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Commissioner
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Arizona Corporation Commission

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**IN THE MATTER OF THE COMPLAINT OF
ESCHELON TELECOM OF ARIZONA, INC.
AGAINST QWEST CORPORATION**

**DOCKET NO. T-03406A-06-0257
T-01051B-06-0257**

**QWEST'S RESPONSE TO
ESCHELON'S MOTION FOR LEAVE
TO OBTAIN RESPONSES TO
REQUESTS FOR ADMISSIONS AND
ACCOMPANYING DATA REQUEST**

After Eschelon persuaded the Administrative Law Judge to set a very tight schedule on the premise that this proceeding would not require much discovery, Eschelon now seeks permission for discovery in excess of three times the presumptive limits under applicable Arizona Rules of Civil Procedure. Qwest focused its written discovery to comply with the presumptive limits, whereas Eschelon did not even attempt to comply, and in its Motion essentially argues that the Rules of Civil Procedure are dispensable. To the contrary, the Commission rules expressly incorporate those rules to govern discovery. Nor does Eschelon's Motion give an accurate assessment of the subject discovery requests: many go far outside the facts raised in the Petition and Answer, and Qwest has already expended over 100 employee hours responding to just two of Eschelon's interrogatories. Because the subject discovery is unduly burdensome, unnecessary, and would affect Qwest's substantial interests by forcing

1 Qwest to spend a disproportionate amount of time and resources drafting discovery responses at
2 the expense of preparing for the hearing which is set just three months out, the ALJ should deny
3 Eschelon's Motion.

4 **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

5 To obtain a very fast schedule for hearing, Eschelon has represented to the ALJ that
6 limited discovery was needed in this proceeding. For instance, in Eschelon's proposed
7 procedural schedule, it says the parties have already exchanged data requests, and that the ALJ
8 should limit discovery. *See Eschelon's Proposal for Interim Resolution and Procedural*
9 *Schedule, at 3, filed June 2, 2006.* The ALJ was persuaded by Eschelon's presentation to set an
10 early hearing date and set the hearing for the first week of October.

11 Qwest has asked the ALJ to reschedule the matter for hearing in January 2007 to
12 accommodate the schedule of Qwest's lead hearing counsel. In response to this request for
13 reconsideration, Eschelon has reiterated that if the hearing date is moved, the ALJ should put
14 "limitations [in] place on the . . . scope of discovery..." *See Eschelon Response to Qwest's*
15 *Motion to Reconsider Hearing Date, filed by Eschelon on June 14, 2006, at 1.* Thus, with one
16 hand, Eschelon demands discovery limitations, and with the other, dumps extraordinary
17 discovery on Qwest – well in excess of that allowed in a traditional full-blown lawsuit.

18 **A. Qwest Responded to Eschelon's First Set of Discovery Requests, Despite the**
19 **Undue Burden Imposed by Many of those Requests.**

20 After persuading the ALJ to set a very tight schedule with a hearing in the first week of
21 October, Eschelon issued its First Set of Data Requests containing 16 interrogatories (not
22 counting subparts or separate factual matters separately) and eight (8) requests for production
23 (not counting the number of distinct categories of documents sought). These interrogatories are
24 in and of themselves voluminous. In responding to just two of Eschelon's interrogatories,
25 *Qwest has spent more than 100 employee hours of time. See Exhibit 1, Affidavit of Charles*
26 *W. Steese.*

1 **B. Eschelon's Second Set of Discovery Requests Contains at Least 100 Requests**
 2 **for Admission and an Additional Interrogatory for Each of those Requests for Admission.**

3 Eschelon's Second Set of Requests, in which Eschelon numbered 27 requests for
 4 admission and one interrogatory, actually presents 100 requests for admission when numbered
 5 according to Arizona Rule of Civil Procedure 36 ("Each request shall contain only one factual
 6 matter"), and the same number of interrogatories:

Request Number	Number of Factual Inquiries Contained in the Request
3	5
5	3
11	4
13	21 (Asking to admit separately as to each of 21 disconnects)
14	21 (This contains a separate inquiry as to each disconnect discussed in Request No. 13).
17	6
19	2
20	3
22	At least 5
24	3
25	3
27	At least 9
1, 2, 4, 6-10, 12, 15-16, 18, 21, 23, and 26	Each contain one factual matter (15 total for these 15 numbered requests for admission)

19 ***Thus, in total, Eschelon has propounded 100 requests for admission. Exhibit 2*** to this
 20 Response is a copy of Eschelon's Second Set of requests, in which Qwest has separately
 21 numbered each of the separate factual matters contained in the Requests for Admission. *See*
 22 *also*, Exhibit 3 to Eschelon's Motion (Qwest letter to Eschelon explaining the conclusion that
 23 Eschelon's Second Set contains at least 80 RFAs).¹ Similarly, DR 1-17 requests an
 24 interrogatory explanation as to each response to the above requests for admission; therefore, it

25 _____
 26 ¹ In counting at least 80 RFAs in the letter, Qwest was being charitable to Eschelon by only counting RFA 14 as one.

