement”). If, however, either party to this Amendment asserts that there is a conflict between the language contained in this Amendment and similar language in the Agreement, the language in the Agreement will govern.

2. **General Terms**

2.1 The term “Combinations” has the same meaning as in the Agreement.

2.2 Qwest shall provide Eschelon with nondiscriminatory access to Combinations in accordance with the Act, FCC rules and regulations, the Agreement, and the following terms and conditions.

3. **Description**

Qwest shall provide Combinations in at least five categories: (i) 1FR/1FB Plain Old Telephone Service (POTS) – with and without features such as vertical or Centrex features; (ii) Local Exchange Private Line; (iii) ISDN – either Basic Rate or Primary Rate, (iv) Digital Switched Service (DSS) and (v) PBX Trunks. Providing these examples is not intended to mean that these are the only

categories of Combinations of the type currently combined by Qwest in its network or provided by Qwest to itself, its customers or its end users.

3.1 UNE-P-POTS (including UNE-P- CENTREX): 1FR/1FB lines are available to Eschelon as a Combination. UNE-P POTS may include the following unbundled network elements: Analog – 2 wire voice grade loop; Analog Line Side Port, including all features, functions, and capabilities of the switch; and Shared Transport.

3.1.1 Eschelon may request a change from Centrex 21, Centrex Plus, or Centron resold service to UNE-P-POTS.

3.2 UNE-P-PBX: PBX Trunks are available to Eschelon as a Combination. UNE-P-PBX may include the following combination of unbundled network elements: DS1 capable loop, DS-1 PRI ISDN Trunk Port and Shared Transport.

3.3 UNE-P-DSS: Digital Switched Service (DSS) is available to Eschelon as a Combination.

3.4 UNE-P-ISDN: ISDN lines are available to Eschelon as a Combination. There are at least two types of UNE-P-ISDN. First, basic rate ISDN (UNE-P-ISDN-BRI) may include the following unbundled network elements: Basic ISDN Capable Loop, Digital Line Side Port and Shared Transport. Second, primary rate ISDN (UNE-P-ISDN-PRI) is available to Eschelon as a Combination.

3.5 Private Line Local Exchange (UNE-PL-X): Private line circuits are available to Eschelon as a Combination. There are many types of Private Line Local Exchange Combinations. For example, UNE-PL-DS1 is available to Eschelon as a Combination. UNE-PL-DS1 private line circuits may include the following unbundled network elements: DS1 Capable Loop and DS1 Unbundled Dedicated Interoffice Transport.

4. **Terms and Conditions**

Qwest shall provide to Eschelon Combinations of the type that Qwest currently combines in its network or provides to itself, its customers or its end users. Such Combinations include existing and new or additional lines. For such Combinations, Qwest must provide the Combination to Eschelon, regardless of whether Qwest has identified the particular Combination as a standard product offering. If Eschelon desires access to Combinations of a type that Qwest does not currently combine in its network or provide to itself, its customers or its end users, Eschelon may request access to such Combinations according to the terms of the Agreement. If Qwest begins to offer Combinations of a type that Qwest does not currently combine in its network or provide to itself, its customers or its end users, Qwest will begin, at the same time, to offer such Combinations to Eschelon under nondiscriminatory terms and conditions.

4.1 The parties recognize that, at the time of execution of this Amendment, the Federal Communications Commission (“FCC”) has adopted a “temporary mechanism to avoid a reduction in contributions to universal service prior to full implementation of access charge and universal service reform” under certain circumstances that are described in that the FCC’s Supplemental Order Clarification. *In re. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (June 2, 2000), at ¶4 [“Supplemental Order Clarification”]. Qwest shall provide Combinations in accordance with FCC rules and regulations, including the Supplemental Order Clarification while it is in effect.

5. **Rates and Charges**

Qwest shall bill Eschelon for each element, Combination, or local service supplied to Eschelon pursuant to the Agreement at the rates set forth in the Agreement. If the State Commission takes any action to adjust the rates previously ordered, Qwest will make any requested or required compliance filing to incorporate the adjusted rates into the Agreement. Upon approval of the adjusted rates by the Commission, the parties will abide by the adjusted rates on a going-forward basis, unless the Commission provides otherwise.

