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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE PETITION OF)
ESCHELON TELECOM OF ARIZONA, INC.)
FOR ARBITRATION WITH QWEST CORP.,) DOCKET NO. T-03406A-06-0572
PURSUANT TO 47 U.S.C. SECTION 252 OF) DOCKET NO. T-01051B-06-0572
THE FEDERAL TELECOMMUNICATIONS)
ACT OF 1996)

SURREBUTTAL TESTIMONY

OF

MICHAEL STARKEY

ON BEHALF OF

ESCHELON TELECOM OF ARIZONA, INC.

March 2, 2007

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE**
3 **RECORD.**

4 A. My name is Michael Starkey. My business address is QSI Consulting, Inc., 243
5 Dardenne Farms Drive, Cottleville, Missouri 63304.

6 **Q. ARE YOU THE SAME MICHAEL STARKEY WHO FILED DIRECT**
7 **TESTIMONY IN THIS PROCEEDING ON NOVEMBER 8, 2006, AND**
8 **REBUTTAL TESTIMONY ON FEBRUARY 9, 2007?**

9 A. Yes.

10 **II. OVERVIEW OF SURREBUTTAL TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

12 A. I will respond to rebuttal testimony of Qwest. I have listed below the issues I
13 address in my surrebuttal testimony and the corresponding Qwest witness who
14 addressed that issue in his or her rebuttal testimony.

- 15 • Section III: Contractual Certainty – Interconnection Agreement/Change
16 Management Process – Issues (Qwest witnesses Renee Albersheim¹ and
17 Karen Stewart²);

¹ Rebuttal Testimony of Renee Albersheim on behalf of Qwest Corp., ACC Docket Nos. T-03406A-06-0572/T-01051B-06-0572. February 9, 2007 (“Albersheim Rebuttal”).

² Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp., ACC Docket Nos. T-03406A-06-0572/T-01051B-06-0572. February 9, 2007 (“Stewart Rebuttal”).

- 1 • Section IV: Subject Matter 1 (Interval Changes and Placement) – Issue 1-1
2 and subparts (Qwest witness Renee Albersheim);
- 3 • Section V: Subject Matter 11 (Power) – Issue 8-21 and subparts (Qwest
4 witnesses Curtis Ashton³ and Teresa Million⁴);
- 5 • Section VI: Subject Matter 14 (Nondiscriminatory Access to UNEs) – Issue 9-
6 31 (Qwest witness Karen Stewart);⁵
- 7 • Section VII: Subject Matter 16 (Network Maintenance and Modernization) –
8 Issue Nos. 9-33, 9-33(a), 9-34, 9-35, and 9-36 ICA Sections 9.1.9 and 9.1.9.1
9 (Qwest witness Karen Stewart);
- 10 • Section VIII: Subject Matter 18 (Conversion) – Issues 9-43 / 9-44 and
11 subparts (Qwest witness Teresa Million);
- 12 • Section IX: Subject Matter 24 (Loop-Transport Combinations) – Issue 9-55
13 (Qwest witness Karen Stewart);
- 14 • Section X: Subject Matter 27 (Multiplexing/Loop-Mux Combinations) – Issue
15 9-61 and subparts (Qwest witness Karen Stewart); and
- 16 • Sections XI - XIV: Subject Matters 29, 30, 31A, 32, 33, 34, 36, 42, 43
17 (Section 12 issues – some are closed) – Issues 12-64 through 12-87 (except
18 Issue 12-67 and subparts) (Qwest witness Renee Albersheim).

³ Rebuttal Testimony of Curtis Ashton on behalf of Qwest Corp., ACC Docket Nos. T-03406A-06-0572/T-01051B-06-0572. February 9, 2007 (“Ashton Rebuttal”).

⁴ Rebuttal Testimony of Teresa Million on behalf of Qwest Corp., ACC Docket Nos. T-03406A-06-0572/T-01051B-06-0572. February 9, 2007 (“Million Rebuttal”).

⁵ Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp., ACC Docket Nos. T-03406A-06-0572/T-01051B-06-0572. February 9, 2007 (“Stewart Rebuttal”).

1 Q. DO YOU HAVE ANY EXHIBITS TO YOUR SURREBUTTAL
2 TESTIMONY?

3 A. Yes. Exhibit MS-7, which consists of Minnesota Public Utilities Commission
4 (“PUC”) Orders dated July 30, 2003 and November 12, 2003 in Minnesota PUC
5 Docket No. P-421/C-03-616 (“*MN 616 Docket*”). These orders are discussed in
6 conjunction with Subject Matter 29 (Issue 12-64 and subparts).

7 **III. CHANGE MANAGEMENT PROCESS, INTERCONNECTION**
8 **AGREEMENT TERMS, AND THE NEED FOR CONTRACTUAL**
9 **CERTAINTY**

10 Q. HOW IS SECTION III OF YOUR TESTIMONY ORGANIZED?

11 A. I will first discuss Qwest’s attacks on the factual record that Eschelon provided by
12 way of four examples (each with its own chronology),⁶ and then I will discuss
13 Qwest’s more general claims regarding the CMP, contractual certainty, and the
14 FCC and state commission decisions discussed in my direct testimony.⁷ Both Ms.
15 Albersheim and Ms. Stewart address these issues.

16 A. JEOPARDIES, DESIGN CHANGES, SPECIAL CONSTRUCTION
17 (CRUNEC), SECRET TRRO PCAT, AND EXPEDITE EXAMPLES
18 OF WHEN QWEST VACILLATES OR MANEUVERS AS TO CMP

19 Q. QWEST TESTIFIES THAT ESCHELON HAS PRESENTED A

⁶ Compare Albersheim Rebuttal, pp. 21-33 (and Stewart Rebuttal, p. 14) with Starkey Direct, pp. 51-84 & Exhibits BJJ- 2 – BJJ-10.

⁷ Compare Albersheim Rebuttal, pp. 2-21 (and Stewart Rebuttal, pp. 14, 66-70, & 76-77) with Starkey Direct, pp. 8-51 & Exhibit BJJ- 1; see also Exhibits BJJ-26 – BJJ-28.

1 **“MISLEADING PICTURE” OF SEVERAL EXAMPLES OF QWEST’S**
2 **HANDLING OF ISSUES IN CMP.⁸ DO YOU AGREE?**

3 A. No. The opposite is true, as my discussion of each example will show. Eschelon
4 has presented an accurate picture of each example discussed in my direct
5 testimony⁹ and provided supporting documentation¹⁰ to allow an independent
6 review of the facts. To avoid voluminous filings of many exhibits, Eschelon has
7 made efficient and proper use of summary information and excerpts, while
8 providing sufficient information (including URLs to information on Qwest’s own
9 web page) to allow further review of the entire documents (many of which were
10 prepared by Qwest) if desired. Despite these efforts by Eschelon to be thorough
11 and fair in reasonably presenting a large number of facts, Qwest testifies:

12 ...Eschelon has presented small pieces of the record for each of
13 these topics, and chosen the pieces that seem on the surface to
14 support Eschelon’s position. I will present a more complete
15 discussion of each topic....¹¹

16 An examination of each example will show that Qwest presents even smaller
17 pieces of the record (to the extent it attempts to support its assertions with
18 evidence at all), and Qwest’s version of events is inaccurate.¹² As in my direct

⁸ Albersheim Rebuttal, p. 20, line 18.

⁹ Starkey Direct, pp. 51-84.

¹⁰ See, e.g., Exhibits BJJ-5 & BJJ-6 (jeopardies), BJJ-2 (delayed/held orders), BJJ-9 & BJJ-10 & BJJ-11 (CRUNEC), BJJ-7 (Secret TRRO PCAT); see also additional examples in Exhibits BJJ-3 & BJJ-4 (expedited orders or “expedites”).

¹¹ Albersheim Rebuttal, p. 21, lines 2-4.

¹² Ms. Albersheim points to more than 1,000 product and process and system changes and claims that they demonstrate that the four examples provided by Eschelon “are not the general rule.” (Albersheim Rebuttal, p. 4). I addressed Ms. Albersheim’s argument at page 82 of my direct

1 testimony, I will refer to the four primary examples as Jeopardies, Design
2 Changes, CRUNEC, and Secret TRRO PCATs.¹³ As Ms. Albersheim responds¹⁴
3 to an example I provided with respect to Expedited Orders,¹⁵ I will address those
4 aspects of Expedited Orders as well.¹⁶

5 **1. Jeopardies Example**¹⁷

6 **Q. MS. ALBERSHEIM CLAIMS THAT QWEST “NEVER” MADE A**
7 **COMMITMENT TO DELIVER A NEW DUE DATE RESOLVING AN**
8 **ORDER IN JEOPARDY THE DAY BEFORE THE NEW DUE DATE.¹⁸ IS**
9 **THAT TRUE?**

10 **A. No. Ms. Albersheim is wrong when she says that the “evidence presented by**
11 **Eschelon regarding the applicable CMP Change Requests shows that Qwest never**
12 **made such a commitment.”¹⁹ In my response below, I point directly to the**

testimony. Though Qwest claims these are isolated incidents, the significance of these examples is that they occurred at all. If CMP was the disciplined process Qwest claims it is, these examples would not have occurred at all. These examples demonstrate that: Qwest has used the CMP to advantage itself relative to its own policy positions, there is potential for abuse in the future, and safeguards in the form of clear ICA terms are needed to protect against this abuse. Furthermore, Ms. Albersheim’s data on the amount of changes in CMP does not include product and process changes that Qwest tries to implement outside of CMP. *See, e.g.*, Secret TRRO PCATs example (Starkey Direct, pp. 69-84 & Exhibits BJJ-7, BJJ-17-BJJ-18 & BJJ-40).

¹³ Starkey Direct, pp. 52-84.

¹⁴ Albersheim Rebuttal, pp. 10-11.

¹⁵ Starkey Direct, p. 47 (citing Eschelon Complaint against Qwest).

¹⁶ Regarding Issue 12-67 (Expedited Orders), please refer to the testimony of Mr. Denney.

¹⁷ Starkey Direct, pp. 52-55; Webber Direct (adopted by Mr. Denney), pp. 125-150; and Exhibits BJJ-5 and BJJ-6.

¹⁸ Albersheim Rebuttal, p. 21, lines 9-15; *id.* p. 26, line 20.

¹⁹ Albersheim Rebuttal, p. 21, lines 13-15 and p. 26, line 20.

1 evidence in the record where Qwest makes this commitment. Qwest both made a
2 commitment to send an Firm Order Confirmation (“FOC”) with the due date after
3 a Qwest facility jeopardy and to do so at least the day before the due date.
4 Eschelon submitted the evidence of this Qwest commitment with its direct
5 testimony, so this evidence was in the record at the time that Ms. Albersheim
6 made her statement to the contrary. In addition, I will explain how Qwest
7 attempts to confuse the Commission by discussing two CMP change requests
8 together – PC081403-1²⁰ and PC072303-1²¹ – when change request PC072303-1
9 does not even relate to FOCs that follow a Qwest facility jeopardy.²²

10 **Q. DID QWEST COMMIT TO DELIVER A NEW DUE DATE RESOLVING**
11 **AN ORDER IN JEOPARDY AND TO DO SO AT LEAST THE DAY**
12 **BEFORE THE NEW DUE DATE?**

13 A. Yes. On February 26, 2004, in CMP Qwest provided to Eschelon a response to
14 an example in which Qwest, after a Qwest facility jeopardy, had not provided an
15 FOC with a new due date the day before.²³ In its response, Qwest made the
16 commitment in CMP that Ms. Albersheim suggests Qwest did not make. To
17 confirm Qwest’s process and ensure a mutual understanding of the facts,

²⁰ Exhibit BJJ-5 pp. 17-28; *see also* Qwest Exhibit RA-R4.

²¹ Exhibit BJJ-5, pp. 29-34; *see also* Qwest Exhibit RA-R3.

²² Exhibit BJJ-5, pp. 29-34; *see also* Qwest Exhibit RA-R3.

²³ Exhibit BJJ-5, p. 4 (2/26/04). The notice for the March 4, 2004 meeting was dated February 26, 2004. *See id.*, p. 35. The enclosed materials (distributed with the notice on 2/26/04) are dated February 25, 2004 and are part of Exhibit BJJ-5. *See id.*, pp. 36-50.

1 Eschelon specifically asked Qwest whether, under Qwest's process, "shouldn't
2 we have received the releasing FOC the day before the order is due?"²⁴ Qwest
3 responded:

4 Yes an FOC should have been sent prior to the Due Date.²⁵

5 During the March 4, 2004 call to discuss these materials (including Eschelon's
6 example and Qwest's response), Eschelon "confirmed that the CLEC should
7 always receive the FOC before the due date."²⁶ Qwest "agreed, and confirmed
8 that Qwest cannot expect the CLEC to be ready for the service if we haven't
9 notified you."²⁷ With this commitment from Qwest, change request PC081403-1
10 was closed.²⁸

11 A copy of the meeting materials provided on February 26, 2004 is attached to the
12 direct testimony of Ms. Johnson as part of Exhibit BJJ-5.²⁹ A comparison of this
13 document to the quotations in the chronology in Exhibit BJJ-5 (the first document
14 in Exhibit BJJ-5) shows that Eschelon accurately and fairly described these events
15 in that chronology. Similarly, the copy of the Detail for Change Request

²⁴ Exhibit BJJ-5, p. 4 (2/26/04) (emphasis added) & p. 37.

²⁵ Exhibit BJJ-5, p. 4 (2/26/04) (emphasis added) & p. 37.

²⁶ Exhibit BJJ-5, p. 4 (3/4/04) & p. 21; Qwest Exhibit RA-R4, p. 7 (second full paragraph on page 7).

²⁷ Exhibit BJJ-5, p. 4 (3/4/04) & p. 21; Qwest Exhibit RA-R4, p. 7 (second full paragraph on page 7).

²⁸ Exhibit BJJ-5, pp. 4-5 (7/21/04) & p. 20; Qwest Exhibit RA-R4, p. 5. Qwest agreed that, after a Qwest facility jeopardy, if Qwest did not send an FOC with the new due date the day before, this should be treated as a "compliance issue." *See id.* In other words, Qwest's process is to provide the FOC the day before, and when it does not do so, it is out of compliance with its own process.

²⁹ Exhibit BJJ-5, pp. 36-50. For the March 4, 2004 ad hoc CMP meeting minutes, see Exhibit BJJ-5, p. 21 & Qwest Exhibit RA-R4, pp. 6-7.

1 PC081403-1, which Ms. Albersheim attaches to her testimony as Exhibit RA-R4
2 (and which Eschelon provided as part of its direct testimony in Exhibit BJJ-5³⁰),
3 establishes that Eschelon accurately quoted from that Change Request Detail in
4 its chronology of this issue.³¹

5 **Q. QWEST TESTIFIED IT WOULD PRESENT “A MORE COMPLETE**
6 **RECORD” FOR THIS TOPIC THAN DID ESCHELON.³² DID QWEST**
7 **DO SO?**

8 A. No. Ms. Albersheim testified that her purpose in attaching two change requests
9 as Exhibits RA-3 and RA-4 was to “present a more complete record of the
10 activities that took place regarding the Change Requests in question.”³³ Eschelon
11 attached both of those identical change requests, however, to its *direct* testimony
12 as part of Exhibit BJJ-5.³⁴ It is Ms. Albersheim’s review of the record, and not
13 the evidence presented by Eschelon, that is incomplete. Ms. Albersheim’s
14 attempt to suggest that Eschelon does not want the full facts on the record is
15 rebutted by the greater amount and accuracy of information provided by
16 Eschelon. As I explained above, due to volume, Eschelon at times properly relied
17 upon summaries and excerpts, but it has provided full documents as well, in

³⁰ Exhibit BJJ-5, pp. 17-28.

³¹ Compare Qwest Exhibit RA-R4 with excerpts in the chronology in Exhibit BJJ-5 (see also the full change request in Exhibit BJJ-5, pp. 17-28).

³² Albersheim Rebuttal, p. 21, line 15.

³³ Albersheim Rebuttal, p. 21, lines 15-16.

³⁴ Compare Qwest Rebuttal Exhibit RA-R3 with Eschelon Direct Exhibit BJJ-5, pp. 29-34. Compare Qwest Rebuttal Exhibit RA-R4 with Eschelon Direct Exhibit BJJ-5, pp. 17-28.

1 addition to URLs pointing to even more documentation. Ms. Albersheim does
2 not provide any document that shows a single material inaccuracy in Eschelon's
3 excerpts and summary information.

4 Also, despite Ms. Albersheim's claim that she was making a "complete record,"³⁵
5 the February 25, 2004³⁶ meeting materials that contain key evidence of this Qwest
6 commitment are notably absent from her testimony and its exhibits (even though
7 Eschelon pointed Qwest directly to it in its chronology in Exhibit BJJ-5 and
8 attached the materials as part of Exhibit BJJ-5).³⁷ Ms. Albersheim attached
9 Change Request PC081403-1 to her testimony (as Qwest Exhibit RA-R4).
10 Exhibit RA-R4 specifically refers to the March 4, 2004 ad hoc meeting discussed
11 above,³⁸ but Ms. Albersheim omitted the materials provided on February 26, 2004
12 for that ad hoc meeting from her exhibits. Key documentation of Qwest's
13 commitment to send an FOC at least the day before the due date (which I quoted
14 and cited above), however, is contained in that documentation omitted by Qwest.