1 constitutes 100 separate interrogatories.

2 Qwest responded with objections and responses to the first 25 requests for admission,
3 counting each factual matter as a separate request for admission. In addition, Qwest responded
4 to each of these requests (RFAs 1-1 through part of 1-14) with an interrogatory response even
5 though this meant responding to 42 interrogatories, two over the presumptive limit. *See Exhibit*
6 *4 to Eschelon's Motion.*

7 Many of the discovery requests in Eschelon's Second Set go far beyond the facts of the
8 Complaint and Answer. RFA 1-11 regards previous versions of the Expedites process, not
9 Qwest's current process. RFAs 1-13 and 1-14 (which collectively constitute 42 separate
10 requests for admission) regard purported disconnects that are not at issue because this
11 proceeding does not regard disconnects in error by Qwest. Indeed, Eschelon admitted that this
12 case concerns its disconnecting a line due to its own error. RFA 1-17 in part regards facts
13 outside this case (as to disconnects in error by Qwest). RFA 1-18, regarding Eschelon as a
14 facilities-based CLEC, is also not at issue in the case. RFAs 1-22 through 1-27 each concern
15 facts wholly outside the case because they relate only to expedite processes applicable to non-
16 design services, and this case concerns the expedite process for design services.

17 **II. ARGUMENT**

18 **A. Because Much of Eschelon's Subject Discovery Ranges Far from the Issues**
19 **at Hand, and in Any Case is More than Three Times the Presumptive Limits, Eschelon**
Has Not Shown Good Cause to Grant its Motion.

20 ***1. The Applicable Rules of Discovery Set Numerical Limits on***
21 ***Interrogatories and Requests for Admission.***

22 The Commission's Rule R14-3-101 provides that to the extent the Commission rules do
23 not cover a procedure or discovery, the Arizona Rules of Civil Procedure govern matters in this
24 proceeding:

25
26

1 Except as may be otherwise directed by the Commission, and when not in
2 conflict with law or the regulations or orders of this Commission, these Rules of
3 Practice and Procedure shall govern in all cases before the Corporation
4 Commission ***In all cases in which procedure is set forth neither by law, nor
5 by these rules, nor by regulations or orders of the Commission, the Rules of
6 Civil Procedure for the Superior Court of Arizona as established by the
7 Supreme Court of the state of Arizona shall govern.***

8 A.A.C. § R14-3-101(A) (2005). This rule shows that on discovery matters for which there is no
9 Commission rule, regulation, or order, the Civil Procedure rules shall govern. There is no
10 Commission rule regarding issuance of written discovery. Therefore, the Arizona Rules of Civil
11 Procedure govern written discovery here.

12 The applicable Civil Procedure rules set numerical limits on interrogatories and requests
13 for admission:

14 ***Each request shall contain only one factual matter*** or request for genuineness
15 of all documents or categories of documents. Each party without leave of court
16 shall be entitled to submit no more than ***twenty-five (25)*** requests in any case
17 except upon: (1) agreement of all parties; (2) an order of the court following a
18 motion demonstrating good cause, or (3) an order of the court following a
19 Comprehensive Pretrial Conference pursuant to Rule 16(c). Any interrogatories
20 accompanying requests shall be deemed interrogatories under Rule 33.1.

21 *Ariz. R. Civ. P. 36(b)* (emphasis added). Thus the rule which limits the number of requests for
22 admission also provides that any interrogatories issued concerning those requests for admission
23 count as interrogatories for purposes of the numerical limit imposed by Rule 33.1:

24 Except as provided in these Rules, a party shall not serve upon any other party
25 more than forty (40) interrogatories, which may be any combination of uniform
26 or non-uniform interrogatories. Any uniform interrogatory and its subparts shall
be counted as one interrogatory. Any subpart to a non-uniform interrogatory shall
be considered as a separate interrogatory.

27 *Ariz. R. Civ. P. 33.1*. None of Eschelon's interrogatories were uniform interrogatories provided
28 under Rule 33.1. It is undisputed that Eschelon did not follow the procedures contemplated in
29 Rules 33.1 and 36 to obtain counsel's agreement before issuing the excess discovery. Qwest

1 limited its written discovery to comply with the presumptive limits.