6. **Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, and Billing**

Processes for pre-ordering, ordering, provisioning, maintenance and repair, and billing for Combinations are contained in the Agreement.

6.1 Qwest shall provision unbundled network elements either individually or in any combination on a single order.

7. **Effective Date**

This Amendment will be submitted to the Commission for approval in accordance with Section 252 of the Act. This Amendment shall become effective pursuant to Sections 251 and 252 of the Act, upon Commission approval, or direction from the Commission that the Amendment ought to be implemented pending approval. The Agreement, including its provisions relating to combinations, is currently in effect. Nothing about the making of this Amendment renders those provisions ineffective before or after approval of this Amendment.

Eschelon Telecom of Minnesota, Inc.

Authorized Signature

Name Typed or Printed

Title

Date

Qwest Corporation

Authorized Signature

Name Typed or Printed

Title

Date

The Arizona Republic

BUSINESS & MONEY

SATURDAY
September 16, 2000
SECTION D

Qwest's job cuts under scrutiny

By Max Jarman
The Arizona Republic

The Arizona Corporation Commission wants assurances from Qwest Communications International that the 360 job cuts planned for Arizona won't compromise the company's already dismal service record.

Qwest executives will be asked to explain the cuts to the commission at a yet-to-be scheduled hearing on the subject.

Qwest is obligated to improve service in Arizona as a condition of the commission's approval of its June 30 acquisition of US West. Commissioner Bill Mundell is worried that directive could be compromised by the job reductions announced by Qwest Sept. 30. The 360 layoffs in Arizona are part of 11,000

positions being eliminated companywide.

Qwest spokesman Matt Barkett said the positions being eliminated in Arizona are redundant administrative jobs and will not affect the company's efforts to improve customer service.

"There will be no impact on our customers," he said.

Last year Qwest's predecessor, US West, paid \$1.5 million in fines for violations of minimum service quality standards established by the commission. Mundell, who is running for reelection, has been at the forefront of a movement to compel Qwest to improve the quality of service in the state.

Reach the reporter at
max.jarman@arizona
republic.com or (602) 444-7351.

1ST STORY of Level 1 printed in FULL format.

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THE ARIZONA REPUBLIC

August 5, 2000 Saturday, Final Chaser

SECTION: BUSINESS & MONEY; Pg. D1

LENGTH: 199 words

HEADLINE: QWEST TO CUT 4,000 IN US WEST MERGER

BYLINE: By Max Jarman, The Arizona Republic

BODY:

Qwest Communications International, which is beginning to digest US West, said it will cut up to 4,000 jobs systemwide by the end of the year.

Qwest spokesman Tyler Gronbach said the numbers are rough estimates and could not say how many jobs would be eliminated in Arizona, where the company has about 8,000 workers.

The layoffs will primarily affect staff in departments where there is overlap, such as finance, legal and communications, Gronbach said.

He added that the company plans to boost the number of technicians and customer service employees as it struggles to improve US West's dismal service record.

Qwest is looking to improve the company's revenue-to-employee ratio to \$350,000 by the end of 2001. Before the merger, US West's ratio was \$225,000 and Qwest's was \$490,000.

The shedding of redundant workers has been anticipated, according to Sharon Cordova, a spokeswoman with the Communications Workers of America union in Denver. The union represents about 35,000 of Qwest's 71,000 employees.

Although several hundred employees have left the company on their own volition since Qwest took over US West on June 30, Gronbach said there have been no company layoffs.

LANGUAGE: ENGLISH

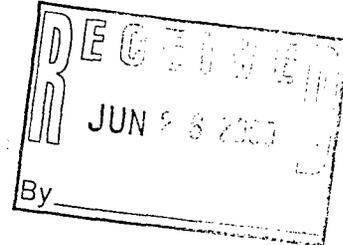
LOAD-DATE: September 8, 2000

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
303-672-1780
Facsimile 303-295-6973
lkornef@uswest.com



Laurie Korneffel
Senior Attorney

June 23, 2000



VIA FACSIMILE AND U.S. MAIL

F. Lynne Powers, Vice President-Finance
Dennis Ahlers, Esq.
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 1200
Minneapolis, Minnesota 55402

Re: DS0 loop intervals in Minnesota

Dear Lynne and Dennis:

This responds to your June 8, 2000 letter to Judy Tinkham and reflects the outcome of several recent conversations between me and Dennis regarding DS0 loop intervals in Minnesota. Through the good faith efforts and cooperation of both parties, we were able to address and resolve your concerns about this issue.