³⁵ Albersheim Rebuttal, p. 21, lines 15-16.

³⁶ Exhibit BJJ-5, p. 4 (2/26/04) refers to meeting materials dated 2/25/06. The correct date for this meeting material is 2/25/04.

³⁷ Exhibit BJJ-5 (chronology), p. 4 (2/26/04). Eschelon explained in Exhibit BJJ-5 that Qwest's commitment is documented in written materials dated February 25, 2004 that were attached to the March 4, 2004 meeting notice relating to Change Request PC081403-1. *See id.* & BJJ-5, p. 4 (2/26/06 & 3/4/04). *See also id.*, p. 35 (2/26/04 notice) & *id.*, pp. 36-50 (meeting materials dated 2/25/04).

³⁸ Qwest Exhibit RA-R4, p. 4 ("3/4/04 – Held ad hoc meeting with CLECs") & pp. 6-7.

1 It is Ms. Albersheim that has presented small pieces of the record and chosen the
2 pieces that seem on the surface to support Qwest's position.³⁹

3 **Q. QWEST DISCUSSES TWO DIFFERENT CHANGE REQUESTS. DOES**
4 **QWEST CLEARLY DISTINGUISH THEM?**

5 A. No. Qwest introduces confusion by discussing two different change requests
6 without explaining the facts relating to them or distinguishing clearly when Qwest
7 is discussing which change request. The first change request (PC081403-1) is the
8 subject of Eschelon's Jeopardy Classification and Firm Order Confirmations
9 Chronology (the first document in Exhibit BJJ-5) and relates to situations
10 involving Qwest facility jeopardies. I'll refer to this as the *Qwest Jeopardy*
11 *Change Request*. In the *Qwest Jeopardy Change Request*, Eschelon requested "a
12 reasonable time frame to prepare to accept the circuit."⁴⁰ Initially, Eschelon
13 identified a minimum of 2 to 4 hours as a time frame for discussion.⁴¹ As

³⁹ Albersheim Rebuttal, p. 21 ["But in sum, Eschelon has presented small pieces of the record for each of these topics, and chosen the pieces that seem on the surface to support Eschelon's position."]

⁴⁰ Exhibit BJJ-5, p. 2 (8/14/03) & p. 18; *see also* Exhibit RA-R4, p. 2. Eschelon was requesting not a delay but advance notice of delivery of a circuit so that Eschelon could be prepared to accept the circuit *on time*.

⁴¹ Exhibit BJJ-5, p. 27; Exhibit RA-R4, p. 15 (8/26/03); Albersheim Rebuttal, p. 23, lines 24-26. Eschelon was clear that this was a "minimum" only, and the request therefore included a longer time frame to prepare to accept the circuit. *See* Exhibit BJJ-5, p. 3 & p. 25 (12/8/03) ("4 hour minimum"); *see also* Exhibit RA-R4, p. 12 (12/8/03) ("4 hour minimum"). Note that Qwest, as part of its proposal, commits to no time frame (whether 4 hours or 24 hours). In fact, Qwest's CMP Process Manager has denied that Qwest must send an FOC at all in these situations, much less send them in advance. *See* Exhibit BJJ-5, pp. 15-16.

1 indicated above, however, Qwest later committed to a longer time frame (to
2 provide the FOC the day before the due date), as that is Qwest's process.⁴²

3 The other change request (PC072303-1) has nothing to do with Qwest facility
4 jeopardies.⁴³ It relates to situations in which there is no Qwest-caused jeopardy
5 (of any kind, facility or otherwise).⁴⁴ The issue in this change request is whether
6 Eschelon has until 5:00 p.m. to accept a circuit for basic installations on the due
7 date or whether Qwest can declare an Eschelon-caused ("Customer Not Ready"
8 or "CNR") jeopardy if it attempts to deliver the circuit earlier in the day and
9 Eschelon is not ready at that time but is ready before 5:00 p.m. In these cases,
10 Eschelon has received an FOC for the due date, but the question revolves around
11 timing of delivery on that date. I will refer to this as the *Before 5:00 p.m. CNR*
12 *Jeopardy Change Request*.⁴⁵ As a result of this change request, Qwest made "a
13 back end system change" to "hold the CNR jeopardy notifications until 6 PM
14 Mountain time."⁴⁶

15 A comparison of the description of the change request in Exhibit RA-R4 (*Qwest*
16 *Jeopardy Change Request*) and Exhibit RA-R3 (*Before 5:00 p.m. CNR Jeopardy*

⁴² Exhibit BJJ-5, p. 4 (2/26/04) (quoted above); see also Exhibit BJJ-5 (2/26/04 minutes) & Qwest Exhibit RA-R4, p. 7 (3/4/04 minutes).

⁴³ On page 23, lines 4-5, of Ms. Albersheim's rebuttal testimony, Ms. Albersheim quotes this statement before I had made it in this case. Apparently, she is quoting from testimony in another state, but she provides no citation. See below for my response.

⁴⁴ Exhibit BJJ-5, pp. 29-34; see also Qwest Exhibit RA-R3 (PC072303-1).

⁴⁵ Exhibit BJJ-5, pp. 29-34; see also Qwest Exhibit RA-R3 (PC072303-1).

⁴⁶ Exhibit BJJ-5, p. 34; see also Qwest Exhibit RA-R3, p. 6 (Qwest 9/9/03 Response) (PC072303-1).

1 *Change Request*) shows that Eschelon made different requests in each one. The
2 titles alone demonstrate this:

3 *Qwest Jeopardy Change Request* (PC081403-1): “Delayed Order
4 process modified to allow the CLEC a designated time frame to
5 respond to a released delayed order after Qwest sends an updated
6 FOC.”⁴⁷

7
8 *Before 5:00 p.m. CNR Jeopardy Change Request* (PC072303-1):
9 “Customer Not Ready (“CNR”) jeopardy notice should not be sent
10 by Qwest to CLECs before 5 PM local time on the due date (for
11 basic install)”⁴⁸

12 Although there were “synergies”⁴⁹ because both change requests dealt to some
13 extent with jeopardies, the resolution of one request did not replace the other.⁵⁰

14 The change in the timing of jeopardies until 6 p.m. for situations when the due
15 date was provided on an FOC as a result of the *Before 5:00 p.m. CNR Jeopardy*
16 *Change Request* did not resolve the request for a reasonable time frame to prepare
17 to accept the circuit in situations when Qwest failed to deliver a FOC after a
18 facility jeopardy in the *Qwest Jeopardy Change Request*.

19 **Q. QWEST SUGGESTS THAT ESCHELON’S POSITION AS DESCRIBED**
20 **IN CMP MEETING MINUTES DIFFERS FROM ESCHELON’S**

⁴⁷ Exhibit BJJ-5, pp. 17; Exhibit RA-R4 (PC081403-1), p. 1

⁴⁸ Exhibit BJJ-5, p. 29; Exhibit RA-R3 (PC072303-1), p. 1.

⁴⁹ Exhibit BJJ-5, p. 3 (10/15/03); Albersheim Rebuttal, p. 22, line 20 & p. 23, line 10.

⁵⁰ On page 23, lines 4-5, of Ms. Albersheim’s rebuttal testimony, Ms. Albersheim quotes this statement before I had made it in this case. Apparently, she is quoting from testimony in another state, but she provides no citation. See below for my response.

1 **POSITION AS DESCRIBED IN YOUR TESTIMONY.⁵¹ IS THAT AN**
2 **ACCURATE SUGGESTION?**

3 A. No. Qwest quotes CMP meeting minutes stating that the reason Eschelon
4 “wanted to close/leave open or update PC081403-1 is because PC072303-1 is
5 meeting many of the needs.”⁵² Qwest claims that this is contrary to my
6 testimony (see above)⁵³ that “PC072303-1 ‘has nothing to do with Qwest facility
7 jeopardies.”⁵⁴ Note, however, that I did not say that *the two change requests* had
8 nothing to do with one another. In fact, I explain above (as I have in other states)
9 that “there were ‘synergies’⁵⁵ because both change requests dealt to some extent
10 with jeopardies.” As explained in Exhibit BJJ-6 (footnote 6), there are different
11 kinds of jeopardies. I specifically said that PC072303-1 “has nothing to do with
12 ***Qwest facility jeopardies***” (see above; emphasis added). The word “Qwest”
13 refers to a “Qwest-caused” jeopardy; and the word “facility” refers to the type of
14 jeopardy sent when Qwest does not have available facilities to fulfill the order.
15 As I explain in the very next sentence (as I have done in other states), therefore,
16 the change request “relates to situations in which there is no Qwest-caused

⁵¹ Albersheim Rebuttal, p. 23, lines 3-17.

⁵² Albersheim Rebuttal, p. 23, lines 14-17.

⁵³ Ms. Albersheim quotes my statements before I had made them in this case. (Apparently, she is quoting from testimony in another state, but she provides no citation.) Therefore, to read my statements in context, please read the questions and answers on this point.

⁵⁴ Albersheim Rebuttal, p. 23, lines 3-5.

⁵⁵ Exhibit BJJ-5, p. 3 (10/15/03); Albersheim Rebuttal, p. 23, line 10.

1 jeopardy (of any kind, facility or otherwise).”⁵⁶ The quoted language from the
2 CMP minutes dealt with the above-mentioned synergies. My testimony describes
3 the differences in the change requests (see above) and the outstanding issues in
4 this case, which *do* relate to Qwest facility jeopardies.⁵⁷

5 Qwest also claims that the quoted language from the CMP minutes dealing with
6 “synergies”⁵⁸ is contrary to my testimony (see above)⁵⁹ that ““the resolution of
7 one request did not replace the other.””⁶⁰ As I describe above (as I have done in
8 other states), although there were “synergies”⁶¹ because both change requests
9 dealt to some extent with jeopardies, the change in the timing of jeopardies until 6
10 p.m. for situations when the due date was provided on an FOC as a result of the
11 *Before 5:00 p.m. CNR Jeopardy Change Request* did not resolve the request for a
12 reasonable time frame to prepare to accept the circuit in situations when Qwest
13 failed to deliver a FOC after a facility jeopardy in the *Qwest Jeopardy Change*
14 *Request*.

15 **Q. WAS THERE ANY COMPROMISE TO COMPLETE ONE OF THESE**
16 **CHANGE REQUESTS INSTEAD OF THE OTHER?**

⁵⁶ Exhibit BJJ-5, pp. 29-34; *see also* Qwest Exhibit RA-R3 (PC072303-1).

⁵⁷ I discuss these issues below with respect to Subject Matter 33 (Issues 12-71 – 12-73, Jeopardies).

⁵⁸ Albersheim Rebuttal, p. 23, lines 10-17.

⁵⁹ Ms. Albersheim quotes my statements before I had made them in this case. (Apparently, she is quoting from testimony in another state, but she provides no citation.) Therefore, to read my statements in context, please read the above questions and answers on this point.

⁶⁰ Albersheim Rebuttal, p. 23, lines 3-5.

⁶¹ Exhibit BJJ-5, p. 3 (10/15/03); Albersheim Rebuttal, p. 22, line 20 & p. 23, line 10.

1 A. No, although that seems to be the impression Qwest is attempting to create in its
2 testimony. Qwest claims that it “proposed a compromise.”⁶² Instead of
3 describing the alleged compromise, Qwest directly quotes from October 6, 2003,
4 CMP minutes that make no reference to a compromise.⁶³ The quote actually
5 refutes Qwest’s own claim. Qwest clearly refers in the quotation to two *phases*,
6 both of which will be completed, and *not* a compromise to complete one request
7 and not the other.⁶⁴ Phase 1 is “changing the jep timeframe to 6 pm”⁶⁵ (*i.e.*,
8 *Before 5:00 p.m. CNR Jeopardy Change Request, PC072303-1*), and Phase 2 is to
9 “accommodate some time frames in between FOC and Jep”⁶⁶ (*i.e.*, *Qwest*
10 *Jeopardy Change Request, PC081403-1*). The *Before 5:00 p.m. CNR Jeopardy*
11 *Change Request (PC072303-1; Phase 1)* was completed on February 18, 2004,
12 with the back end system change to hold the CNR jeopardy notifications until 6
13 p.m. Mountain time.⁶⁷ The *Qwest Jeopardy Change Request (PC081403-1; Phase*
14 *2)* was completed on July 21, 2004, with the commitment described above to send
15 the FOC the day before the due date after a Qwest facility jeopardy.⁶⁸

⁶² Albersheim Rebuttal, p. 24, line 3 and p. 26, lines 18-19.

⁶³ Albersheim Rebuttal, p. 24, lines 5-17.

⁶⁴ Albersheim Rebuttal, p. 24, lines 10 and 14-15.

⁶⁵ Albersheim Rebuttal, p. 24, line 8.

⁶⁶ Albersheim Rebuttal, p. 24, lines 13-14.

⁶⁷ Exhibit BJJ-5, pp. 29 & 34; Exhibit RA-R3, p. 1 (“Completed 2/18/2004”) & p. 6 (describing back end system change) (PC072303-1).

⁶⁸ Exhibit BJJ-5, p. 17; *see also* Qwest Exhibit RA-R4, p. 1 (“Completed 7/21/2004”) (PC081403-1).

1 Q. QWEST TWICE REFERS TO “THE CHANGE REQUEST” OR “THE
2 CR,”⁶⁹ THE FIRST TIME WHEN QWEST TESTIFIES THAT
3 ESCHELON AGREED TO QWEST’S ALTERNATIVE PROPOSAL FOR
4 “THE CHANGE REQUEST.” TO WHAT CHANGE REQUEST IS
5 QWEST REFERRING?

6 A. Qwest does not say, but from the description it is apparent that Qwest is referring
7 to the *Before 5:00 p.m. CNR Jeopardy Change Request*, (PC072303-1; Phase 1).
8 For this change request, Eschelon proposed a process change to not send a CNR
9 jeopardy notice before 5 p.m. and instead Qwest offered the alternative proposal
10 of a systems solution – “back end system change” – to hold the CNR jeopardy
11 notice until 6 p.m. Mountain time. Eschelon accepted that proposal, and the
12 change request was completed on February 18, 2004.

13 Q. THE SECOND TIME THAT QWEST REFERS TO “THE CR” IS WHEN
14 QWEST STATES THAT ESCHELON AGREED TO CLOSE “THE CR.”⁷⁰
15 TO WHICH CHANGE REQUEST IS QWEST REFERRING?

16 A. Qwest does not say, but Qwest quotes from the July 21, 2004, CMP minutes for
17 the *Qwest Jeopardy Change Request* (PC081403-1; Phase 2).⁷¹ By referring to
18 both change requests as “the Change Request” or “the CR,” Qwest’s testimony
19 tends to suggest that there was some compromise with respect to the first change

⁶⁹ Albersheim Rebuttal, p. 24, lines 19 & 30.

⁷⁰ Albersheim Rebuttal, p. 24, line 30.

⁷¹ Compare Albersheim, p. 24, lines 27-30 with Exhibit RA-R4, p. 5 and Exhibit BJJ-5, pp. 4-5 (7/21/04).

1 request (PC072303-1; Phase 1) that resolved the second change request
2 (PC081403-1; Phase 2). This is not the case.

3 **Q. WAS THERE ANY REASON FOR ESCHELON TO ESCALATE THE**
4 **OUTCOME OF “THE CR,”⁷² GO TO THE CMP OVERSIGHT**
5 **COMMITTEE TO DISPUTE THE OUTCOME OF “THE CR,”⁷³ USE THE**
6 **CMP DISPUTE PROCESS FOR “THIS CR,”⁷⁴ OR SUBMIT ANOTHER**
7 **REQUEST⁷⁵ FOR EITHER OF THESE TWO CHANGE REQUESTS?**

8 A. No. For both change requests, Qwest completed the change requests.⁷⁶ *The*
9 *problem is that Qwest is no longer honoring the CMP resolution of the Qwest*
10 *Jeopardy Change Request* (PC081403-1), as described in the attachment to Ms.
11 Johnson’s direct testimony.⁷⁷ It is frustrating, at best, for Eschelon to read sworn
12 testimony by Qwest saying that Eschelon should submit a change request in CMP
13 to obtain a result that it already achieved through CMP. Qwest has elected to
14 disregard its own CMP resolution without following its own CMP processes to
15 initiate a change in that resolution when Qwest desires a different outcome.

⁷² Albersheim Rebuttal, p. 25, lines 11-14.

⁷³ Albersheim Rebuttal, p. 25 lines 18-20.

⁷⁴ Albersheim Rebuttal, p. 26, lines 1-3.

⁷⁵ Albersheim Rebuttal, p. 26, lines 4-6.

⁷⁶ As indicated above, *Before 5:00 p.m. CNR Jeopardy Change Request* (PC072303-1) was completed on February 18, 2004, with the back end system change to hold the CNR jeopardy notifications until 6 PM Mountain time. [Exhibit RA-R3 (PC072303-1), p. 1 (“Completed 2/18/2004”) and p. 6 (describing back end system change)]. *Qwest Jeopardy Change Request* (PC081403-1) was completed on July 21, 2004, with the commitment described above to send the FOC the day before the due date after a Qwest facility jeopardy. [Exhibit BJJ-5, p. 4 (7/21/04); see also Exhibit RA-R4, p. 1 (“Completed 7/21/2004”) and p. 5 (7/21/04)].