2 As to modification of these numerical limits, the Rules of Civil Procedure and the
3 Commission's rule R14-3-101 are in substantial accord. The Commission's rule provides that if
4 waiver of a Commission rule would affect a party's substantial interests, the Commission should
5 not expand discovery beyond the presumptive limit:

6 These rules shall be liberally construed to secure just and speedy determination
7 of all matters presented to the Commission. If good cause appears, the
8 Commission or the presiding officer may waive application of these rules when
9 not in conflict with law ***and does not affect the substantial interests of the parties.***

10 *A.A.C. § R14-3-101(B)* (2005) (emphasis added). This rule provides that the Commission shall
11 only waive its own rules when, in relevant part, to do so "does not affect the substantial interests
12 of the parties."² This standard accords with the Commission's authority under civil procedure
13 Rule 26 to limit discovery to protect against undue burden and expense:

14 The frequency or extent of use of the discovery methods set forth in subdivision
15 (a) may be limited by the court if it determines that: (i) the discovery sought is
16 unreasonably cumulative or duplicative, or obtainable from some other source
17 that is either more convenient, less burdensome, or less expensive; (ii) the party
18 seeking discovery has had ample opportunity by discovery in the action to obtain
19 the information sought; or (iii) the ***discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.***

20 (1) ... for good cause shown, the court in which the action is pending ... may
21 make any order which justice requires to protect a party or person from
22 annoyance, embarrassment, oppression, or undue burden or expense....

23 ² Eschelon argues that this paragraph of R14-3-101 shows the Commission must liberally
24 construe the Rules of Civil Procedure, but it actually only refers to construction of the
25 Commission's rules ("these rules"), not the Civil Procedure rules. The Rules of Civil Procedure
26 themselves provide "[t]hey shall be construed to secure the just, speedy, and inexpensive
determination of every action." Ariz. R. Civ. P. 1. Regardless, no amount of 'liberal'
construction could read Rule 36 as stating anything other than a maximum of 25 factual matters
for requests for admission, and Rule 33.1 as limiting the parties to 40 non-uniform
interrogatories, counting each subpart as a separate interrogatory. Nor is it 'strict' construction
to apply the Rule according to its plain language.

1 *Ariz. R. Civ. P. 26(b)(1), (c)(1)*. Reading Rule R14-3-101 and Rule 26 in tandem, the ALJ
2 should not allow Eschelon's subject discovery because it affects Qwest's substantial interests in
3 imposing undue, unnecessary burden particularly given the availability and higher efficiency of
4 depositions to delve into facts.

5 **2. *The Subject Discovery Affects Qwest's Substantial Interests Because it Would***
6 ***Force Qwest to Respond to Unduly Burdensome Discovery, Especially Considering The***
6 ***Already Very Limited Time to Prepare its Case for Hearing.***

7 While Eschelon correctly recognizes it must show good cause to obtain discovery in
8 excess of the presumptive limits set in Arizona Rules of Civil Procedure 36 and 33.1, Eschelon
9 does not even attempt to show that allowing such voluminous discovery would not "affect[] the
10 substantial interests of" Qwest.

11 Allowing Eschelon to issue discovery beyond the presumptive limits significantly,
12 adversely affects Qwest's substantial interest in not being forced to respond to unduly
13 burdensome, voluminous, and irrelevant discovery, at the expense of being able to prepare for
14 the hearing in this matter, currently scheduled only three months out from the filing of this
15 Response. *See, Ariz. R. Civ. P. 26(b)(1)* (court should limit discovery to avoid undue or
16 unnecessary burden given the needs of the case).

17 The subject discovery is unduly burdensome on at least two grounds. First, as noted
18 above, the subject discovery constitutes 100 requests for admission, and 100 corresponding
19 interrogatories in addition to the 16 interrogatories Eschelon issued in its First Set. Many of
20 these requests are outside the facts stated in the Petition and Answer. As explained supra, RFAs
21 1-11, 1-13, 1-14, 1-17 (as to four of six factual matters), 1-18, and 1-22 through 1-27 each
22 regard factual matters that are outside the complaint and answer.³ Eschelon is thus attempting
23

24 ³ As to the excess requests which reference facts stated in the Answer, Eschelon also has not
25 shown any authority suggesting it is entitled to issue discovery requests concerning every fact
26 alleged in an answer. The presumptive limit does not depend on the number of allegations stated
in the pleadings. *See Arizona Rules of Civil Procedure 36, 33.1*. The purpose of presumptive
limits is to require parties to focus on only the issues which genuinely require written discovery.

1 to require Qwest to respond to discovery far beyond the bounds of the issues raised in
2 Eschelon's Complaint or Qwest's Answer. Eschelon does so despite the express provisions of
3 Arizona Rule of Civil Procedure 36(a) and (c), which limit the use of requests for admission to
4 the pending action. Forcing Qwest to expend resources answering discovery on matters outside
5 this proceeding is unduly burdensome. (As further discussed below, Eschelon also does so
6 despite its express representations to the ALJ that minimal discovery is needed to present this
7 case for hearing, and the hearing date is presently only three months out).