Eschelon and U S WEST Communications ("U S WEST") are parties to an Interconnection Agreement in the state of Minnesota that specifies standard intervals for loop provisioning. Although the contract specifies that DS0 loops be provisioned in a minimum of two (2) days, Eschelon has the option of requesting a longer interval period. For a variety of reasons, Eschelon desires to have its DS0 loops provisioned in five (5) days, regardless of order size, and it does not agree to submit to the 5-plus day interval provisions set forth in the separate U S WEST Standard Interval Guide.

After reviewing various provisions in the parties' Minnesota Interconnection Agreement, U S WEST concurs with Eschelon that, pursuant to section 9.1 of Attachment 5, it may submit to U S WEST DS0 loop orders with a desired due date based on a five (5) day interval and, assuming that such orders are otherwise compliant with the Interconnection Agreement, U S WEST will accept such orders.

If you have any further questions regarding this matter or any other matter, please do not hesitate to contact me or your account representative Jaye Vilks.

Very truly yours,
Laurie Korneffel / dsd

Laurie L. Korneffel

COPY



August 28, 2000

Ms. Sydney Margul, *by facsimile, U.S. mail & email*
Qwest Corporation
1801 California St.
Denver, CO 80202

Re: Feedback from CLEC Forum Regarding CICMP

Dear Ms. Margul:

As indicated at recent Co-Provider Industry Change Management Process ("CICMP") meetings, the Competitive Local Exchange Carrier ("CLEC") Forum believes it would be helpful at this time to communicate in writing several comments on the CICMP. The CLEC Forum has authorized me to write on its behalf to Qwest Corporation, f/k/a U S WEST Communications, Inc. ("Qwest").

CLECs have long requested a change management process and welcome the opportunity to participate in CICMP meetings. CLECs appreciate the time and efforts of Qwest in hosting the CICMP meetings and listening to and considering CLEC requests.

CLECs believe, however, that the CICMP process to date is less effective than it could be if the process was worked faster, particularly for emergency issues, and if Qwest demonstrated more flexibility. CLECs are disappointed, for example, that a number of Change Requests previously requested will not be implemented until at least Release 7.0. Also, Qwest delayed implementation of some of the Change Requests due to claimed regulatory reasons, but those reasons disappeared once Qwest needed to move forward on them to obtain approval of its merger with U S WEST. It is unclear when and whether those changes are actually going to be implemented. The process needs to incorporate more ability to expedite matters that CLECs or Qwest identify as important. It should be driven less by Qwest and its regulatory needs and more by CLEC business needs.

Currently, months can and do go by as CLECs must first formalize a Change Request (even though the same request may have been raised repeatedly in other arenas, such as regulatory processes or with a Qwest account manager), wait a month or more to get it on the agenda for discussion as to the nature of the request, wait a month or more to hear Qwest's response, possibly wait a month or more to get an indication of the priority that will be given to the request (*i.e.*, a "t-shirt size"), *etc.* Months are lost through this

cumbersome process. At the end of those months, if Qwest decides that it will not honor a request, Qwest designates the issue as "closed," even though CLECs are not satisfied with the response. (At a minimum, these issues should be designated as "unresolved" or "disputed.") The escalation process has been poorly communicated and may still result in closure of an issue, despite continued CLEC need for the requested item. Particularly for issues that CLECs or Qwest identify as important or urgent, a more streamlined, expedited process is needed.

Flexibility is needed not only to consider important issues earlier but also with respect to structure and scheduling. At a recent meeting, for example, Qwest's insistence that it make a presentation requested by CLECs as part of the CLEC forum, rather than as part of the CICMP (as requested by CLECs), suggested that Qwest construes narrowly the purpose and structure of the CICMP. In contrast, in regulatory proceedings, Qwest representatives often suggest that a wide range of issues are being handled in the CICMP. When an OSS or related issue arises, the CICMP should be available to deal with that issue, even if doing so does not fit into the existing rigid structure of the CICMP. That structure is exemplified by the materials in the CICMP "Distribution Package for 7/19/00." If an issue does not fit into one of the forms or matrixes represented by the materials in the package, it is difficult to get it addressed in the CICMP.