⁷⁷ Exhibit BJJ-5, pp. 13-16.

1 Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON HAS PORTRAYED
2 QWEST AS “CHANGING ITS MIND” OR ACTING
3 “INCONSISTENTLY” WHEN “IN FACT” ESCHELON’S EXAMPLES
4 ARE DEMONSTRATIVE OF “QWEST’S SIGNIFICANT EFFORTS TO
5 BE RESPONSIVE TO ITS CLEC CUSTOMERS.”⁷⁸ IS MS.
6 ALBERSHEIM CORRECT?

7 A. No. Qwest’s email dated September 1, 2005,⁷⁹ is evidence that Qwest has
8 arbitrarily changed its policy and violated the result achieved through completion
9 of the Qwest Jeopardy Change Request (PC081403-1). As this email shows,
10 Qwest is not only denying that it must provide the FOC after a Qwest facility
11 jeopardy the day before the due date, Qwest has actually denied that it must
12 provide it at all. And, Qwest maintains it may still classify the jeopardy as CNR
13 if a CLEC is not ready as a result of Qwest’s failure to provide notice.⁸⁰ Whereas
14 in February of 2004, Qwest confirmed in CMP that its process is to send an FOC
15 “*prior to the Due Date*,”⁸¹ Qwest later claimed that this is just a “goal”⁸² and that
16 there is no requirement in these situations to send an FOC at all. To confirm

⁷⁸ Albersheim Rebuttal, p. 21, lines 5-7.

⁷⁹ Exhibit BJJ-5, pp. 15-16 (9/1/05 email from Qwest CMP Process Manager).

⁸⁰ Qwest Exhibit RA-R6; *see also* Albersheim Rebuttal, p. 60, lines 14-16. Qwest refers to unspecified “order activity” as “eliminate[ing] the need for an FOC,” *see id.*, despite the unqualified requirement of the SGAT and closed language in the proposed ICA (9.2.4.4.1) to provide an FOC after a Qwest facility jeopardy. (*See* Section 9.2.4.4.1, which is discussed and quoted in Webber Direct (adopted), pp. 145-146.)

⁸¹ Exhibit BJJ-5, Chronology p. 4 (2/26/04) (emphasis added); *See also* Exhibit BJJ-5, p. 37.

⁸² Exhibit BJJ-5, p. 13 (8/29/05 email from CMP Process Manager) and Exhibit BJJ-5, p. 15 (9/1/05 email from CMP Process Manager).

1 Qwest's new position and ensure that Eschelon was not misunderstanding it,
2 Eschelon sent Qwest a scenario in which Qwest, after a facility jeopardy, sent no
3 FOC at all and yet Qwest classified the jeopardy as a Customer Not Ready (*i.e.*,
4 Eschelon-caused) jeopardy.⁸³ Despite completion of *Qwest Jeopardy Change*
5 *Request* (PC081403-1), Qwest's CMP Process Manager responded: "Your
6 scenario is correct."⁸⁴

7 In contrast, in CMP, Qwest "agreed, and confirmed that Qwest cannot expect the
8 CLEC to be ready for the service if we haven't notified you."⁸⁵ Now, Qwest is
9 expecting the CLEC to be ready for service even if Qwest has not notified the
10 CLEC.⁸⁶ Qwest did not escalate in CMP, go to the CMP oversight committee,
11 use the CMP dispute resolution process, or submit a Qwest-initiated CR to
12 achieve this change. Qwest just arbitrarily changed its policy, despite all of
13 Eschelon's efforts to work through CMP as requested by Qwest. Qwest then adds
14 salt to the wound by claiming this arbitrary action is indicative of "Qwest's
15 significant efforts to be responsive to its CLEC customers."⁸⁷ Clearly, the

⁸³ Exhibit BJJ-5, p. 15 (9/1/05 Eschelon email).

⁸⁴ Exhibit BJJ-5, p. 15 (9/1/05 Qwest email).

⁸⁵ Exhibit BJJ-5, p. 4 (3/4/04); *See also*, Qwest Exhibit RA-R4, p. 7.

⁸⁶ Exhibit BJJ-5, p. 15 (9/1/05 Qwest email).

⁸⁷ Albersheim Rebuttal , p. 21, lines 6-7; p. 6, lines 16-17; and p. 32, line 8. Similarly, in response to an email from Eschelon indicating that "this is not the process we discussed in CMP," Qwest responded: "Qwest will continue to strive to deliver service on the due date to meet our customers' expectations." *See* Exhibit BJJ-5, p. 16. This is hardly responsive to the need expressed by Eschelon.

1 interconnection agreement needs to address this issue for Eschelon to obtain any
2 consistent, reliable result upon which it can plan its business.

3 **2. Design Changes Example**

4 **Q. QWEST STATES THAT IT IS “INAPPROPRIATE” TO “USE A RATE**
5 **ISSUE AS AN EXAMPLE OF QWEST ACTIONS IN CMP.”⁸⁸ IS THAT**
6 **AN ACCURATE DESCRIPTION OF YOUR EXAMPLE?**

7 A. No. I provided the purpose of the design changes⁸⁹ example on page 55 of my
8 direct testimony, as follows: “I discuss the issue here because Qwest’s treatment
9 of its proposed language for Issue 4-5 Design Changes is another example of
10 Qwest’s directing – or, inconsistently, not directing – issues to CMP, to its own
11 advantage (and the corresponding disadvantage of CLECs). Consequently, the
12 issue highlights the need for the certainty of ICA language to govern the parties’
13 business relationship for the years to come.” On pages 56-57 of my direct
14 testimony I provided, as evidence of Qwest’s inconsistency, Qwest’s differing
15 positions over time with respect to whether the *definition* of the term design
16 change should, or should not, be subject to CMP.

17 Qwest’s single criticism of this example is that the rates associated with design
18 changes are outside the scope of CMP.⁹⁰ I expressly discussed this distinction on

⁸⁸ Albersheim Rebuttal, p. 27, lines 10-11.

⁸⁹ For a discussion of Subject Matter 4 (Design Changes, Issue 4-5), see the testimony of Mr. Denney.

⁹⁰ Albersheim Rebuttal, p. 27, lines 3-11.

1 page 56 of my direct testimony, where I said: “When Eschelon inquired about
2 these changes, Qwest CMP personnel responded that ‘this item is outside the
3 scope of CMP.’⁹¹ While this statement would be correct regarding rate issues
4 (which clearly do not belong in CMP), it does not answer the fact that Qwest
5 chose to address the *definition* of design changes (a non-rate or rate application
6 issue) outside the CMP, and also chose to unilaterally establish new rates not only
7 outside CMP but without benefit of Commission review or approval.” I
8 suggested that the Commission should conclude from this example that Qwest’s
9 inconsistent treatment of design changes shows that CLECs must have contract
10 language upon which they may fairly depend in their dealings with Qwest.
11 Nothing in Qwest’s rebuttal testimony alters this conclusion.

12 **3. CRUNEC Example**⁹²

13 **Q. QWEST CITES SOME PERCENTAGES TO SHOW THAT THE**
14 **DRAMATIC SPIKE IN HELD ORDERS WAS ONLY FOR A “SPECIFIC**
15 **TYPE OF HELD ORDERS” AND WAS “NOT REFLECTIVE OF HELD**
16 **ORDERS OVER ALL.”⁹³ DO THESE PERCENTAGES AFFECT YOUR**
17 **ANALYSIS OF THIS ISSUE?**

⁹¹ See, Mr. Denney’s Exhibit DD-2, page 3.

⁹² Starkey Direct, pp. 59-69; Exhibits BJJ-9, BJJ-10, BJJ-11.

⁹³ Albersheim Rebuttal, p. 29, lines 16-17.

1 A. No. As I explained in my direct testimony, the third example (involving a change
2 that Qwest implemented through CMP relating to special construction charges,
3 which Qwest calls “CLEC Requested UNE Construction” or “CRUNEC”) relates
4 to “no-build situations” that exist when Qwest will not build for CLECs because
5 it would likewise not build for itself for the normal charges assessed to its
6 customers.⁹⁴ As is apparent from my discussion of this example in the context of
7 these no-build situations, the data I cited in my direct testimony⁹⁵ related to this
8 specific type of held order (“service inquiry” or “no-build” held orders). The fact
9 that Qwest used the CMP notice to apply no-build held orders to situations in
10 which it should not do so is what caused the spike. In other words, my numbers
11 related only to a specific type of held order because that type of held order is *the*
12 *only type relevant to the discussion*. The held orders that spiked were the ones
13 for which Qwest started to demand charges and a lengthy process that would
14 cause delay when none of those charges or that lengthy process applied
15 previously.

16 **Q. QWEST SUGGESTS THAT ITS CONDUCT IN ISSUING THIS NOTICE**
17 **THROUGH CMP DID NOT CAUSE THE PROBLEMS FOR**
18 **ESCHELON.⁹⁶ IS THAT ACCURATE?**

⁹⁴ Starkey Direct, pp. 59-60.

⁹⁵ Starkey Direct, p. 63.

⁹⁶ Albersheim Rebuttal, p. 29, lines 3-6.

1 A. No. The before and after effects of Qwest's one-word change to its PCAT speak
2 for themselves. Before Qwest implemented this change in CMP, Eschelon did
3 not have this problem, but afterwards it did. Similarly, Allegiance and Covad
4 both submitted CMP comments indicating that they had "already" been
5 negatively impacted by Qwest's implementation of this one-word change to
6 Qwest's PCAT.⁹⁷ Twelve CLECs joined in opposing this change.⁹⁸ Only after
7 the CLECs, including Eschelon, brought this issue to the attention of the Arizona
8 Commission in the 271 proceeding did Qwest revoke it. Qwest's attempt to
9 suggest the lack of a causal relationship is ineffective and contrary to the findings
10 of the Arizona Commission.⁹⁹ Contrary to Qwest's suggestion that it was being
11 responsive to its CLEC customers,¹⁰⁰ Qwest denied Covad's objection in CMP¹⁰¹
12 and only retracted its change later after the Arizona Commission became
13 involved.¹⁰²

⁹⁷ CLEC Comments Received from Allegiance and Covad on July 26, 2003 (stating the companies have "**already been negatively impacted**") (emphasis added). See Exhibit BJJ-9, p. 3 citing <http://www.qwest.com/wholesale/cnla/uploads/PROD%2E08%2E06%2E03%2EF%2E03494%2EDelayedResponseCRUNEC%2Edoc>

⁹⁸ See Exhibit BJJ-9, pp. 3-4.

⁹⁹ September 16, 2003, 271 Order, ACC Docket No. T-00000A-97-0238 (Decision No. 66242), ¶109 (quoted at Starkey Direct, pp. 66-67).

¹⁰⁰ Albersheim Rebuttal, p. 21, lines 4-7 ["I will demonstrate in each case that what Eschelon has portrayed as Qwest "changing its mind" or Qwest acting "inconsistently" is in fact Qwest's significant efforts to be responsive to its CLEC customers."]

¹⁰¹ See Starkey Direct, p. 62.

http://www.qwest.com/wholesale/downloads/2003/030521/CNL3_response_CRUNEC_V4.doc

¹⁰² Exhibit BJJ-9, pp. 4-5 (9/16/03, 9/18/03).

1 Q. MS. ALBERSHEIM CLAIMS THAT THE “CONDITIONING” IN THE
2 CONTEXT OF CRUNEC “BEARS NO RESEMBLANCE WHATSOEVER
3 TO “CONDITIONING” LOOPS FOR DATA SERVICES,¹⁰³ AND THAT
4 QWEST SUBMITTED THE LEVEL 3 CRUNEC NOTICE TO CLARIFY
5 THIS POINT.¹⁰⁴ IS THERE ANY SUPPORT FOR MS. ALBERSHEIM’S
6 CLAIMS?

7 A. No. First, Ms. Albersheim testifies: “As Qwest witness Mr. Hubbard explains,
8 the description for CRUNEC in the PCAT contained the word ‘conditioning.’”¹⁰⁵
9 However, Mr. Hubbard’s testimony does not explain what Ms. Albersheim says it
10 does. In fact, neither Mr. Hubbard’s direct testimony, nor his rebuttal testimony
11 contain the word “conditioning.” The only place where CRUNEC is discussed in
12 Mr. Hubbard’s testimony is one Q&A on pages 18-19 of his rebuttal testimony,
13 and this discussion does not discuss conditioning or include the explanation
14 referenced in Ms. Albersheim’s testimony. Mr. Hubbard simply defines the
15 acronym CRUNEC, defines the term and provides the URL to Qwest’s PCAT.
16 To the extent that Mr. Hubbard’s testimony is supposed to support Ms.
17 Albersheim’s claim about “conditioning” and the purpose of Qwest’s Level 3
18 CRUNEC notice, it does not.

¹⁰³ Albersheim Rebuttal, p. 28.

¹⁰⁴ Albersheim Rebuttal, p.28, lines 1-12.

¹⁰⁵ Albersheim Rebuttal, p. 28, lines 3-4.

1 Moreover, despite Ms. Albersheim's claim that the Level 3 CRUNEC notice was
2 "simply a clarification,"¹⁰⁶ the results of Qwest's notice¹⁰⁷ and the Arizona
3 Commission's order on the notice¹⁰⁸ speak for themselves. The record shows that
4 this notice did not just clarify, rather it had serious business-affecting
5 consequences on Eschelon and other CLECs.

6 **Q. IS MS. ALBERSHEIM'S CLAIM THAT "CONDITIONING" FOR**
7 **CRUNEC IS SOMETHING COMPLETELY DIFFERENT THAN**
8 **"CONDITIONING" LOOPS FOR DATA SERVICES SUPPORTED BY**
9 **THE RECORD?**

10 A. No. Though Ms. Albersheim claims that my testimony reflects "confusion" on
11 this point,¹⁰⁹ her attempt to distinguish between CRUNEC "conditioning" and
12 loop "conditioning" is undermined by the record. As shown in the Arizona
13 Commission's 271 Order in Docket No. T-00000A-97-0238, the Arizona
14 Commission and its Staff were concerned about Qwest's policy related to "line
15 conditioning" – not some other different type of activity related to "CRUNEC"
16 conditioning. The pertinent language from the Commission's order is found at

¹⁰⁶ Albersheim Rebuttal, p. 28, lines 10-12.

¹⁰⁷ Starkey Direct, pp. 62-63. See also CLEC Comments Received from Allegiance and Covad on July 26, 2003 (stating the companies have "*already been negatively impacted*") (emphasis added). See Exhibit BJJ-9 p. 3, citing

<http://www.qwest.com/wholesale/cnla/uploads/PROD%2E08%2E06%2E03%2EF%2E03494%2EDelayedResponseCRUNEC%2Edoc>

¹⁰⁸ Starkey Direct, pp. 66-67. The Arizona Commission and Staff conditioned Checklist Items 2 and 4 of the Qwest Section 271 evaluation on Qwest's agreement to suspend the policy set forth in Qwest's Level 3 CRUNEC notice and provide refunds to CLECs.

¹⁰⁹ Albersheim Rebuttal, p. 28, lines 7-9.

1 pages 66-67 of my direct testimony. The Commission's Order states: "Staff
2 agrees with Eschelon with respect to the recently imposed *construction charges*
3 *on CLECs for line conditioning*. Staff is extremely concerned that Qwest would
4 implement such a *significant change* through its CMP process without prior
5 Commission approval."¹¹⁰ By referring to Qwest's Level 3 CRUNEC notice as a
6 "significant change," the Arizona Commission made clear that Ms. Albersheim's
7 claim that it was a simple clarification is false. More importantly, by clearly
8 referring to construction charges for "line conditioning," the order shows that Ms.
9 Albersheim's attempt to distinguish between line conditioning and CRUNEC
10 conditioning to support her claim that it was not Qwest's Level 3 CRUNEC
11 notice that caused problems for Eschelon and other CLECs should be rejected.

12 **Q. MS. ALBERSHEIM MAKES MUCH OF THE FACT THAT ESCHELON**
13 **DOES NOT USE THE CRUNEC PROCESS.¹¹¹ WHY IS IT THEN THAT**
14 **ESCHELON WAS SO CONCERNED ABOUT QWEST'S CRUNEC**
15 **NOTICE?**

16 A. It is the effect of the notice that greatly concerned Eschelon. As I said in my
17 direct testimony, almost immediately after the effective date of Qwest's unilateral
18 email notification, Eschelon began experiencing a dramatic spike in the number

¹¹⁰ September 16, 2003 Order in the 271 Docket, Docket No. T-00000A-97-0238 (Decision No. 66242) at ¶109 (emphasis added). The Commission also states: "Staff recommends that Qwest be ordered to immediately suspend its policy of assessing *construction charges on CLECs for line conditioning and reconditioning...*" *Id.* (emphasis added)

¹¹¹ Albersheim Rebuttal, p. 27, lines 16-17; p. 29, line 7; and p. 4, lines 18-19.

1 of no-build held orders relative to DS1 loops ordered from Qwest.¹¹² Because
2 Eschelon did not use the CRUNEC process, it did not expect changes in that
3 process to affect its business. A CMP notice for a process never used by
4 Eschelon should not have had such a business-affecting impact on Eschelon.