8 Secondly, although Eschelon argues that its written discovery is a more efficient means
9 of developing factual information than depositions, written discovery is a poor avenue to get to
10 the heart of many of the pending questions. It is far easier to simply ask questions of
11 knowledgeable witnesses than to require Qwest to write narrative responses explaining why it
12 admits or denies the requests for admission. *For example, Qwest has already expended over*
13 *100 employee hours in responding to just two of Eschelon's interrogatories. See Exhibit 1.*
14 Many courts have recognized that interrogatories quickly become unduly burdensome when
15 they seek responses that either require the party to provide a narrative description of its case (see
16 *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998)) or require the responder
17 to collate information from its records which the discovering party could collate with
18 substantially the same effort. *See e.g., Ariz. R. Civ. P. 33(c)* (option to produce business records
19 in lieu of narrative response). In fact, the Arizona Supreme Court noted that the purpose of
20 introducing the numerical limits on written discovery was to "reduce discovery abuse and to
21 make the judicial system in Arizona more efficient, expeditious, and accessible to the people."
22 *Ariz. R. Civ. P. 36*, 1991 Court note.

23 Depositions better allow for complete development of the facts by allowing for follow-
24 up questions on issues of interest to the party taking the deposition. The Commission rules
25 expressly allow for depositions. *A.A.C. § R14-3-109(P)* ("The Commission, a Commissioner,
26 *or any party to any proceeding* before it may cause the depositions of witnesses to be taken in

1 the manner prescribed by law and of the civil procedure for the Superior Court of the state of
2 Arizona.”). Accordingly, Qwest limited its written discovery to those matters which are critical
3 for written responses and document production, and at this time plans to take depositions to
4 develop the facts.

5 **B. Allowing the Subject Discovery Also Contradicts a Just and Speedy**
6 **Resolution, Because Eschelon is Now Contradicting the Representations Upon Which**
6 **Eschelon Persuaded the ALJ to Set a Very Short Timeline to Hearing.**

7 Eschelon obtained a hearing date in this matter for the first week of October in
8 conjunction with requesting that the Commission “limit” discovery. Now that it has obtained
9 the short timeline it desired, Eschelon has submitted 100 requests for admission and 116
10 interrogatories. This is four times the presumptive limit on requests for admission, and almost
11 three times the presumptive limit on interrogatories. *To allow Eschelon to ‘bait and switch’*
12 *regarding the discovery needed for this matter would clearly not be in the interest of “just and*
13 *speedy determination.”* It would instead be markedly unjust, because Qwest has limited its own
14 written discovery to comply with presumptive limits and to conform to the very abbreviated
15 timeline the ALJ has imposed.

16 Eschelon also points out that it is a smaller company than Qwest, and implies it was
17 unfair that it had to file its Motion. Yet Eschelon could have instead focused its discovery to
18 comply with the presumptive limits. Eschelon could have complied with the procedure set out
19 in Rules 36 and 33.1 for the parties to agree to modify the limits before issuing discovery.
20 Eschelon could have foreseen that given the very short timeline it obtained in this proceeding, it
21 could not issue three to four times the presumptive limit of discovery without harming Qwest’s
22 substantial interests. Eschelon could also have foreseen the unduly burdensome nature of its
23 requests to Qwest, and focused its discovery requests on those matters that were critical, instead
24 of fishing to see what it might find. The Arizona Supreme Court notes that the standards of
25 Rule 26(b)(1) to limit discovery “must be applied in an even-handed manner to prevent use of
26 discovery to wage a war of attrition or as a device to coerce a party, whether affluent or

1 financially weak.” Ariz. R. Civ. P. 26, 1984 Court note to amendment of Rule 26(b)(1).

2 Excessive written discovery is an abuse regardless of the size of a litigant.

3 In sum, the ALJ should reject the notion that the discovery rules give less protection
4 depending on whether the responding party is large or small.

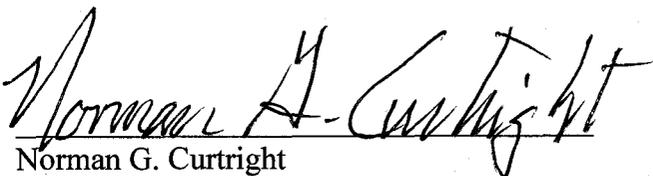
5 **III. CONCLUSION**

6 For each of the reasons stated above, the discovery which Eschelon seeks beyond the
7 presumptive limits provided by Arizona Rules of Civil Procedure is unduly burdensome and
8 unnecessary, and allowing it would significantly affect Qwest’s substantial interests. Eschelon’s
9 Motion should be denied.