CLECs also would like more information about upcoming releases to be an ongoing part of the CICMP meetings (and not just by request, as for the last presentation). If Qwest is already working on a change, the CLECs need to know about it and prepare for it. Also, none of the parties should have to expend resources on the lengthy change request process, if those changes are already in the process internally at Qwest. Qwest needs to communicate these issues to CLECs so they also have that information. Additionally, CLECs need a better understanding of the internal organization and prioritization that takes place at Qwest with respect to changes requested by CLECs and those instituted by Qwest itself. We understand, for example, that Qwest is or was working on its billing architecture. CLECs need to know the nature and status of this project.

CLECs also asked that, when scheduling the meetings, consideration be given to the scheduling of meetings for the Regional Oversight Committee ("ROC"), due to overlap in participants. CLECs appreciate Qwest's responsiveness in agreeing to accommodate this request. CLECs also appreciate Qwest's responsiveness to their request that ROC updates take place during the CICMP meetings. The first update at the last CICMP meeting provided a helpful introduction to the ROC process. Also, CLECs need to know how ROC activities affect the change management process. For example, if Qwest is ultimately mandated to make changes to its systems as a result of the ROC and related proceedings, CLECs need to know how they relate to the change management process, how CLECs will be notified of changes, and how the changes will be prioritized.

Ms. Sydney Margul
Page 3
08/28/00

CLECs have requested more coordination and communication between the CICMP and ROC processes. Some of the CLECs are unfamiliar with the ROC process, and many have limited resources for participation in both processes. Issues raised in the ROC process, however, will likely affect issues being discussed in the CICMP. By separate letter, the CLEC Forum is contacting the ROC to request more communication and coordination between the two processes. Changes being discussed in the ROC must be implemented, and the CICMP participants should be aware of the nature of those changes and plans to implement them. CLECs have some concern that ROC participants currently believe that the CICMP forum is more comprehensive than it is currently.

Perhaps we could discuss formulation of a sub-group or task force to work on CICMP process issues and recommend changes, now that several meetings have been held and the parties have had more exposure to the existing process. CLEC Forum members look forward to working with you on these issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "F. Lynne Powers", with a long horizontal line extending to the right.

F. Lynne Powers,
Vice President,
Customer Operations

cc: Denise Anderson, Regional Oversight Committee Project Manager

COPY



August 28, 2000

Denise Anderson, *by facsimile, U.S. mail & email*
Regional Oversight Committee ("ROC") Project Manager
MTG Consulting
1309 Lake Washington Blvd. So.
Seattle, WA 98144-4017

Re: Co-Provider Industry Change Management Process

Dear Ms. Anderson:

Competitive Local Exchange Carriers ("CLECs") have formed a group, known as the "CLEC Forum," which has held meetings recently to discuss common experiences of CLECs with respect to Operations Support Systems ("OSS") issues and the change management process. The meetings are generally held immediately preceding meetings of the Co-Provider Industry Change Management Process ("CICMP"). Participating CLECs agreed to send a letter to Qwest Corporation, f/k/a U S WEST Communications, Inc. ("Qwest"), to provide feedback with respect to the CICMP process. A copy of that letter is enclosed.

As indicated in the enclosed letter, members of the CLEC Forum are concerned that the CICMP remains driven by Qwest's needs, rather than CLEC business needs, and that ROC participants may believe that the CICMP forum is more comprehensive and effective than it is currently. Members of the CLEC Forum have asked Qwest to assist in facilitating better coordination and communication between the CICMP and ROC processes. They also believe that it was important to share their concerns and request with ROC participants involved in third party testing. Anything that can be done to improve the effectiveness of CICMP, as well as coordination and communication between the ROC and CICMP, would be appreciated.

Please contact me if you would like to discuss the issues addressed in the enclosed letter.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Lynne Powers", written in a cursive style.

F. Lynne Powers
Vice President, Customer Operations

cc: Ms. Sydney Margul, Qwest