5 **Q. QWEST STATES THAT ITS NOTICE WAS JUST A “CLARIFICATION”**
6 **OF THE CRUNEC PROCESS AND SUGGESTS THAT THE BUSINESS**
7 **IMPACT THEREFORE WAS THE RESULT, NOT OF A QWEST**
8 **CHANGE IN PROCESS IMPLEMENTED THROUGH CMP, BUT OF AN**
9 **EFFORT BY QWEST TO COMPLY WITH A PREVIOUSLY EXISTING**
10 **PROCESS.¹¹³ QWEST ADDS THAT YOUR DESCRIPTION OF THESE**
11 **EVENTS “IS NOT COMPLETELY ACCURATE.”¹¹⁴ PLEASE RESPOND.**

12 **A.** I accurately described this Qwest position in my direct testimony, where I quoted
13 Qwest’s claim word-for-word.¹¹⁵ I said: “Qwest said:

14 Qwest has in the past not fully enforced our contractual right to
15 collect on the charges incurred when completing DS1 level
16 unbundled services. Charging is the specific change that has
17 occurred.^{116”}

18 Qwest identifies no inaccuracy in my description of events. Qwest’s claim that
19 “[i]n error, Qwest’s technicians had been constructing DS1 loops outside of

¹¹² Starkey Direct, p. 63.

¹¹³ Albersheim Rebuttal, p. 28, line 12.

¹¹⁴ Albersheim Rebuttal, p. 29, line 12.

¹¹⁵ Starkey Direct, p. 63, lines 19-20; p. 64, lines 1-2.

¹¹⁶ Qwest (Teresa Taylor) email to Eschelon (July 3, 2003).

1 process”¹¹⁷ is no more persuasive now in this case than it was at that time and in
2 the Arizona 271 proceeding. This was a clear, business-affecting and rate-
3 impacting change that Qwest inappropriately attempted to implement through
4 CMP but had to revoke as a result of the 271 proceedings. The Arizona Staff
5 described it as a “significant change” and recommended “that Qwest be ordered to
6 immediately suspend its policy.”¹¹⁸

7 **4. Secret TRRO PCAT Example**¹¹⁹

8 **Q. QWEST COMPLAINS ABOUT WHAT IT CALLS INFLAMMATORY**
9 **LANGUAGE.¹²⁰ WHAT INFLAMMATORY LANGUAGE IS MS.**
10 **ALBERSHEIM REFERRING TO?**

11 **A.** Ms. Albersheim apparently finds troubling my use of the term *secret* to refer to
12 Qwest’s password-protected TRRO PCATs.¹²¹ She claims that there was nothing
13 secret about them. According to Ms. Albersheim, Qwest issued its TRRO PCAT
14 as password-protected (originally without providing the password until the CLEC
15 blindly signed Qwest’s form TRRO amendment) “to avoid the confusion of
16 having the TRRO-related PCAT posted on the same website with the original

¹¹⁷ Albersheim Rebuttal, p. 29, lines 10-11.

¹¹⁸ Arizona 271 Order, ¶109.

¹¹⁹ Starkey Direct, pp. 69-84; Exhibits BJJ-7, BJJ-17, BJJ-18, BJJ-39 and BJJ-40.

¹²⁰ Albersheim Rebuttal, p. 30, lines 11-12.

¹²¹ Starkey Direct, p. 74, footnote 145.

1 PCAT.”¹²² Eschelon defined the first-ever password-protected PCATs as “secret”
2 to clearly distinguish them “from generally available PCATs accessible without a
3 password distributed through Qwest notice process.”¹²³ Apparently, Qwest does
4 not like it when the shoe is on the other foot. The reality is that Qwest could have
5 included the password in its initial notice if its motivation had been as simple as
6 to “avoid confusion,” but Qwest chose not to do so. Until it distributed the
7 password and, today, for those who are unfamiliar with the password process, the
8 “TRRO” PCATs were and are secret. This term distinguishes them from the
9 generally available PCATs.

10 **Q. IS THE REASON PROVIDED BY MS. ALBERSHEIM FOR WHY**
11 **QWEST PASSWORD PROTECTED ITS TRRO PCATS CONVINCING?**

12 A. No. There are many different offerings in Qwest’s PCAT on its website, some
13 which apply to a CLEC and some which do not. There is no basis to believe that
14 Qwest’s non-CMP TRO/TRRO PCAT would have caused any more confusion for
15 carriers who had not signed TRRO amendments if they were not password-
16 protected than any other offering in Qwest’s PCAT that doesn’t apply to a
17 particular carrier. CLECs did not ask for these TRRO PCATs to be password-
18 protected, nor did the CLECs give Qwest any reason to believe that they would
19 have been confused if the TRRO PCAT was not password-protected. Though Ms.
20 Albersheim testifies that “it is ridiculous to contemplate that Qwest would even

¹²² Albersheim Rebuttal, p. 31, lines 16-17.

¹²³ Starkey Direct, p. 74, footnote 145. *See also*, Exhibit BJJ-7, p. 11, footnote 6.

1 attempt¹²⁴ to keep the TRRO-related PCAT secret, Ms. Albersheim ignores the
2 fact that, at that time, there were several CLECs who had not signed such
3 agreements and were contesting the terms of the TRRO in various state
4 proceedings.¹²⁵ Therefore, Qwest had a vested interest in keeping its unilateral
5 implementation of the FCC's TRO/TRRO decisions secret from those who had
6 not signed the amendments yet, so that these non-CMP PCATs (which proved to
7 be premature and not reflective of the FCC's final rules) could not be used in the
8 state dockets to show how Qwest was implementing the FCC's decisions.

9 **Q. MS. ALBERSHEIM STATES THAT THE TRRO PCAT WAS**
10 **REACTIVATED AT THE NOVEMBER CMP MEETING.¹²⁶ WOULD**
11 **YOU LIKE TO COMMENT?**

12 **A.** Yes. I discussed this issue at pages 20-22 of my rebuttal testimony. Recently,
13 Qwest again asked CLECs to identify and discuss legal issues in CMP relating to
14 the FCC's TRO/TRRO orders.¹²⁷ CLECs indicated that Qwest's PCAT deals
15 with legal issues (such as when a product is legally available under the FCC's
16 rulings) that should be dealt with in ICAs and negotiation of those agreements. In
17 response, Qwest agreed on a CMP ad hoc all to circulate to CLECs a redlined

¹²⁴ Albersheim Rebuttal, p. 31, line 20; p. 32, lines 1-2.

¹²⁵ In the Minnesota Qwest-Eschelon ICA arbitration, Ms. Albersheim acknowledged this point as follows: "Qwest was aware that several CLECs had not signed such agreements and were contesting the terms of the TRRO in various state dockets." Albersheim Minnesota Rebuttal Testimony, p. 28, lines 13-15. Ms. Albersheim did not include this explanation in her testimony in the Arizona arbitration proceeding.

¹²⁶ Albersheim Rebuttal, p. 32, lines 14-15.

¹²⁷ See Exhibit BJJ-40.

1 version of at least one non-CMP TRRO PCAT to show which issues it believed
2 were “process” issues that should be dealt with in CMP and were not redundant
3 of ICA or template ICA terms. At a later monthly CMP meeting, however, Qwest
4 reneged on that commitment.

5 Qwest ignores the fact that when this issue was previously discussed in CMP (i.e.
6 pre-arbitrations), CLECs said the proper alternative to CMP was to handle TRRO
7 changes in law through ICA negotiations that, if unsuccessful, would be decided
8 by state commissions in ICA arbitrations.¹²⁸ CLECs including Eschelon
9 maintained that Qwest should negotiate TRRO issues, including operational and
10 conversion issues, in ICA negotiations,¹²⁹ as recommended by the FCC.¹³⁰
11 Eschelon continues to maintain that is the case.

12 Furthermore, Qwest has said over time that changes will be made in conjunction
13 with SGAT updates. Qwest has taken this position in CMP, through its service
14 management team, and in ICA negotiations. On June 30, 2005, Qwest committed
15 in CMP:

16 *... as SGAT language changes, we will have a comment period*
17 *and that the States will engage you when decisions are made.*

¹²⁸ See, e.g., Exhibit BJJ-7, p. 4 & 21 (11/17/04 CMP November monthly meeting minutes). A comparison of the full text of from the change request (Exhibit BJJ-7 p. 21) with the excerpt in the chronology (Exhibit BJJ-7, p. 4) shows that Eschelon accurately and fairly quoted from the minutes in its chronology.

¹²⁹ See, e.g., Exhibit BJJ-7, p. 4 (11/17/04 CMP November monthly meeting minutes).

¹³⁰ E.g., TRRO, ¶¶ 196 and 227.

1 *Cindy also said that PCAT changes will be brought through*
2 *CMP.*¹³¹

3 On March 29, 2006, Qwest service management similarly told Eschelon:

4 As agreed to at CMP, the PCATs/Business Procedures associated
5 specifically to TRRO are handled outside the scope of CMP *until*
6 *such time that there is an approved SGAT*, which is why the
7 change was noticed as a non-CMP document.¹³²

8 On April 6, 2006, the Qwest ICA negotiations team similarly told Eschelon:

9 From those discussions it was agreed that *until such time that a*
10 *SGAT is filed* and the TRRO related issues were finalized that all
11 of the TRRO processes and issues would be deferred from a CMP
12 perspective.¹³³

13 **Q. DOES QWEST'S REBUTTAL TESTIMONY IN THIS PROCEEDING**
14 **TELL A DIFFERENT STORY?**

15 A. Yes. Despite these assurances over more than a year's time from every one of
16 these groups within Qwest that Qwest would update the SGATs and deal with
17 "TRRO" issues (including those that Eschelon was asking Qwest to negotiate
18 under Section 252) in CMP as Qwest did so, Qwest testifies in this case that it

¹³¹ Exhibit BJJ-7, pp. 8-9 (6/30/05) (emphasis added).

¹³² Exhibit BJJ-7, p. 11.

¹³³ Exhibit BJJ-7, p. 12 (4/6/06) (emphasis added). As the above quotation shows (*see also* full paragraph quoted at p. 12 of Exhibit BJJ-7), in April of 2006, Qwest was still promising to raise the separate, business impacting "processes and issues" with the Commission in association with SGAT filings. Qwest made the latter statement in response to Eschelon's Section 252 request to negotiate collocation and APOT issues (*see id.* & Exhibit BJJ-18). Yet, Qwest responded that it is "premature to initiate TRRO discussion at this time." *See* Exhibit BJJ-7, p. 12. Given that Eschelon asked to negotiate TRRO issues years ago (*see, e.g.*, Exhibit BJJ-7, p. 4 (11/17/04) and also the APOT issue promptly when Qwest finally disclosed it (*see* Exhibit BJJ-18), the Commission should not allow Qwest to exclude these issues from this arbitration because Qwest has steadfastly refused to take up the issues in negotiations (or even CMP) in the intervening months and years. Eschelon has properly brought them to negotiation and before this Commission in arbitration. [*See* Subject Matters 18 (Conversions) and 26 (Commingle Arrangements).]

1 had “*stopped updating its SGATs.*”¹³⁴ Qwest added that, “Indeed, the SGATs
2 have not been updated to incorporate changes in law since 2002 and are therefore
3 outdated documents.”¹³⁵ This raises a genuine question about Qwest’s conduct in
4 representing to Eschelon and other CLECs that it will deal with issues in
5 conjunction with updating the SGAT when, according to Ms. Stewart’s sworn
6 testimony, Qwest had no intention at all of updating those SGATs. As I
7 explained in my rebuttal testimony, Qwest also recently notified CLECs that
8 Qwest was no longer making the SGATs available for CLEC opt in.¹³⁶

9 As the above quotations illustrate, Qwest has consistently pushed out dealing with
10 business-impacting issues that have resulted from the TRO/TRRO based on its
11 promise to deal with them collaboratively when the time is right. At the same
12 time, Qwest has been busily churning out business-affecting¹³⁷ secret (*i.e.*,
13 password-protected) PCATs¹³⁸ that have not gone through any collaborative
14 process at all – not ICA negotiations (as requested by Eschelon and other
15 CLECs),¹³⁹ not CMP in conjunction with SGAT filings (as promised by
16 Qwest),¹⁴⁰ and not Commission proceedings (as also promised by Qwest).¹⁴¹

¹³⁴ Stewart Rebuttal, p. 32, line 28.

¹³⁵ Stewart Rebuttal, p. 32, line 28; p. 33, lines 1-2.

¹³⁶ Starkey Rebuttal, p. 19.

¹³⁷ Exhibit BJJ-18.

¹³⁸ *See, e.g.*, Exhibit BJJ-7, pp. 26-27.

¹³⁹ Exhibit BJJ-7, p. 4 (11/17/04 CMP November monthly meeting minutes).

¹⁴⁰ Exhibit BJJ-7, pp. 8-9 (6/30/05); *See also*, Qwest Exhibit RA-24RT, pp. 7-8.

1 Qwest implements its own "TRRO" view of the world through notifications that
2 it chose for years to *not send through the CMP* notification or change request
3 processes, while at the same time it refused to negotiate these issues under
4 Section 252 on the grounds that *Eschelon* should take the issue to CMP.¹⁴²
5 Eschelon has exercised its Section 252 right to raise these issues in negotiation
6 and arbitration. Qwest, as the party advocating they belong in CMP, elected not
7 to raise them there (or in any regulatory proceeding) during negotiations and
8 before Eschelon incurred the expense of the ICA arbitrations. As such, Eschelon
9 maintains that this arbitration is the appropriate place to deal with the business
10 impacting aspects of the TRO/TRRO.

11 Qwest has implemented its many TRRO PCATs¹⁴³ without scrutiny (through
12 CMP or otherwise) and is now, remarkably, claiming that the "existing" processes
13 are already in place and it will be too costly or time-consuming to change them
14 (e.g., conversions, see Issues 9-43/9-44). However, Qwest should not have
15 implemented them unilaterally in the first place. If it ultimately incurs costs in
16 changing terms and processes that it should not have put in place unilaterally and
17 over Eschelon's objections, Qwest is the cost causer and should bear those
18 alleged costs.

19 **Q. MS. ALBERSHEIM DESCRIBES THESE EVENTS AS QWEST'S**

¹⁴¹ Exhibit BJJ-7, pp. 8-9 (6/30/05); *See also*, Qwest Exhibit RA-24RT, pp. 7-8.

¹⁴² Exhibit BJJ-25; *See also*, Stewart Rebuttal, p. 69, lines 22-28 and p. 76, lines 21-15; p. 77, lines 1-2.

¹⁴³ *See* Exhibit BJJ-7, pp. 26-27.

1 **CONSIDERABLE ATTEMPTS TO BE RESPONSIVE TO ITS CLEC**
2 **CUSTOMERS.¹⁴⁴ WHAT IS YOUR REACTION?**

3 A. This testimony is telling as to Qwest's view of how it may treat its wholesale
4 customers. In the face of clearly expressed desires by its customers to deal with
5 these issues in pretty much any way other than the unilateral approach Qwest has
6 taken, Qwest persists undeterred in its objectionable approach. Persisting in
7 advancing the opposite of the CLECs' desired outcome is a unique interpretation
8 of "responsiveness," and fully underscores Eschelon's insistence in this docket for
9 contractual certainty. Eschelon is clearly not going to get a resolution through
10 Qwest's customer service efforts, and therefore, needs the statutorily assigned
11 oversight of the Commission to resolve these issues.

12 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON IN ITS EXAMPLES**
13 **AND EXHIBITS IS TRYING TO FALSELY PAINT QWEST AS ACTING**
14 **INCONSISTENTLY IN CMP BY PRESENTING "SMALL PIECES OF**
15 **THE RECORD."¹⁴⁵ IS MS. ALBERSHEIM CORRECT WITH REGARD**
16 **TO THE SECRET TRRO PCAT EXAMPLE?**

17 A. No. Ms. Albersheim's claim is incorrect as it relates to all of the examples I
18 provide, but with regard to the secret TRRO PCAT example specifically, Exhibit
19 BJJ-7 provides an accurate description of events, and the documents attached to
20 the chronology in Exhibit BJJ-7 confirm the facts as presented in that

¹⁴⁴ Albersheim Rebuttal, p. 32, lines 8-10.

¹⁴⁵ Albersheim Rebuttal, p. 21, line 2.

1 chronology.¹⁴⁶ The chronology in Exhibit BJJ-7 contains quotations from the
2 documents. A comparison of the excerpts in Exhibit BJJ-7 to those documents
3 shows that Eschelon's chronology in Exhibit BJJ-7 accurately and fairly quotes
4 that documentation, provides information (such as URLs) to allow easy access to
5 those documents, and includes additional information as well. And despite Ms.
6 Albersheim's claim that Eschelon provided only "small pieces" of the record on
7 this issue,¹⁴⁷ Ms. Albersheim provides no examples of information omitted by
8 Eschelon to support her claim.