10 RESPECTFULLY SUBMITTED this 7th day of July, 2006.

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1 ORIGINAL and 13 copies hand-delivered
2 for filing this 7th day of July, 2006, to:

3 Docket Control
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6 Phoenix, AZ 85007

7 Copy of the foregoing hand-delivered
8 this 7th day of July, 2006, to:

9 The Honorable Lyn Farmer
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
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14 Phoenix, Arizona 85007

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22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007

25 Copy of the foregoing mailed
26 this 7th day of July, 2006 to:

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EXHIBIT 1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS:**

3 **JEFF HATCH-MILLER – Chairman**

4 **WILLIAM A. MUNDELL**

5 **MARK SPITZER**

6 **MIKE GLEASON**

7 **KRISTIN K. MAYES**

8

<p>IN THE MATTER OF THE COMPLAINT OF ESCHELON TELECOM OF ARIZONA, INC. AGAINST QWEST CORPORATION</p>

**DOCKET NO. T-03406A-06-0257
DOCKET NO. T-01051B-06-0257**

9

10 **AFFIDAVIT OF CHARLES W. STEESE IN SUPPORT OF QWEST'S RESPONSE**
11 **TO ESCHELON'S MOTION FOR LEAVE TO OBTAIN RESPONSES TO**
12 **REQUESTS FOR ADMISSIONS AND ACCOMPANYING DATA REQUEST**
13

14 I, Charles W. Steese, being over 18 years old and having personal
15 knowledge of each fact asserted in this Affidavit, hereby attest as follows.

16 1. I am a partner in the law firm of Steese & Evans, P.C., and am counsel of
17 record for Qwest Corporation ("Qwest") in this proceeding.

18 2. As counsel for Qwest in this matter, I have coordinated the efforts of
19 Qwest representatives to gather and analyze the information necessary to respond to the
20 discovery requests which Eschelon has issued in this proceeding.

21 3. To date, Qwest representatives have spent over 100 employee hours
22 collecting and analyzing information necessary to respond to just two of Eschelon's data
23 requests, data requests 1-4 and 1-5.

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I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed this 7th day of July, 2006 at Denver, Colorado.

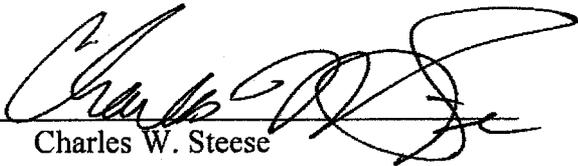

Charles W. Steese

EXHIBIT 2

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

**IN THE MATTER OF THE COMPLAINT OF
ESCHELON TELECOM OF ARIZONA, INC.
AGAINST QWEST CORPORATION**

)
) **DOCKET NO. T-03406A-06-0257**
) **DOCKET NO. T-01051B-06-0257**
) **ESCHELON'S SECOND SET OF DATA**
) **REQUESTS AND REQUEST FOR**
) **ADMISSIONS TO QWEST**
CORPORATION

Eschelon Telecom of Arizona, Inc. ("Eschelon") requests that Qwest Corporation ("Qwest") submit answers to the following Data Requests and Requests for Admissions within 11 business days [ten (10) business days, plus one day to account for overnight delivery of referenced documents].

INSTRUCTIONS AND DEFINITIONS

The Instructions and Definitions from Eschelon's First Set of Data Requests and Request for Production to Qwest Corporation in this matter are incorporated by reference and apply equally to this Second Set of Data Requests and Request for Admissions to Qwest Corporation.

Document Numbers ("Document Nos.") in these requests refer to the sequential numbering that appears on the documents produced with Eschelon's Objections and Responses to Qwest's First Set of Data Requests. References to Document Numbers are provided in these requests as a convenience to the parties, and are not intended to limit Qwest's responses to those documents or in any other respect.

"Proc. Conf. Tr." refers to the Transcript of the Procedural Conference held in this matter on May 23, 2006. Copies of excerpts from that transcript are stamped with Document Nos. 001659-001667.

126.) Admit that in CMP Eschelon followed the CMP comment process and submitted comments on November 11, 2005 regarding Qwest's CMP notice PROS.10.19.05.F.03380.ExpeditesEscalationsV30 in which Eschelon said:

"In Qwest's response to Covad's CR PC021904-1, Qwest said: "If a CLEC chooses not to amend their Interconnection Agreement, the current expedite criteria and process will be used." The current "expedite requiring approval process" allows a CLEC to request an expedite, at no charge, when the customer's needs met certain criteria. Eschelon relied upon Qwest's response and based its decision to comment, or not comment, on that response. Qwest is now failing to keep the commitments it made to CLECs in CMP, and in its response to Covad, by now changing its position on expedites and unilaterally imposing charges via a process change in CMP. Qwest's proposed change to remove the existing approval required expedite process for designed products will negatively impact Eschelon and its customers. Qwest said its basis for this change is "parity" and that Qwest retail charges for all expedites for "designed" services. However, this claim of "parity" is misleading as Qwest's new process now treats CLEC POTS customers differently than Qwest POTS customers. Qwest defines parity based on whether a service is "designed." Qwest has chosen to apply the "design" process to DS0 UBLs, but not to its own POTS customers. The result is that though from the customer perspective the service is the same, Qwest now proposes to treat them differently for the expedite process. The change Qwest is proposing is discriminatory to CLECs and their customers. A CLEC DS0 UBL and a Qwest retail 1FB functionally are the same service. A DS0 loop is merely a POTS line that Qwest chose to provision using a design flow process. For example, a customer could request an expedite using the approval required process when ordering service from Qwest (e.g. a 1FB), and would not have to pay additional charges for the expedite. However, if the customer orders service from a CLEC via a DS0 loop and the customer requests an expedite from the CLEC, the CLEC and the customer would have to pay an additional charge for the same basic service.

Eschelon objects to Qwest's proposed changes to the current approval required expedite process because it is discriminatory to CLECs and CLEC customers. In addition, because Eschelon relied upon Qwest's comments to Covad's CR, Eschelon also objects to Qwest's addition of UBL DS0 products to the pre-approved list of products. Qwest chose to make the change to the approval required expedite process after it added DS0 loops to the product list for pre-approved products. The result is that CLECs were unable to effectively comment on a change that now, coupled with Qwest's further change, significantly impacts a CLEC's business."

ESCHELON RFA 1-5:

1-5 (Reference, e.g., Document Nos. 000123-000128.) Admit that (a) multiple CLECs submitted CMP comments regarding PROS.10.19.05.F.03380. Expedites

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EscalationsV30; that (b) three of five CLECs (including Eschelon) providing comments in CMP referred to discrimination and/or a competitive disadvantage; and that (c) Integra said in its comments that "Integra objects to Qwest proposed change to remove the existing approval required expedite process for designed products. When Integra signed the Qwest Expedite Amendment we were not advised that by signing the amendment it would change the current Expedites Requiring Approval process. We signed the amendment believing that this would ADD to our options of having an order completed outside the standard interval. When Integra signed the amendment UBL DS0 loops were not included as a product on the list of products in the "Pre-Approved Expedites" list. When the UBL DS0 was added to this list Integra did not comment as at that time we still believed the Expedites Requiring Approval process was in place for our use."

ESCHELON RFA 1-6:

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1-6 (Reference, e.g., Document No. 000129.) Admit that Qwest provided a binding response in CMP by email on November 7, 2005 (dated November 4, 2005) to the McLeod escalation, which Eschelon joined in CMP, in which Qwest said "rates associated with an Interconnection Agreement are outside the scope of the CMP process."

ESCHELON RFA 1-7:

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1-7 (Reference, e.g., Document Nos. 000130 & 000136.) Admit that Eschelon (Danny de Hoyos, Vice President, Customer Service and Product Delivery), in a letter dated March 21, 2006 to Qwest (Kenneth Beck, Regional Vice President; Director - Interconnection Compliance; General Counsel, Law Department), cited the dispute resolution provisions of the Qwest-Eschelon ICA (Part A, §27).

ESCHELON RFA 1-8:

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1-8 In Paragraph 14(B), p. 10, line 26 - p. 11, lines 1-2, of its Answer, Qwest states that Eschelon could have challenged the provision using the CMP dispute resolution process, but Eschelon chose not to do so. (Reference, e.g., Document No. 000137.) See also Proc. Conf. Tr., p. 11, lines 3-6 (Document No. 001661). Admit that Eschelon (Danny de Hoyos, Vice President, Customer Service and Product Delivery), in a letter dated April 3, 2006 to Qwest (Kenneth Beck, Regional Vice President; Director - Interconnection Compliance; General Counsel, Law Department), indicated in the subject line that the letter was regarding: "Escalation and Request for Dispute Resolution pursuant to the Interconnection Agreements; LSR #17114755 (#D49232945); LSR #17192206 (#N49828418; PON #AZ657718T1FAC); ASR #0607700072 (#C50456587; PON # AZ657718T1FAC); Joint McLeod-Eschelon Escalation #39 Re. PROS.09.12.05.F.03242.Expedites_Escalations_V27 - Denied by Qwest 11/4/05; Eschelon 11/3/05 objections to PROS.10.19.05.F.03380.Expedites EscalationsV30."

ESCHELON RFA 1-9:

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1-9 Admit that Qwest's statement in Paragraph 14(B), p. 10, line 25 that Eschelon "did nothing" is false.

ESCHELON RFA 1-10:

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1-10 Admit that Qwest's statement in Proc. Conf. Tr., p. 14, lines 1-6 (Document No. 001663) that Qwest "never complained" about changes to the expedite process in CMP is false.

ESCHELON RFA 1-11:

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1-11 (Reference Document Nos. 000066, 000078, 000090, 000105.) Admit that the CMP notifications for Versions 11, 22, 27, and 30 of the Expedites and Escalations Overview PCAT were "process" notifications and none of these Versions were noticed as "system" changes.