9 **5. Expedited Order Example**¹⁴⁸

10 **Q. MS. ALBERSHEIM SUGGESTS THAT ESCHELON DID NOT RAISE**
11 **RELEVANT ISSUES IN THE CMP DURING THE IMPLEMENTATION**
12 **OF THE EXPEDITE PROCESS CHANGES AND INSTEAD OPTED FOR**
13 **LITIGATION.¹⁴⁹ IS THAT TRUE?**

¹⁴⁶ As explained on page 7 of Ms. Johnson's direct testimony, in the Minnesota arbitration proceeding, Qwest criticized Eschelon for not providing the entire public record for these examples and attached several documents to its rebuttal testimony that purportedly provided the remainder of the public record. Though Eschelon disagreed with Qwest's criticism, to avoid a similar argument in Arizona, Eschelon included the documentation that Qwest claimed Eschelon left out in Minnesota. They demonstrate that Eschelon's summaries and excerpts are fair and accurate.

¹⁴⁷ See Albersheim Rebuttal, p. 21, lines 2-3.

¹⁴⁸ As Ms. Albersheim responds to my testimony (see Starkey Direct, pp. 47-51) by discussing Expedited Orders (see Albersheim Rebuttal, pp. 10-11), I will address aspects of Expedited Orders as well. Regarding Eschelon's proposed language for Expedited Orders (Issue 12-67), please refer to the testimony of Mr. Denney.

¹⁴⁹ Albersheim Rebuttal, p. 11, lines 9-10.

- 1 A. No. Ms. Albersheim is wrong, as clearly demonstrated by the evidence submitted
2 with Eschelon's direct testimony. As described in Eschelon's direct testimony,¹⁵⁰
3 Eschelon took several steps to raise relevant issues in CMP regarding expedited
4 orders, including:
- 5 • Eschelon escalated Qwest's Version 27 Expedite PCAT changes in CMP, by
6 joining McLeod's escalation.¹⁵¹ Qwest later confirmed that "Eschelon did join
7 the escalation,"¹⁵² and it included Eschelon (along with several other CLECs) in
8 Qwest's response to this escalation.¹⁵³ Qwest provided a binding response in
9 CMP to this escalation.¹⁵⁴ The CMP Document provides for escalations, and
10 participation in other CLEC's escalations¹⁵⁵ in Section 14.0.¹⁵⁶
 - 11 • Eschelon requested a CMP ad hoc meeting to discuss Qwest's Version 30
12 Expedite PCAT notice.¹⁵⁷ The CMP Document provides that a CLEC may
13 request additional meetings in Section 3.0.¹⁵⁸ Eschelon participated in the call,
14 and Qwest admits that "some CLECs expressed dissatisfaction on the ad-hoc
15 call."¹⁵⁹
 - 16 • Eschelon submitted comments on Qwest's Level 3 Version 30 Expedite PCAT
17 notice.¹⁶⁰ The CMP Document provides that a CLEC may provide comments

¹⁵⁰ Webber (adopted by Mr. Denney), pp. 80-81.

¹⁵¹ Exhibit BJJ-4, p. 1, #2 (#39 PROS.09.12.05.F.03242. *Expedites_Escalations_V27*); *See also*, Exhibit BJJ-3, p. 12.

¹⁵² Exhibit BJJ-4, p. 1, #3; *See also*, Exhibit BJJ-3, p. 12.

¹⁵³ Exhibit BJJ-4, p. 2, #4.

¹⁵⁴ Exhibit BJJ-4, p. 4, ##11-12.

¹⁵⁵ Exhibit BJJ-1, p. 99 (second bullet point); *See also*, Qwest Exhibit RA-1.

¹⁵⁶ Exhibit BJJ-1, pp. 98-99; *See also*, Qwest Exhibit RA-1.

¹⁵⁷ PROS.10.19.05.F.03380. *ExpeditesEscalations V30*. *See* Exhibit BJJ-4, p. 2, #5 and Exhibit BJJ-3, p. 12.

¹⁵⁸ Exhibit BJJ-1; RA-1.

¹⁵⁹ Qwest (Martain) Direct (July 13, 2006), p. 27, lines 3-4, in *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 ["Arizona Complaint Docket"].

¹⁶⁰ PROS.10.19.05.F.03380. *ExpeditesEscalations V30*. *See* Exhibit BJJ-4, p. 3, #7 and Exhibit BJJ-3, p. 13.

1 upon Level 3 notices in Section 5.4.4.¹⁶¹ Eschelon's 11/3/05 CMP comments,
2 which are posted on the Qwest CMP web page (and quoted on pages 80-81 of
3 Eschelon's direct).¹⁶²

- 4 • Eschelon escalated with Qwest pursuant to the dispute resolution provisions of the
5 Qwest-Eschelon ICAs¹⁶³ and the CMP Document (§15.0).¹⁶⁴ Eschelon's dispute
6 resolution letter expressly identified Qwest's Version 27 and Version 30 Expedite
7 PCAT CMP changes as subject to the dispute in the subject line: "Joint McLeod-
8 Eschelon Escalation #39 Re.
9 **PROS.09.12.05.F.03242.Expedites_Escalations_V27 - Denied by Qwest**
10 **11/4/05;** Eschelon 11/3/05 objections to
11 **PROS.10.19.05.F.03380.ExpeditesEscalationsV30.**"¹⁶⁵

- 12 • Eschelon proposed Section 12.2.1.2 (expedite language) in ICA negotiations.¹⁶⁶
13 • Eschelon filed a complaint with the Arizona state commission.¹⁶⁷

14 As this last bullet point shows, Eschelon filed a complaint with the Arizona
15 commission to resolve the CMP and ICA dispute resolution for the issues
16 addressed in the complaint after taking a number of steps in CMP. Ms.
17 Albersheim attempts to make it appear as if Eschelon took no action in CMP

¹⁶¹ Exhibit BJJ-1; RA-1.

¹⁶² URL provided in Exhibit BJJ-4, p. 3, #7 & #9 & BJJ-3, p. 13. *See*

http://www.qwest.com/wholesale/downloads/2005/051118/PROS.11.18.05.F.03492.FNL_Exp-EscalationsV30Qwest%20Response.doc

¹⁶³ An Eschelon March 21, 2006, escalation and request for dispute resolution letter to Qwest stated that Eschelon reserved its right to submit the dispute to all of the state commissions pursuant to the dispute resolution provisions of the ICAs, and an attachment to that letter included relevant ICA provisions from each state.

¹⁶⁴ Exhibit BJJ-1; *See also*, Qwest Exhibit RA-1. Regarding CMP dispute resolution, *see* Starkey Rebuttal, pp. 38-45 and Exhibits BJJ-26, BJJ-27, and BJJ-28.

¹⁶⁵ Exhibit BJJ-3, p. 14.

¹⁶⁶ *See* Qwest April 6, 2006, ICA draft. Section 15.0 of the CMP Document, (Exhibit BJJ-1) states: "This process does not limit any party's right to seek remedies in a regulatory or legal arena at any time." Section 252 negotiation and arbitration is one such regulatory or legal arena. *See* Starkey Direct, p. 51.

¹⁶⁷ Complaint, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (April 14, 2006) ["Arizona Complaint Docket"].

1 before taking the dispute to the state commission (“file litigation”),¹⁶⁸ which is
2 simply not true. In any event, CMP Section 15.0 specifically provides that a
3 complaint may be brought “at any time.”¹⁶⁹ So, Eschelon’s complaint is fully
4 consistent with the CMP Document.

5 Despite all of the other steps taken by Eschelon in CMP, Qwest complains that
6 Eschelon did not also seek postponement of the changes or Alternative Dispute
7 Resolution.¹⁷⁰ I discussed postponement on page 47 of my direct testimony and
8 on pages 34-35 of my rebuttal testimony. Qwest ignores that testimony and
9 instead describes postponement as a “powerful mechanism.”¹⁷¹ As I previously
10 discussed, however, it is a weak mechanism because Qwest is the sole decision
11 maker on a postponement request, which even if granted by Qwest may be as
12 short as thirty days. Moreover, Qwest’s continued opposition to Eschelon’s
13 position both in the ICA arbitrations in multiple states and the Arizona complaint
14 case demonstrates the futility of re-circulating the issue in various CMP settings
15 in which Qwest is the decision maker. Using those processes would have only
16 delayed obtaining resolution of this issue. The CMP Document is clear that both
17 of the processes mentioned by Qwest are optional,¹⁷² and there was no

¹⁶⁸ Albersheim Rebuttal, p. 11, line 10.

¹⁶⁹ Exhibit BJJ-1, Section 15.0; *See also*, Exhibit RA-1.

¹⁷⁰ Albersheim Rebuttal, p. 11.

¹⁷¹ Albersheim Rebuttal, p. 10, line 18.

¹⁷² Exhibit BJJ-1, Section 5.5 (postponement) and Section 15.0 (ADR). Regarding postponement, see Starkey Rebuttal, pp. 33-34. Regarding ADR, *see id.*, pp. 36-39.

1 requirement to pursue them before raising issues in negotiations or in the Arizona
2 complaint case.¹⁷³

3 In addition, if Qwest really desired dispute resolution, Qwest should have
4 requested it. In the Arizona Complaint Docket, Staff said that “since CLEC
5 interconnection agreements are voluntarily negotiated or arbitrated,” Qwest could
6 have taken the issue to arbitration under the Qwest-Eschelon ICA, “rather than
7 trying to force Eschelon into signing an amendment.”¹⁷⁴ In the particular
8 rehabilitation center example described in that Complaint,¹⁷⁵ the Staff indicated
9 that “Qwest should have expedited the request first and then followed up
10 afterwards with the dispute resolution process.”¹⁷⁶ Instead, Qwest refused to
11 provide expedite capability under the existing ICA while the customer was out of
12 service. Staff concluded that “Qwest did not adhere to the terms and conditions
13 of the current Qwest-Eschelon Interconnection Agreement, which allows
14 Eschelon the capability to expedite orders when Qwest denied this option without

¹⁷³ Eschelon’s CMP comments represent another step that Eschelon took to raise relevant issues in CMP during the implementation of the expedite process changes. In response to Eschelon’s CMP comments on the Covad change request, Eschelon obtained two commitments from Qwest (both reflected in the above quotation from Qwest’s CMP Response): (1) implementation of the Covad CR would not result in replacement of the existing emergency-based option (*i.e.*, “continue with the existing process that is in place”); and (2) resources would remain available to process expedite requests under the existing emergency-based option even with the addition of the optional fee-added alternative (*i.e.*, “this will not impact resources”). To the extent that Qwest criticizes Eschelon for not seeking postponement or seeking Alternative Dispute Resolution with respect to Covad’s change request (Albersheim Rebuttal , pp.10-11), there was no reason to do so, because Qwest made these commitments to Eschelon and, therefore, there was no impact on the existing emergency-based option to challenge at that time.

¹⁷⁴ Staff Testimony, Arizona Complaint Docket, p. 36, line 21 – p. 37, line 2.

¹⁷⁵ Complaint, ¶¶22-41.

¹⁷⁶ Staff Testimony, Arizona Complaint Docket, p. 34, lines 19-20.

1 signing an amendment to the Agreement.”¹⁷⁷ Clear expedite terms are needed in
2 the new ICA to avoid a similar situation in the future.

3 **Q. QWEST STATES THAT YOU “OMIT THE PRIMARY REASON FOR**
4 **WHY THE HEARING WAS DELAYED” IN THE ARIZONA**
5 **COMPLAINT DOCKET.¹⁷⁸ PLEASE RESPOND.**

6 A. In my testimony, I pointed out that the ten-month time period required to obtain a
7 hearing date in the Arizona Complaint Docket as a result of Eschelon’s CMP
8 dispute resolution efforts is a far cry from the 31-day time period in which Qwest
9 can accomplish changes through Level 3 CMP notifications.¹⁷⁹ This is true
10 regardless of the reason for the length of the time needed to process the case.¹⁸⁰
11 In the event that Qwest were to claim that ten months is an unusually long period
12 of time and Eschelon may receive relief earlier in other dispute resolutions, I
13 specifically quoted the representation of Qwest counsel that six months to hear a
14 single issue presented by a complaint was so short an amount of time that Qwest

¹⁷⁷ Staff Testimony, Arizona Complaint Docket, Executive Summary, Staff Conclusion No. 1.

¹⁷⁸ Albersheim Rebuttal, p. 11, lines 11-14.

¹⁷⁹ Starkey Direct, pp. 49-50. Similarly, when Eschelon wanted a change in the delayed order policy, completion of Eschelon’s delayed order change request in CMP from submission to an unsatisfactory closure, took 469 days, whereas when Qwest wanted a change Qwest was able to implement it in CMP in only 43 days. *See* Exhibit BJJ-2.

¹⁸⁰ Qwest asserts that one of its attorneys on the case had a scheduling conflict with another case. *See* Albersheim Rebuttal, p. 11, lines 13-14. Surely Qwest is not suggesting that this is a one-time experience and no other scheduling conflicts will arise in any other case to cause delays in other dispute resolution proceedings. Qwest does not point to any complaint case that has been tried in less than the 31-day period available to Qwest for its own Level 3 CMP changes. In fact, Qwest’s “rocket docket” comment (quoted below) suggests that the opposite is more generally true.

1 had not even heard of rocket dockets proceeding that fast.¹⁸¹ The need to make
2 that point is validated by Ms. Albersheim's rebuttal testimony in which Qwest
3 does, in fact, try to suggest that "the scheduling of the hearing for the Arizona
4 docket" may not be the "norm for complaint proceedings."¹⁸² According to
5 Qwest's own counsel, however, several months is like a rocket docket compared
6 to the norm.¹⁸³ The time required for a CLEC to obtain a result through CMP
7 dispute resolution (regardless of whether that time is the same or somewhat
8 different from the time needed in the Arizona Complaint Docket) is much longer
9 than the 31-day period in which Qwest can accomplish changes through Level 3
10 CMP notifications. I also referred to Qwest's expressed intent to conduct
11 multiple depositions and other discovery in that case as an example of the
12 expense and resources that a CLEC in dispute resolution will experience that
13 Qwest does not with its quick and easy notification process.¹⁸⁴ These facts should
14 be considered when weighing any Qwest suggestion that dispute resolution for
15 CLECs is the best means to address every issue. This is particularly true because

¹⁸¹ AZ Complaint Docket, Transcript, Procedural Conference (July 27, 2006), p. 18, lines 20-24 (Counsel for Qwest stated: "So the whole point is, we look at this scheduling question as one that is perplexing; that why is it that we are moving -- I mean I've been involved in rocket dockets. I've never seen a case that goes from beginning to end within this period of time that we've proposed in this case, and maybe there's cases here that I'm unaware of. None in my experience.")

¹⁸² Albersheim Rebuttal, p. 11, lines 11-12.

¹⁸³ AZ Complaint Docket, Transcript, Procedural Conference (July 27, 2006), p. 18, lines 20-24 (quoted above).

¹⁸⁴ Starkey Direct, p. 49.

1 Qwest will “probably never”¹⁸⁵ be the party initiating CMP dispute resolution.
2 As noted in the Staff testimony quoted above, Qwest certainly did not initiate
3 other dispute resolution in the situation in the Arizona Complaint Docket, despite
4 its own alleged conclusion that this should have been done.

5 **Q. YOU REFER TO ESCHELON’S COMPLAINT RELATING TO**
6 **EXPEDITED ORDERS AS A CMP DISPUTE RESOLUTION, BUT MS.**
7 **ALBERSHEIM TESTIFIES THAT ONLY ONE CLEC (NOT ESCHELON)**
8 **HAS “EVER” USED THE DISPUTE RESOLUTION PROCESS IN CMP.¹⁸⁶**
9 **PLEASE EXPLAIN.**

10 A. Qwest’s claim doesn’t make sense. In the case of Eschelon’s Complaint, as I
11 discussed in my testimony above, Eschelon’s dispute resolution letter expressly
12 identified Qwest’s Version 27 and Version 30 Expedite PCAT CMP changes as
13 subject to the dispute resolution. Eschelon’s Complaint is a CMP dispute
14 resolution. The VCI matter that Qwest points to as the only CLEC use of the
15 dispute resolution process “ever”¹⁸⁷ in CMP, was not handled pursuant to Section
16 15.0 (“Dispute Resolution Process”) but rather Section 18.0 (“Oversight Review
17 Process”) of the CMP Document.¹⁸⁸ Although Qwest for some unidentified

¹⁸⁵ Exhibit BJJ-18 (October 2-3, 2001 CMP Redesign Meeting Minutes, Att. 4, p. 36, Action Item #86); Starkey Direct, p. 27.

¹⁸⁶ Albersheim Rebuttal, p. 11, lines 15-17.

¹⁸⁷ Albersheim Rebuttal, p. 11, line 17.

¹⁸⁸ As the name “Oversight” suggests, Section 18.0 indicates that it applies to issues raised with “using this CMP.” See Exhibit BJJ-1 and Qwest Exhibit RA-1. Section 18.0 of the CMP Document not

1 reason singles out the VCI matter, several other matters have also been handled
2 through Section 18.0 (“Oversight Review Process”) of the CMP Document.¹⁸⁹
3 Given the expense and time associated with the CMP dispute resolution process, I
4 am not surprised that it has not experienced a lot of use, but data with respect to
5 the number of dispute resolutions is meaningless if Qwest can simply choose not
6 to count valid dispute resolutions or uses some criteria for counting dispute
7 resolutions other than those in the CMP Document (Section 15.0) itself.