ESCHELON RFA 1-12:

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1-12 (Reference Document Nos. 000159-000287.) Admit that, for product and process changes in CMP, while votes may be taken as to certain CMP procedural issues in the course of considering the change, no vote is taken in CMP as to whether a particular product or process change requested by a CLEC or Qwest should be granted or denied.

ESCHELON RFA 1-13:

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1-13 Attached as part of these requests is a list of twenty-one (21) disconnects in error that resulted in disruption of an Eschelon end user customer's service. (Reference also Document Nos. 000379-000443.) Admit separately, for each of the 21 on the list, that it is a disconnect in error by Qwest.

ESCHELON RFA 1-14:

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1-14 In its Complaint at p. 2, lines, 3-4 and paragraph 26, Eschelon admits that this was an Eschelon disconnect in error. On page 1, line 17 of its Answer, Qwest states that Eschelon's customers found themselves out of service because of Eschelon's "incompetence." On page 2, lines 22-23 of its Answer, Qwest states that the cause of the disconnect was Eschelon's "incompetence." On page 2, line 25, Qwest again refers to Eschelon's "incompetence." For each of the errors for which Qwest admits it was a Qwest disconnect in error in response to RFA No. 1-13, admit that the Qwest disconnect(s) in error was due to Qwest's incompetence. Admit separately, for all such errors collectively, that these errors were due to Qwest's incompetence.

ESCHELON RFA 1-15:

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1-15 (Reference Document Nos. 000313.) Admit that, in response to trouble ticket number OC125098, Qwest repaired a missing cross connect that restored the customer's service on March 15, 2006, before Qwest later disconnected the service.

ESCHELON RFA 1-16:

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1-16 In Paragraph 6(C), p. 6, line 1 and Paragraph 14(A), p. 10, line 18 of its Answer, Qwest states that Eschelon wants "expedites for free." In the Proc. Conf. Tr., p. 7, lines 14-16 (Document No. 001660), Qwest said: "The only real reason that Eschelon is objecting to the amendment is they don't want to pay anything to obtain expedites." (Reference Document Nos. 000137-000139.) Admit that, before filing its Complaint, Eschelon told Qwest in writing that it will pay charges for expedites pursuant to the ICA without amendment, including hourly and dispatch charges, in addition for the installation charge for the order requesting the expedite.

ESCHELON RFA 1-17:

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1-17 When an unbundled loop is installed and then an expedited order is needed several months later (e.g., to correct a later disconnect in error of that loop), admit that (a) Qwest charges the Commission approved non-recurring charge (NRC) for the initial installation of the unbundled loop (e.g., \$87.93 for DS1 capable loop without testing in Arizona); and that (b) Qwest charges the Commission approved non-recurring charge (NRC) for the later installation of the unbundled loop (e.g., \$87.93 for DS1 capable loop without testing in Arizona) to restore service (e.g., to correct the later disconnect in error of that loop), even if the facilities remain in place and no premise dispatch is required; and (c) Qwest charges the rate in its expedite amendment (e.g., \$200 per day expedited, which is \$1,000 for a 5-day expedite) if the CLEC has signed the expedite amendment. Please provide separate responses to (a)-(c) for (1) disconnects in error caused by Qwest and (2) disconnects in error caused by CLEC.

ESCHELON RFA 1-18:

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1-18 On page 4, line 1 of its Answer, Qwest "denies" that Eschelon is a facilities based CLEC. (Reference Document No. 000373.) Admit that the Arizona Corporation Commission authorized Eschelon to provide competitive facilities-based and resold local exchange and interexchange telecommunications services in Arizona.

ESCHELON RFA 1-19:

1-19 In Paragraph 14, p. 9, line 26 and in Paragraph 16, p. 11, lines 18-19 of its Answer, Qwest states that the expedite process under which Qwest previously

2 { expedited orders for unbundled loops was "created" in CMP. (Reference Document Nos. 000022-000025.) Admit that (a) a mutually agreed upon process for expedites requiring approval was in place, including for unbundled loops, before Qwest documented it on its website through CMP and that (b) on September 22, 2001, Qwest issued an expedites and escalations product notification (Version 1) when documenting the process on its website in which Qwest said that "these updates reflect current practice."

ESCHELON RFA 1-20:

1-20 In Paragraph 16, p. 11, line 23 of its Answer, Qwest refers to the "former expedite process." In Paragraph 14(B), p. 10, lines 23-24 of its Answer, Qwest refers to a "new process" and said that Qwest gave CLECs time "to prepare for the new process." Admit that, in connection with Covad CR PC021904-1:

3 { (a) on May 12, 2004, Qwest told CLECs that: "If a CLEC chooses not to amend their Interconnection Agreement, the current expedite criteria and process will be used."

(b) on July 15, 2004, Qwest told CLECs that: "If a CLEC chooses not to sign the amendment and pay the approved rates, this will not impact resources. For Qwest's Retail and Access customers, they are bound by the terms established in the tariffs (which have been or are in the process of being filed). Qwest did not want to shut the door for its Interconnect customers because of existing contractual obligations, so is offering those customers two options: 1) To be able to expedite without reason for a per-day improved rate, like the Retail and Access customer, or 2) Continue with the existing process that is in place. Qwest is providing the Interconnect customers an additional option. If the CLEC chooses option 2, and the expedite reason is for one of those listed in the PCAT, they are given the same opportunity at having the due date requested. This comment is accepted."; and

(c) on June 29, 2004, Qwest told CLECs that: "Qwest is modifying/changing the existing manual Expedite process to incorporate two processes. These are described as Pre-Approved and Expedites Requiring Approval."

ESCHELON RFA 1-21:

i { 1-21 (Reference Document Nos. 000107-000115; *Compare, e.g., 000017 with 000107.*) Admit that, after Qwest issued Version 30 of the Expedites and Escalations Overview PCAT, the Expedites Requiring Approval process remained in place at Qwest, but Qwest removed certain products (including unbundled loops) from the list of products to which Qwest said the Expedites Requiring Approval process applied.

ESCHELON RFA 1-22:

1-22 In Proc. Conf. Tr., p. 23, lines 17-18; p. 24, lines 12-13; p.28, lines 1-2 (Document No. 001664-001666), Qwest said Qwest doesn't "have methods to apply the old process anymore"; that the "old process, which, frankly, doesn't exist anymore"; and the process "still exists for QPP." (Reference, e.g., Document Nos. 001645-001654.) Admit that (as of the present time - for all subparts) (a) Qwest describes its expedites and escalations "local business procedures" in the Qwest "Expedites and Escalations Overview - V40.0," which is available on the web at <http://www.qwest.com/wholesale/clecs/exesclover.html>; (b) requesting an expedite "follows one of two processes" (c) One of the processes for requesting an expedite is the "Expedites Requiring Approval" process (d) "Expedite charges are not applicable with the Expedites Requiring Approval process."; and (e) "Following is a list of conditions where an expedite is granted" under the "Expedites Requiring Approval" process:

at least
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- "Fire
- Flood
- Medical emergency
- National emergency
- Conditions where your end-user is completely out of service (primary line)
- Disconnect in error by Qwest
- Requested service necessary for your end-user's grand opening event delayed for facilities or equipment reasons with a future RFS date
- Delayed orders with a future RFS date that meet any of the above described conditions
- National Security
- Business Classes of Service unable to dial 911 due to previous order activity
- Business Classes of Service where hunting, call forwarding or voice mail features are not working correctly due to previous order activity where the end-users business is being critically affected"

ESCHELON RFA 1-23:

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1-23 (Reference Document No. 001646.) Admit that under the Qwest Expedites Requiring Approval process, for any of the above conditions (listed in RFA 1-22), "expedited request can be made either prior to, or after, submitting CLEC's service request."

ESCHELON RFA 1-24:

3 { 1-24 (Reference Document No. 001646.) Admit that under the Qwest Expedites Requiring Approval process there are two options to request an expedite on a Local Service Request (LSR) and that, under the second option: (a) the CLEC is not required to populate the EXP field; (b) the CLEC submits the request with a due date interval from the SIG or CLEC's ICA and then calls the Qwest Call Center; and (c) the CLEC is required to call to the Qwest Call Center at 1-866-434-2555.

ESCHELON RFA 1-25:

3 { 1-25 (Reference Document Nos. 001646 & 001653-001654.) Admit that (a) the Qwest Call Center and its telephone number of 1-866-434-2555 used to request an expedite under the Qwest Expedites Requiring Approval process is the same Qwest Call Center and telephone number that is used generally for other LSR Tier 1 escalations; (b) the next escalation level is Tier 2; and (c) the next escalation level is Tier 3, which is the Qwest Service Manager assigned to that CLEC's account.

ESCHELON RFA 1-26:

1 { 1-26 (Reference 001655-001658; escalation ticket number 25891370; PON AZ606564-IKLH.) Admit that, on or about March 20, 2006, Qwest's Tier 2 Call Center granted an expedite to Eschelon, under the Qwest Expedites Requiring Approval process, for the product Qwest Platform Plus (QPP) in circumstances that met at least one of the conditions (listed in RFA 1-22).

ESCHELON RFA 1-27:

at least 9 { 1-27 Admit that Qwest's [Tier 1] [Tier 2] and [Tier 3] personnel are trained on, or familiar with, [the Qwest Expedite Requiring Approval process] and, specifically, [the conditions (listed in RFA 1-22)] and [when to grant or deny an expedite based upon whether one or more of those conditions is met.]

i.e. each of three tiers x three matters

By _____

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