8 **Q. MS. ALBERSHEIM ASSERTS THAT YOUR CLAIM THAT THERE ARE**
9 **NO CLEC CMP NOTIFICATIONS IS “NOT ENTIRELY ACCURATE”**
10 **BECAUSE THERE IS AN EXTERNAL DOCUMENTATION PROCESS.¹⁹⁰**
11 **DO YOU AGREE?**

12 **A.** No. The CMP Document is very clear on this point. Only Qwest may implement
13 changes by notification (Levels 1-3) in CMP.¹⁹¹ All CLEC proposed changes are
14 submitted as change requests (Level 4),¹⁹² as I indicated in my direct
15 testimony.¹⁹³ Qwest’s attempt to portray the External Documentation process as

only provides that it is “optional,” but also that: “It will not be used when one or more processes documented in this CMP are available to obtain the resolution the submitter desires.” *Id.*

¹⁸⁹ See, e.g., Exhibit BJJ-33 (List of CMP Oversight Committee Meeting Minutes Posted on the Qwest Wholesale Website).

¹⁹⁰ Albersheim Rebuttal, p. 12, lines 8-11.

¹⁹¹ Exhibit BJJ-1, Section 5.4. These are described as “Qwest Originated” changes. See *id.*; See also, Exhibit RA-1.

¹⁹² Exhibit BJJ-1, pp. 24-25.

¹⁹³ Starkey Direct, p. 43, lines 13-15.

1 a notification process through which CLECs may implement product and process
2 changes by notice, like Qwest, flies in the face of the CMP Document.

3 Ms. Albersheim's assertion also mischaracterizes the External Documentation
4 process. As Eschelon said in its change request when requesting this process,
5 Eschelon requested this process because "although Qwest has existing internal
6 processes, Qwest has not documented many of those processes for CLECs."¹⁹⁴
7 Nonetheless, Qwest's process is to require CLECs to find information in Qwest's
8 website, PCAT, or technical publications before they approach the Qwest service
9 manager with requests for information.¹⁹⁵ In its change request, Eschelon pointed
10 out that, "without adequate documentation, when the process breaks down,
11 CLECs are forced to spend unnecessary time and resources debating with Qwest
12 representatives about the process itself, when those challenges could be avoided
13 by simply pointing to mutually accessible documentation that clearly states the
14 process for all involved. Instead, unnecessary escalations waste CLEC and Qwest
15 resources."¹⁹⁶

¹⁹⁴ Eschelon's CR PC030603-1.

¹⁹⁵ Exhibit BJJ-34 (Qwest Service Center and Manager Roles in Relation to CMP) (6/6/02), p. 1 (first bullet point: "Requests for Information").

¹⁹⁶ Eschelon's CR PC030603-1.

1 Qwest documents processes for itself.¹⁹⁷ Until recently, Qwest provided access to
2 its methods and procedures (with confidential information redacted) to Eschelon
3 and other CLECs, so they had access to those procedures to allow a
4 nondiscriminatory opportunity to use those procedures and train their employees
5 on them (as well as to confirm that the procedures were applied in a
6 nondiscriminatory manner). Qwest had said that, in order “to comply with the
7 Telecommunications act of 1996 Qwest developed a redaction process which
8 allows CLEC’s access to the retail product methods and procedures contained in
9 InfoBuddy that are available for Resale. That information is formatted into a
10 WEB based application known as Resale Product Database (“RPD”). The
11 redaction process removes only the proprietary information found in InfoBuddy
12 that Qwest is not mandated via the Act to provide to CLEC’s.”¹⁹⁸ Recently,
13 however, Qwest has “retired” RPD over Eschelon’s objection, so that this
14 information will no longer be available to CLECs.¹⁹⁹ Therefore, other clear and
15 accessible documentation is even more important now than before.

16 The External Documentation process is a mechanism for CLECs to identify and
17 request corrections in Qwest’s documentation that Qwest should have corrected

¹⁹⁷ “Shon Higer-Qwest stated that Qwest does have a lot of procedures in place i.e. PCATs, business procedures, LSOG, and that they do get updated *like Retail’s do.*” (emphasis added), from http://www.qwest.com/wholesale/cmp/archive/CR_SCR062105-01.htm; See also Exhibit BJJ-35 (Qwest 6/27/01 email).

¹⁹⁸ Exhibit BJJ-35 (6/27/01 Qwest Senior Service Manager email).

¹⁹⁹ Exhibit BJJ-35 (RPD Retirement notice, effective 4/29/06, and Eschelon objection).

1 itself.²⁰⁰ It shifts the burden to CLECs to clean up Qwest's documentation. This
2 is accomplished through a request placed to Qwest and not a general notification
3 by a CLEC. This is very different from Qwest's ability to implement product and
4 process changes by notice after waiting an applicable time period and then going
5 forward with the change. And, like many other changes in CMP, only Qwest has
6 the ability to deny an External Documentation request.²⁰¹

7 **Q. MS. ALBERSHEIM CLAIMS THAT ITS PROPOSAL FOR EXPEDITED**
8 **ORDERS "REFLECTS QWEST'S CURRENT PRACTICE"²⁰² WHICH IT**
9 **HAS SAID WAS DEVELOPED "THROUGH THE CMP."²⁰³ PLEASE**
10 **RESPOND.**

11 **A. CLECs did not request an "expedite process for design services, like unbundled**
12 **loops"²⁰⁴ to obtain "more certainty" than the emergency-based Expedites**

²⁰⁰ Exhibit BJJ-1, Section 3.3 and Section 2.4.4; *See also*, Exhibit RA-1.

²⁰¹ "You will be notified within 14 business days whether your request is accepted or denied." *See* file://corp/dfs/Team/Legal/Clauson/ArbitrationQwestICA/Minnesota/SurrebuttalLMNDRAFTS/307,14, Slide 14 (CLEC External Documentation Request Process Guide, September 2005, V4.0). *See* Albersheim Rebuttal, p. 12, lines 9-11 (indicating that Qwest has denied almost one-third of Eschelon's external documentation requests).

²⁰² Albersheim Rebuttal, p. 43, line 15.

²⁰³ Albersheim Rebuttal, p. 53, line 13. *See also* Albersheim Direct, pp. 58-60.

²⁰⁴ Albersheim Rebuttal, p. 58, lines 19-20. While Covad, due to its business plan may order primarily "designed" products, Covad asked for an "Enhanced Expedite Process *for Provisioning*," as the title of the Change Request reflects. *See* Exhibit BJJ-41, p. 5. Qwest was the company that said that it would accept the change request "*with the caveat* that it will be looked at and implemented on a product by product basis. *Qwest* will continue to look at all of the individual products to determine if *we* will implement those changes." *See* Exhibit BJJ-41 at 13 (emphasis added) (p. 9 of 11 of CR; p. 13 of Exhibit).

1 Requiring Approval process provided.²⁰⁵ As discussed in the testimony of Mr.
2 Denney,²⁰⁶ CLECs had certainty with the long-standing emergency-based
3 Expedites Requiring Approval process (which had been available for loops since
4 at least 2000).²⁰⁷ CLECs sought – not to eliminate one process in favor of the
5 other (as suggested by Qwest) but – to use *both* processes to expedite orders,
6 including for unbundled loops (which are, per Qwest, “designed” facilities). At
7 the time Qwest introduced its *fee-added* non-emergency expedite process, it
8 assured CLECs that the new fee-added process was *in addition* to the existing
9 emergency-based expedite process. Qwest’s statements are directly quoted on
10 page 82 of Mr. Webber’s direct testimony (which I have adopted).

11 Qwest’s apparent attempt to portray its Version 27 and 30 PCAT changes to
12 remove unbundled loops from the expedite process as a CLEC-desired change is
13 inconsistent with the documented facts.²⁰⁸ Despite Qwest’s suggestions that these
14 changes were associated with Covad’s change request,²⁰⁹ Qwest specifically put
15 “not applicable” on its Version 27 and 30 notices in the space Qwest itself

²⁰⁵ Albersheim Direct, p. 8, lines 5-14.

²⁰⁶ Denney Rebuttal, p. 111.

²⁰⁷ Qwest (Ms. Novak) Direct (July 13, 2006) (Arizona Complaint Docket), p. 5, lines 5-12 & lines 21-22 (Qwest “uniformly followed the process in existence at the time for expediting orders for unbundled loops”); *see also* Answer (May 12, 2006) (Arizona Complaint Docket), Page 9, ¶ 14, Lines 24-25 (“Qwest previously expedited orders for unbundled loops on an expedited basis for Eschelon”).

²⁰⁸ CLECs known to Eschelon who objected to the Qwest-initiated CMP changes to Versions 27 and/or 30 of Qwest’s Expedites and Escalations Overview PCAT include Eschelon, McLeodUSA, PriorityOne, Integra, Velocity, AT&T, ELI, and VCI. *See* Exhibit BJJ-4, pp. 1-2. For a summary of Eschelon’s actions in CMP, *see id.* and my discussion of Expedited Orders.

²⁰⁹ *See, e.g.*, Albersheim Direct, p. 59, lines 4-5 (“hence, Covad’s change request”).

1 provides for listing any "Associated CR Number."²¹⁰ On notices for earlier
2 Versions, issued before the Covad change request was completed, Qwest placed
3 the Covad change request number in this category.²¹¹ Therefore, CLECs knew
4 that the earlier changes may be related to the Covad change request. Qwest had
5 left the Covad change request open while it determined whether any other
6 products would be added to the fee-added expedite process.²¹² Once Qwest
7 agreed to close/complete the Covad change request in July of 2005, CLECs had a
8 reasonable expectation that there would be no additional changes to the products
9 under each process. Versions 27 and 30 were Qwest-initiated changes,
10 announced in October of 2005 by Level 3 Qwest notifications. They were *not*
11 Level 4 change requests; they were not associated with the Covad change request;
12 and they were opposed by Eschelon, as well as other CLECs.²¹³

13 **Q. QWEST THEN CLAIMS THAT QWEST DEVELOPED ITS CURRENT**
14 **EXPEDITE PROCEDURES BECAUSE OF ABUSE OF THE**
15 **EMERGENCY CONDITIONS.²¹⁴ IS THAT WHAT QWEST SAID AT**
16 **THE TIME?**

²¹⁰ See Exhibit BJJ-43.

²¹¹ See, e.g., *id.*

²¹² See Exhibit BJJ-41, p. 15.

²¹³ See Exhibit BJJ-4, pp. 1-2 (CLECs listed in previous footnote).

²¹⁴ Albersheim Rebuttal, p. 53, lines 4-12.

1 A. No. Qwest now claims that, after the July 2004 implementation of the fee-added
2 expedites reflected in PCAT Version 11, Qwest “was seeing cases” of abuse.²¹⁵
3 Ms. Albersheim testifies that “CLECs were gaming the system and submitting
4 spurious emergency expedite requests.”²¹⁶ Neither Ms. Albersheim nor Ms.
5 Martain provided detail or documentation in support of this new claim with their
6 testimony. In the Arizona Complaint Docket, Ms. Martain claimed generally that
7 CLECs tried to escalate expedite requests when they did not have an expedite
8 amendment and the situation did not qualify for an expedite under the emergency-
9 based expedites requiring approval process.²¹⁷ Qwest may have included
10 Eschelon in that example because Qwest claimed that Eschelon needed an
11 expedite amendment, but Eschelon’s position is that it does qualify for an
12 expedite under its existing ICA (and Arizona Staff testified in that case²¹⁸ that
13 Staff agreed).

14 Qwest makes the decision of whether to accept or deny an expedite request. If the
15 conditions were not met in any examples, presumably Qwest would have denied
16 the expedite requests because the conditions had not been met. After all, there is
17 a list of conditions and Qwest requires the CLEC to provide support that it meets

²¹⁵ Qwest (Ms. Martain – CMP Process Manager) Direct (July 13, 2006) (Arizona Complaint Docket), p. 24, lines 15-18.

²¹⁶ Albersheim Rebuttal, p. 53, lines 10-11.

²¹⁷ Qwest (Ms. Martain – CMP Process Manager) Direct (July 13, 2006) (Arizona Complaint Docket), p. 24, line 31 – p. 25, line 3 (“CLECs trying to escalate expedite requests when they did not have an expedite amendment”).

²¹⁸ See Exhibit DD-21 (Executive Summary from Staff Testimony).

1 the conditions. If there had been a widespread problem of gaming the system
2 with CLECs requesting emergency expedites under circumstances that did not
3 meet the emergency conditions, it seems that Qwest would have identified that
4 problem when announcing the changes that it now says are designed to address
5 the problem. When Qwest announced its Versions 27 and 30 PCAT changes,
6 however, Qwest made no mention of alleged abuse, gaming the system, or
7 spurious requests. In its announcement of its Version 30 change – which removed
8 expedite capability for unbundled loops from emergency-based expedites – Qwest
9 cited a legal reason (“parity”) as the reason for this Qwest-initiated change.²¹⁹

10 **B. CMP SCOPE AND QWEST’S CLAIM THAT IT CANNOT ACT**
11 **ARBITRARILY IN CMP**

12 **Q. BEFORE ADDRESSING THE MERITS OF MS. ALBERSHEIM’S**
13 **REBUTTAL TESTIMONY ON THE RELATIONSHIP BETWEEN THE**
14 **ICA AND CMP AND THE NEED FOR CONTRACTUAL CERTAINTY,**
15 **DO YOU HAVE ANY GENERAL COMMENTS ABOUT HER**
16 **TESTIMONY ON THIS ISSUE?**

17 **A.** Yes. Numerous times throughout Ms. Albersheim’s rebuttal testimony, she refers
18 to Eschelon’s proposals as “Eschelon’s proposed CMP-related language.”²²⁰ Ms.
19 Albersheim’s repeated use of this phrase is an attempt to use semantics to make it

²¹⁹ Exhibit BJJ-41, p. 26.

²²⁰ See, e.g., Albersheim Rebuttal, p. 4, line 20; p. 14, lines 13-14. See also Albersheim Rebuttal, p. 5, lines 10-11; p. 18, lines 7-8 (“CMP related issues.”)

1 appear as if Eschelon has CMP-related proposals. To be clear: Eschelon does not
2 have “CMP-related language” proposals. What Ms. Albersheim is apparently
3 referring to is Eschelon’s proposals on the issues for which Qwest wants to omit
4 from the ICA and rely exclusively on the CMP.²²¹ For these issues, Eschelon’s
5 proposals are not “CMP-related,” rather a more accurate description of them
6 would be “ICA-related” because they provide the contractual certainty that is the
7 purpose of ICAs. It is only Qwest’s proposals for these issues that can be
8 accurately characterized as “CMP-related” because, rather than clearly spelling
9 out terms and conditions in the ICA, they are silent or point to the CMP, PCAT or
10 SIG.²²²

11 **Q. MS. ALBERSHEIM CLAIMS IN HER REBUTTAL TESTIMONY THAT**
12 **THE PURPOSE OF CMP IS TO CENTRALIZE PROCESSES AND**
13 **PROCEDURES AND MAKE THEM UNIFORM ACROSS CLECS.²²³ IS**
14 **QWEST’S REBUTTAL TESTIMONY CONSISTENT ON THIS POINT?**

15 **A.** No. Ms. Albersheim once again discusses the ability of the CMP to centralize
16 processes and systems²²⁴ to ensure uniformity.²²⁵ Ms. Albersheim argues that
17 even though older ICAs contained specific terms, Qwest has “worked hard to

²²¹ This list of issues is found at pages 11-13 of my direct testimony.

²²² See, e.g., Qwest’s proposal for 1-1(a) and 1-1(e). Compare to Eschelon’s proposals for the same issues. Starkey Direct, pp. 88-91.

²²³ See, e.g., Albersheim Rebuttal, p. 14, line 15 & p. 16, lines 15-16.

²²⁴ See e.g., Albersheim Rebuttal, p. 14, lines 13-16.

²²⁵ See e.g., Albersheim Rebuttal, p. 16, lines 15-17 and p. 73, lines 12-16. See also, Stewart Rebuttal, p. 84, lines 10-13.

1 eliminate” those specific terms processes and procedures from interconnection
2 agreements.²²⁶ She again claims that adopting Eschelon’s proposals would have
3 Qwest “turn back the clock”²²⁷ on Qwest’s hard work in this regard.²²⁸ In
4 contrast, Qwest witness Ms. Stewart tells the exact opposite story from the one
5 told by Ms. Albersheim. Ms. Stewart tells it this way:

6 In an order issued in 2004, the FCC established that under the opt-
7 in provision in Section 252(i), a CLEC can only opt into an entire
8 ICA or SGAT, not just individual provisions. Under this "all-or-
9 nothing" rule, CLECs that choose to opt into another carrier's ICA
10 or an SGAT can no longer "pick-and-choose" individual provisions
11 that they want and reject other provisions they don't want. A
12 CLEC that elects to negotiate an agreement instead of opting into
13 one has, by definition, chosen not to be eligible to pick and choose
14 any or all of the provisions from another carrier's ICA. While a
15 CLEC can negotiate terms and conditions of its own choosing,
16 Qwest is not bound to accept every term and condition, even if it is
17 a part of another agreement. The FCC explained the reason behind
18 the "all-or-nothing rule," stating that the rule would promote more
19 give and take in negotiations and would produce agreements that
20 are more tailored to the individual needs of carriers.²²⁹

21 Similarly, in Minnesota, Ms. Stewart testified:

22 Moreover, due to the FCC’s elimination of the “pick-and choose”
23 rule and its move to the “all-or-nothing” rule, as discussed CLECs
24 are much less likely to opt into a standard SGAT when ICAs have
25 become increasingly more tailored to CLECs. This tailoring has
26 increased as CLECs have shaped their businesses to have a
27 specialized focus, which is often necessary to survive in today’s

²²⁶ Albersheim Rebuttal, p. 18, lines 11-13.

²²⁷ Albersheim Rebuttal, p. 18, line 14.

²²⁸ I have explained why Ms. Albersheim is wrong when she contends that the purpose of CMP is to implement uniform processes and procedures for all CLECs as well as why Eschelon is not attempting to “turn back the clock.” See Starkey Rebuttal, pp. 11-13.

²²⁹ Stewart Rebuttal, p. 27, lines 11-22. Ms. Stewart also testifies at page 29, lines 3-4 of her rebuttal testimony that “it is essential that the disputed issues in this arbitration be resolved on their merits and based on the law as it exists today.”

1 highly competitive telecommunications market.²³⁰

2 Ms. Stewart's statement that CLEC ICAs have become increasingly tailored to the
3 CLEC's specialized business is in direct conflict with Ms. Albersheim's
4 testimony which states that Qwest has "worked hard to eliminate" these
5 specialized terms from CLEC ICAs.²³¹ Moreover, Ms. Stewart states that
6 tailoring ICAs to meet the specialized needs of CLECs is often necessary for
7 CLEC survival in the competitive telecommunications marketplace, but Ms.
8 Albersheim is asking that any terms tailored to meet Eschelon's specialized focus
9 be omitted from the ICA. Based on Ms. Stewart's rebuttal testimony, it appears
10 that Ms. Albersheim's testimony and the Qwest's positions which she supports,
11 would have the effect of making it more difficult for Eschelon to survive in
12 today's telecommunications marketplace. After all, Ms. Albersheim testifies that
13 Qwest has "worked hard to eliminate"²³² the very thing that Ms. Stewart testifies

²³⁰ Qwest-Eschelon ICA MN Arbitration, Stewart MN Rebuttal, p. 36, lines 19-25. Ms. Stewart also testifies at page 39 of her Minnesota rebuttal testimony that "it is essential that the disputed issues in this arbitration be resolved on their merits and based on the law as it exists today."

²³¹ Albersheim Rebuttal, p. 18. It is also directly contradictory to Ms. Albersheim's claim that "Before the creation of the current CMP, many interconnection agreements were highly individualized. Through the extensive collaborations in the creation of the CMP, and the section 271 evaluations of Qwest's systems and processes, Qwest and the CLECs have created mechanisms to ensure that Qwest can provide the best service for CLECs. As a result, Qwest has taken steps to try to make its contract language reflect these improvements. While process language still exists, Eschelon should not be allowed to compound the problem and turn back the clock on the processes that have proven effective for all of Qwest's CLEC customers." (Albersheim Direct, p. 32.) What Ms. Albersheim refers to as compounding a problem, Ms. Stewart refers to as necessary for survival in the telecommunications market.

²³² See also Albersheim Rebuttal, p. 17 ["Qwest undertook significant efforts over the last four years to negotiate with Eschelon and to reach agreement on disputed ICA language. In the spirit of these negotiations, Qwest compromised when it could and tried hard to avoid including too much process and procedure in the ICA."] Ms. Stewart testifies that there has been increasingly tailored ICAs since the FCC's All Or Nothing Rule, which was issued in mid-2004 – the same time frame that,

1 is necessary to survival in today's telecommunications marketplace – *i.e.*,
2 individualized ICAs.

3 **Q. DESPITE MS. ALBERSHEIM'S TESTIMONY ATTACKING**
4 **SPECIALIZED ICAS, HAS SHE PREVIOUSLY TESTIFIED IN SUPPORT**
5 **OF SPECIALIZED TERMS IN ICAS WITH CLECS?**

6 A. Yes. In her rebuttal testimony in the companion Minnesota arbitration
7 proceeding, Albersheim testified "of course Qwest supports unique negotiated
8 agreements with CLECs."²³³ Ms. Albersheim's testimony from Minnesota stands
9 in stark contrast to the position Ms. Albersheim expressed in her testimony
10 here,²³⁴ as well as Qwest's position in this case on a sub-set of the issues that
11 uniformity should rule.²³⁵ Additionally, as I explained in my direct testimony,
12 Eschelon is not attempting to defeat uniform processes.²³⁶ The vast majority of
13 the contract language proposed by Eschelon for the one-third of the issues (which
14 is now less than one-third due to issue closures) matches Qwest's current
15 practices, including language describing the same terms in the PCAT.

16 **Q. MS. ALBERSHEIM CLAIMS THAT UNIFORM PROCESSES ARE**

according to Ms. Albersheim, Qwest was engaging in negotiations with the goal of not including too much process and procedure detail in the ICAs.

²³³ Albersheim Minnesota Rebuttal Testimony, p. 14. Ms. Albersheim left this testimony out of her direct and response testimonies in Arizona.

²³⁴ See *e.g.*, Albersheim Direct, p. 35, lines 17-19 and Albersheim Rebuttal, p. 5, lines 14-15.

²³⁵ See Starkey Direct, p. 13 for a list of issues for which Qwest would like to deal with in CMP rather than have specific contract language in the ICA.

²³⁶ Starkey Direct, p. 35.

1 **NEEDED SO THAT IT CAN TRAIN ITS EMPLOYEES ON ONE SET OF**
2 **PROCESSES AND HAS RESULTED IN A HIGHER QUALITY OF**
3 **SERVICE,²³⁷ AND THAT “UNIQUE”,²³⁸ “ONE-OFF”²³⁹ PROCESSES**
4 **UNDERMINES THESE OBJECTIVES. DOES MS. ALBERSHEIM’S**
5 **CLAIM HOLD UP TO SCRUTINY?**

6 A. No. ICAs are not uniform among CLECs today and have not been in the past, so
7 therefore, it is not uniform processes that has led to the service quality that Qwest
8 characterizes as “outstanding.”²⁴⁰ Exhibit BJJ-33 shows some of the differences
9 between the Eschelon ICA and Covad ICA. Ms. Johnson also describes more
10 differences between the ICAs of various CLECs in her rebuttal testimony. If Ms.
11 Albersheim’s claim was true that terms needed to be uniform in order for Qwest
12 to provide the level of service quality it provides today, then CLEC ICAs would
13 need to be uniform today. But they are not.

14 Ms. Albersheim also claims that uniform processes helps ensure that CLECs are
15 treated in a nondiscriminatory manner.²⁴¹ Section 252(i) of the federal Act,
16 however, serves that purpose by requiring interconnection agreements to be
17 publicly filed and available for opt-in to avoid discrimination. For example, the
18 Washington Commission has rejected the notion that different publicly filed ICA

²³⁷ Albersheim Rebuttal, pp. 15-16.

²³⁸ Albersheim Rebuttal, p. 5, line 14.

²³⁹ *Id.*

²⁴⁰ Albersheim Rebuttal, p. 16, line 3.

²⁴¹ Albersheim Rebuttal, p. 15, lines 18-20.

1 terms amounted to discrimination. [“The fact that there are differences in change
2 of law provisions among various agreements is not discriminatory: It reflects the
3 variations in negotiation and arbitration of terms in interconnection
4 agreements...”]²⁴²

5 **Q. MS. ALBERSHEIM CLAIMS THAT “UNIFORM PROCESSES AND
6 PROCEDURES” ARE SUPPORTED BY THE CMP SCOPE CLAUSE. IS
7 SHE CORRECT?**

8 **A.** No. At page 15 of her rebuttal testimony, Ms. Albersheim quotes Section 1.0 of
9 the CMP as follows:

10 CMP provides a means to address changes that support of affect
11 pre-ordering, ordering/provisioning, maintenance/repair and billing
12 capabilities and associated documentation and production support
13 issues for local services...provided by...CLECs to their end users.
14 The CMP is applicable to Qwest’s 14-state in-region serving
15 territory.

16 This language does not support Ms. Albersheim’s notion that the purpose of CMP
17 was to make processes and procedures uniform among all CLECs. First, the
18 language says that “CMP provides *a* means to address changes...”, the language
19 does not say that CMP is *the only* means to address changes.

20 Second, Eschelon Exhibit BJJ-32 shows that Qwest has agreed to language in the
21 ICA that differs from what is in Qwest’s PCAT without CMP activity. One

²⁴² Washington State Utilities and Transportation Commission, Docket UT-043013, Order No. 17
Arbitrator’s Report and Decision dated July 8, 2005 at ¶79, [“*Washington ALJ Report*”], affirmed in
relevant part in “*Washington Order No. 18.*”

1 example is Issue 8-24, which is found at pages 2-3 of Exhibit BJJ-32. Qwest
2 agreed to close this issue based on Eschelon's proposal – a proposal that Qwest
3 testified would be a “change in existing Qwest process” and a change “that will
4 impact all CLECs,”²⁴³ and a proposal that was different from Qwest's PCAT.
5 Notably, Qwest closed this language without any CMP activity. This undercuts
6 Ms. Albersheim's notion that uniformity is the overarching goal, and generic
7 ICAs relying upon detailed processes discussed in CMP are required for the sake
8 of efficiency.

9 **Q. DOES QWEST'S REBUTTAL TESTIMONY BRING TO LIGHT ANY**
10 **ADDITIONAL PROBLEMS WITH QWEST'S PROPOSAL TO PUNT**
11 **CRITICAL ISSUES TO CMP?**

12 A. Yes. Ms. Stewart admits on page 32 of her rebuttal testimony that “Qwest
13 stopped updating its SGATs...and [SGATs] are therefore outdated documents.”
14 As I explained in my discussion of the Secret TRRO PCAT example, Qwest told
15 CLECs that it was going to update its SGATs and thereafter address TRRO issues
16 in CMP, but Qwest now admits that it has not updated its SGATs since 2002²⁴⁴
17 (before the TRRO was released) and has no intention to do so. And as I explained
18 in my rebuttal testimony (page 18), Qwest recently issued a Level 1 CMP notice
19 that informed CLECs that Qwest was no longer making SGATs available for

²⁴³ Qwest (Hubbard) Washington Direct Testimony, p. 45, lines 15-18.

²⁴⁴ As I explained at page 17 and footnote 61 of my rebuttal testimony, after Qwest received 271 approval, it has not held a single CLEC Forum for the purposes of discussing Qwest's template agreement.

1 CLEC opt in.²⁴⁵ Qwest unilaterally established these obligations related to the
2 TRRO, and even assuming it now brings some of these issues to CMP, Qwest will
3 undoubtedly treat them as “existing processes” and contend that it is too much
4 work or too costly to change them.

5 Furthermore, I described in my rebuttal testimony Qwest’s “entitlement”
6 mentality when it comes to its negotiations template,²⁴⁶ in which it assumes that
7 its negotiations template should be used as the baseline for negotiations, placing
8 the burden on Eschelon to justify deviation from this template. Ms. Stewart
9 explains that the “Template Agreement is based on the individual states’
10 SGATs.”²⁴⁷ But if Qwest stopped updating its SGATs in 2002 as Ms. Stewart
11 explains, and the Template Agreement is based on these SGATs, then the
12 Template Agreement, too, is an “outdated document.” This provides even more
13 reason to reject Qwest’s notion that Eschelon should carry the burden to justify
14 deviations from Qwest’s Template Agreement.²⁴⁸

15 **Q. MS. ALBERSHEIM CRITICIZES YOUR USE OF THE TERM “NOTICE**
16 **AND GO” WHEN DESCRIBING QWEST’S CMP NOTICES. ARE HER**
17 **CRITICISMS WARRANTED?**

18 **A. No. Ms. Albersheim simply ignores the meaning of Notice and Go I discussed in**

²⁴⁵ See Exhibit BJJ-38.

²⁴⁶ Starkey Rebuttal, pp. 15, line 4 and p. 19, line 8.

²⁴⁷ Stewart Rebuttal, p. 32, lines 22-23.

²⁴⁸ Starkey Rebuttal, p. 15, lines 15-17.

1 my testimony, establishes her own definition, and then criticizes me for not
2 subscribing to her definition.

3 **Q. PLEASE ELABORATE.**

4 A. I discussed Qwest's "Notice and Go" ability in CMP at page 48 of my direct
5 testimony as follows: "if Qwest wants to make a change, it simply notices
6 CLECs, solicits and then may deny their requests for modifications, and
7 implements its proposed change in as little as 31 days after initial notice."
8 Therefore, the "go" in the "notice and go" allows Qwest to implement its
9 proposed change once the notice period is over (which is 31 days for a Level 3
10 Notice).²⁴⁹ No vote is taken regarding the change²⁵⁰ and Qwest can reject (or
11 "respectfully decline")²⁵¹ objections from CLECs and implement the change.²⁵²

12 Ms. Albersheim states that my description is not accurate and that only Level 0
13 and Level 1 notices can be "notice and go."²⁵³ She equates notice and go with
14 "effective immediately," whereas I defined it for purposes of my testimony as to
15 "go" after the applicable notice period. Ms. Albersheim states notices that give
16 CLECs an opportunity to comment or object cannot be "notice and go."

²⁴⁹ Starkey Direct, p. 48, lines 9-12.

²⁵⁰ I describe the two narrow circumstances that may trigger a vote in CMP at page 47 of my direct testimony. No votes are taken on whether Qwest product or process notices or CRs may be implemented.

²⁵¹ See e.g., discussion of CRUNEC example, Starkey Direct, p. 59, line 6. See also Exhibits BJJ-9 and BJJ-10.

²⁵² Starkey Direct, p. 48.

²⁵³ Albersheim Rebuttal, p. 8, lines 9-17. See also, Albersheim Rebuttal, pp. 28-29, claiming that Qwest's 2003 CRUNEC cannot be accurately characterized as "notice and go."

1 However, she fails to realize that the comments and objections are ineffectual if
2 Qwest disagrees because it can, and does, implement its changes even over
3 unanimous CLEC opposition.²⁵⁴ I suppose there can be various definitions or
4 uses of “notice and go,” but arguing semantics is silly when the real issue here is
5 the ability of Qwest to move forward (*i.e.*, “go”) with its changes after issuing a
6 notice of the change, regardless of the comments or objections it may receive
7 from CLECs.²⁵⁵

8 **Q. MS. ALBERSHEIM TAKES ISSUE WITH YOUR EXPLANATION THAT**
9 **CMP PROVIDES NO REAL ABILITY TO KEEP QWEST FROM**
10 **MAKING CHANGES QWEST WANTS TO MAKE IN CMP.²⁵⁶ WOULD**
11 **YOU LIKE TO RESPOND?**

12 A. Yes. Though Ms. Albersheim points to a number of provisions by which a CLEC
13 can pursue a disagreement with Qwest,²⁵⁷ the bottom line is that Qwest has the
14 ability in CMP to overrule CLEC disagreement and go forward with the Qwest
15 change. If a CLEC asks Qwest to postpone a change, Qwest can reject the

²⁵⁴ See Starkey Direct, p. 66. See also, CMP Document (Exhibit BJJ-1), Section 5.4. For example, in the CRUNEC example, the twelve active CLECs all unanimously objected, and Qwest moved forward anyway, until the Arizona Commission became involved. Exhibit BJJ-9, pp. 3-4.

²⁵⁵ This is why Ms. Albersheim’s claim that the CMP allows CLECs to “prevent” Qwest changes is false (*see, e.g.*, Albersheim Rebuttal, p. 6, lines 11-14; p. 7, lines 8-10; and p. 8, lines 12-13). Qwest would only change/postpone/withdraw a notice or CR in CMP if it wants to, and a CLEC cannot force Qwest’s hand.

²⁵⁶ Albersheim Rebuttal, pp. 6-7. See also Albersheim Rebuttal, pp.10-11 and p. 6, lines 5-8.

²⁵⁷ Albersheim Rebuttal, p. 7, lines 8-10.

1 request.²⁵⁸ If a CLEC files comments expressing disagreement with Qwest's
2 change, Qwest can deny the comments.²⁵⁹ If a CLEC raises an issue in CMP
3 Oversight Committee meetings, Qwest can reject it.²⁶⁰ The CRUNEC example
4 shows that Qwest moved forward with a serious, business-affecting change
5 against the unanimous escalation and opposition of CLECs in CMP, and only
6 changed its tune once a state commission weighed in and conditioned a favorable
7 271 recommendation on Qwest reverting back to its prior CRUNEC policy.

8 **Q. MS. ALBERSHEIM CLAIMS THAT OUT OF THE 436 CHANGE**
9 **REQUESTS MADE BY QWEST IN CMP, IT WITHDREW 97 OF THOSE**
10 **BECAUSE OF VOCAL OPPOSITION BY CLECS OR BECAUSE, IN THE**
11 **CASE OF SYSTEM CHANGES, THEY WERE GIVEN SUCH A LOW**
12 **PRIORITY BY CLECS.²⁶¹ HAVE YOU ALREADY ADDRESSED THIS**
13 **CLAIM?**

14 **A.** Yes. This issue was addressed at pages 39-43 of my rebuttal testimony and in
15 Exhibit BJJ-37. This information shows that Ms. Albersheim is wrong. Qwest
16 only withdraws changes in CMP if it wants to, and there is nothing in the CMP
17 Document that requires Qwest to withdraw changes because of CLEC opposition.

²⁵⁸ Starkey Direct, p. 47, line 9 – p. 47, line 13. Exhibit BJJ-1 (CMP Document), Section 5.5.3.3.

²⁵⁹ Exhibit BJJ-1, p. 30 (first bullet point).

²⁶⁰ Starkey Direct, p. 72, footnote 138. CLECs argued that changes to UNE availability should be addressed in negotiation/arbitration and not in CMP.

²⁶¹ Albersheim Rebuttal, p. 7, lines 12-15.

1 Indeed, there is not even a vote taken on Qwest proposed changes in CMP.²⁶²

2 **Q. MS. ALBERSHEIM POINTS TO A LEVEL 1 NOTICE IT ISSUED ON**
3 **SEPTEMBER 27, 2006, REGARDING MAINTENANCE AND REPAIR**
4 **DOCUMENTATION, AND STATES THAT QWEST RETRACTED THE**
5 **NOTICE AND WITHDREW THE DOCUMENTATION CHANGES**
6 **BASED ON CLECS' CONCERNS.²⁶³ DOES THIS EXAMPLE SHOW**
7 **THAT CLECS CAN "PREVENT" QWEST PROPOSED CHANGES AS**
8 **MS. ALBERSHEIM CLAIMS?²⁶⁴**

9 A. No. Though Qwest withdrew the Level 1 notice
10 (PROS.09.27.06.F.04212.Dispatch_and_M&R_Overview), it reissued the same
11 change with essentially the same language as a Level 3 notice in
12 PROS.12.01.06.F.04363.Tagging_of_Circuits. Ms. Albersheim, while claiming
13 elsewhere to complete the record, conveniently omits this fact from her rebuttal
14 testimony. Ms. Albersheim also ignores the fact that Qwest's Level 3 notice is
15 inconsistent with representations Qwest made at the 10/10/06 CLEC AdHoc
16 Meeting scheduled to discuss Qwest's 9/27/06 Level 1 notice. For example,
17 Qwest clearly said at the 10/10/06 meeting that it would obtain CLEC input and
18 schedule an AdHoc Meeting on the reissued notice. However, Qwest initially
19 reissued the Level 3 notice without seeking CLEC input. Ms. Johnson provides

²⁶² Starkey Direct, p. 39, line 22 – p. 40, lines 1-2.

²⁶³ Albersheim Rebuttal, pp. 8-9.

²⁶⁴ Albersheim Rebuttal, p. 8, lines 15-19.

1 Exhibit BJJ-46 that consists of meeting minutes, CMP notices, comments and
2 emails related to this issue.²⁶⁵ Eschelon's comments describe the differences
3 between what Qwest said at the 10/10/06 AdHoc meeting, and what Qwest
4 actually did. This exhibit also shows that there are internal inconsistencies in the
5 PCATs associated with Qwest's Level 3 notice, and the PCAT changes differ
6 markedly from what Qwest described as Qwest's existing process at the 10/10/06
7 AdHoc meeting.²⁶⁶ Given that Qwest is attempting to move forward with this
8 change against strenuous objection from multiple CLECs shows that CLECs
9 cannot "prevent" Qwest from making these changes in CMP. While Qwest has
10 since agreed to submit a Level 4 change request regarding tagging at the
11 demarcation point, this is not evidence that CLECs may "prevent" Qwest from
12 making changes. For Qwest-initiated changes (including Level 4 – change
13 requests), after Qwest abides by the time frames in the CMP document, it may
14 implement changes over CLEC objection (as it did in the CRUNEC example).²⁶⁷

15 **Q. DOES THE COMMISSION HAVE TO FIND THAT "THE CMP ISN'T**

²⁶⁵ Exhibit BJJ-46 consists of: 10/10/06 Ad Hoc Meeting Minutes, 12/1/06 Qwest Level 3 CMP notice, 12/15/06 Eschelon comments on Qwest Level 3 Notice, 12/19/06 Qwest notice, 1/9/07 Qwest email, 1/16/07 Eschelon response, January CMP Meeting Distribution Package (tagging excerpt), notice of February Ad Hoc meeting.

²⁶⁶ Qwest issued PROS.12.19.06.F.04415.QwestDelayedResp-TaggingC indicating that its response to CLECs comments on its Level 3 notice, scheduled for 12/31/06, would be delayed.

²⁶⁷ Although Section 5.3.1 of the CMP Document (Exhibit BJJ-1) provides that "the CR will be closed when CLECs determine that no further action is required for that CR," Section 5.3 applies only to CLEC-initiated change requests. In addition, under Section 5.3, Qwest first has an opportunity to deny the CLEC-initiated change request, so the language of 5.3.1 only applies to those CLEC-initiated change requests that Qwest does not deny and chooses to implement. Section 5.4 applies to Qwest-initiated changes, and it does not contain language similar to the quoted language from Section 5.3.1.

1 **WORKING” TO ADOPT ESCHELON’S LANGUAGE ON THE**
2 **ISSUES?**²⁶⁸

3 A. No.²⁶⁹ In many instances Eschelon is relying upon the established CMP rules for
4 its position.²⁷⁰ None of its positions is inconsistent with the scope of CMP.²⁷¹ As
5 I indicated in my direct testimony,²⁷² although CMP has weaknesses that become
6 self-evident when describing CMP procedures and providing examples of how
7 Qwest has used CMP to its advantage,²⁷³ the Commission does not have to find
8 that CMP is “bad” or “broken” to determine any of the disputed issues in
9 Eschelon’s favor. Likewise, the Commission need not determine that an ICA
10 supersedes CMP – the parties to CMP, including Qwest, have already agreed that
11 is the case. The issue is whether when a CLEC like Eschelon believes a particular
12 process or policy is important enough to its business to arbitrate that issue on its

²⁶⁸ Albersheim Rebuttal, p. 32, line 9.

²⁶⁹ Starkey Direct, pp. 84-85.

²⁷⁰ *See, e.g.*, Starkey Rebuttal, pp. 26-30.

²⁷¹ *See id.*

²⁷² Starkey Direct, p. 84.

²⁷³ Ms. Albersheim disagrees with my testimony at page 83 of my direct where I liken Qwest’s conduct to playing cards with a big brother who “makes up the rules of the game as he goes along.” Albersheim Rebuttal, p. 12, lines 12-15. She then goes on to explain that Qwest cannot unilaterally change the CMP Document (or “make up the rules of the game”). Ms. Albersheim missed the point of my testimony. I was referring to Qwest’s conduct in CMP that is demonstrated in the four examples I provided in my direct testimony – examples showing that Qwest determines whether or not to address issues in CMP, and oftentimes changes its mind on this point along the way. [“As these examples show...] I was not referring to Qwest’s ability to modify the CMP Document. [“it is the Commission who should set the ‘rules’ by establishing interconnection agreement terms and conditions that must be filed, approved, and amended if changed.”] *See also*, Starkey Direct, p. 83, line 20 – p. 84, lines 1-2 [“The Commission should set the ‘rules’ by establishing interconnection agreement terms and conditions...”] As I mentioned at page 46 of my direct testimony, changes to the CMP Document is only 1 of 2 examples of when voting in the CMP occurs.

1 own merits, does that issue warrant inclusion in the contract, and if so, whether
2 Eschelon's or Qwest's proposed language better fits the bill.

3 **Q. MS. ALBERSHEIM STATES THAT QWEST HAS NOT PROPOSED A**
4 **LITMUS TEST OR BRIGHT LINE RULE FOR WHAT SHOULD OR**
5 **SHOULD NOT BE INCLUDED IN THE ICA, AND THAT YOU ARE**
6 **WRONG TO SUGGEST THAT THE LACK OF A LITMUS TEST IS A**
7 **FLAW IN QWEST'S REASONING.²⁷⁴ WOULD YOU LIKE TO**
8 **RESPOND?**

9 A. Yes, I'm afraid that Ms. Albersheim misunderstood the point I was making. My
10 point is that Qwest's position on these issues rests on the assumption that an issue
11 is either inherently a "CMP issue" or a "contractual issue" – and for that position
12 to be valid, there must be some way to make the determination of whether an
13 issue is a CMP issue or a contractual issue.²⁷⁵ The purpose of my testimony was
14 to show that despite claiming that an issue inherently belongs in either CMP or
15 the ICA, Qwest provided no test for making this determination (and the "tests"
16 Qwest had proposed in the past have been rejected by the FCC). As a result,
17 Qwest is free to make that call based on what suits its objectives at any particular
18 time.

19 The purpose of my testimony was not to criticize Qwest for not having a litmus

²⁷⁴ Albersheim Rebuttal, p. 18, lines 5-13. *See also*, Albersheim Rebuttal, p. 19, lines 8-9.

²⁷⁵ *See*, Starkey Direct, p.18.

1 test; it was to point out the inconsistency in Qwest acting as though there was one
2 when there is not. Because ICAs and CMP co-exist, with the ability for terms in
3 ICAs to vary from what is in CMP, there does not need to be a test to determine
4 whether issues belong in CMP versus ICA. As the Staff said in the Arizona
5 Complaint Docket, “changes made through the CMP may affect some, but not all,
6 CLECs depending on the terms of their Interconnection Agreements.”²⁷⁶ What is
7 important is whether parties have negotiated issues and taken steps pursuant to
8 Section 251/252 to seek Commission resolution of these issues. When this
9 occurs, the Commission should decide the issues on their merits and adopt an ICA
10 with clear terms, rather than leaving those issues up to future changes or
11 interpretations by either of the parties. There is no dispute that these issues have
12 been negotiated in this case, and the Commission should not render this effort
13 meaningless by punting issues to CMP. Again,²⁷⁷ a decision to punt issues to
14 CMP is really no decision at all.

15 **C. THE FCC ORDERS ARE ON POINT**

16 **Q. MS. ALBERSHEIM TAKES ISSUE WITH THE FCC ORDERS YOU**
17 **REFERENCE IN YOUR DIRECT TESTIMONY²⁷⁸ THAT YOU SAY**
18 **SUPPORT ESCHELON’S POSITION. WHAT IS MS. ALBERSHEIM’S**

²⁷⁶ Staff Testimony, Arizona Complaint Docket, p. 10, lines 3-4.

²⁷⁷ Starkey Rebuttal, p. 9, lines 4-7.

²⁷⁸ Starkey Direct, pp. 22-24.

1 **PRIMARY COMPLAINT?**

2 A. Ms. Albersheim claims that because the *Declaratory Ruling* and *Forfeiture Order*
3 do not expressly reference Qwest's CMP process, they "do not speak to the issues
4 Mr. Starkey claims."²⁷⁹ Ms. Albersheim is wrong. The purpose of my testimony
5 in this regard is to show that the FCC has rejected Qwest's proposals for
6 determining whether provisions should be excluded from an ICA. As I discussed
7 at pages 19-21 of my direct testimony, Qwest has stated that provisions should be
8 excluded from an ICA if (a) the label Qwest puts on the provision is "process" or
9 "procedure"²⁸⁰ or (b) if the provision affects all CLECs²⁸¹ – or in other words,
10 Qwest proposes to limit the ICA to a schedule of itemized charges and associated
11 description of the services to which the charges apply. The FCC orders I point to
12 – the *Declaratory Ruling* and *Forfeiture Order* – show that Qwest's view of what
13 should be excluded from an ICA is wrong. Though Ms. Albersheim focuses on
14 these orders not expressly referencing Qwest's CMP process,²⁸² they did not need
15 to because they speak to Qwest's narrow view of the scope of an ICA (the same
16 view Qwest is taking in this proceeding) – and reject that view. Not to mention
17 that the *Forfeiture Order* was issued two years after Qwest's CMP was
18 implemented, when the FCC was fully aware of the CMP's existence.²⁸³

²⁷⁹ Albersheim Rebuttal , p.197, lines 12-13.

²⁸⁰ Starkey Direct, pp. 19-21. *See also* my discussion of Issue 12-64.

²⁸¹ Starkey Direct, p. 20, lines 9-10 .

²⁸² Albersheim Rebuttal , p. 19, lines 15-17.

²⁸³ Starkey Direct, pp. 23-24.

1 Obviously, if the FCC has rejected Qwest's view of what should be *excluded* from
2 an ICA, that means that those provisions are to be *included* in an ICA when
3 negotiated/arbitrated – it does not mean that the FCC meant for these to be
4 addressed in CMP (although the FCC did not specifically say that).

5 For example, the FCC's *Declaratory Ruling* states: "*We therefore disagree with*
6 *Qwest that the content of interconnection agreements should be limited to the*
7 *schedule of itemized charges and associated descriptions of the services to*
8 *which those charges apply.*" In contrast, Ms. Albersheim has testified that "It is
9 Qwest's position that business procedures do not belong in this agreement..."²⁸⁴

10 The FCC said that the ICAs should not be limited only to rates and descriptions of
11 services, which can only mean that the FCC envisioned that business process and
12 procedures describing the manner by which CLECs will access those services
13 should be included in ICAs, contrary to Ms. Albersheim's assertions.

14 **Q. MS. ALBERSHEIM STATES THAT THE FCC ADOPTED LANGUAGE**
15 **JUST EIGHT WEEKS BEFORE THE DECLARATORY RULING THAT**
16 **PROVIDED FOR CERTAIN MATTERS TO BE ADDRESSED THROUGH**
17 **CHANGE MANAGEMENT PROCESS.²⁸⁵ MS. ALBERSHEIM CLAIMS**
18 **THAT THE FCC WOULDN'T HOBBLE AN FCC APPROVED PROCESS**

²⁸⁴ Albersheim Minnesota Rebuttal Testimony, p. 12, lines 20-21.

²⁸⁵ Albersheim Rebuttal , pp. 19-20.

1 **AFTER ADVOCATING ITS USE WEEKS EARLIER.²⁸⁶ IS MS.**
2 **ALBERSHEIM'S TESTIMONY ON THIS POINT MISLEADING?**

3 A. Yes, very much so. First, the decision to which Ms. Albersheim points is not an
4 Order adopted by the FCC, rather it is a decision of the Wireline Competition
5 Bureau who was called upon to decide issues in the stead of the state commission.
6 Accordingly, this decision has no more bearing on Arizona than any other state
7 commission order. In contrast, the *Declaratory Ruling* I cite in my testimony is
8 an order voted on by the FCC. Ms. Albersheim's attempt to make it appear as if
9 my position rests on an assumption that the FCC issued two contradictory orders
10 within weeks of each other is simply not true. The authority to which Ms.
11 Albersheim cites is not an FCC order.

12 Ms. Albersheim also takes out of context the mention of the Change Management
13 process in the WCB's decision. The Change Management Process discussed in
14 the WCB's decision is the Verizon – not Qwest – Change Management Process,
15 so this decision does not even apply to Qwest, and Ms. Albersheim provides no
16 indication that the Qwest CMP process is comparable to Verizon's. Perhaps more
17 importantly, the WCB included a reference to Verizon's Change Management
18 Process in the ICA at the request of the CLEC (AT&T),²⁸⁷ not the ILEC, as Qwest
19 is doing here. The WCB therefore was not addressing a situation in which the
20 ILEC was attempting to point to the CMP process instead of addressing

²⁸⁶ Albersheim Rebuttal , p. 20, lines 4-6.

²⁸⁷ Verizon Virginia Arbitration Order, ¶ 343.

1 provisions in the ICA, as Qwest is proposing in this proceeding. These two
2 situations are not comparable.

3 Moreover, the ICA adopted by the WCB in the decision to which Ms. Albersheim
4 refers contained the very business processes and procedures that Qwest is
5 attempting to exclude here. For instance, the WCB's decision adopted specific
6 provisioning intervals to be included in ICAs,²⁸⁸ the very thing that Qwest
7 opposes under Issues 1-1 and subparts. Therefore, the WCB decision Ms.
8 Albersheim relies on actually undermines Qwest's proposals in this case.

9 **Q. IS MS. ALBERSHEIM'S CRITICISMS OF YOUR RELIANCE ON THE**
10 ***FORFEITURE ORDER* ALSO MISPLACED?**

11 A. Yes. In the *Forfeiture Order*, the FCC rejected Qwest's notion that it could
12 simply post its service offering information on its website in lieu of Section 252
13 Agreements because it would render Section 252 ICAs meaningless and provide
14 no certainty to CLECs.²⁸⁹ This is precisely what Qwest is attempting to do by
15 omitting critical terms and conditions from the ICA and defer to the
16 CMP/PCAT/SIG that Qwest maintains on its website – *i.e.*, undermine the
17 certainty of contractual language in favor of a “process” (CMP) controlled by

²⁸⁸ See *e.g.*, Verizon Virginia Arbitration Order, ¶406 [“We adopt AT&T's proposed section 1.3.4. Verizon does not dispute AT&T's statement that the parties reached agreement on a 45-day augmentation interval. Verizon's language is similar to AT&T's, except that Verizon would use the collocation intervals set forth in its applicable tariff. Given the choice of language that specifies an exact interval to which the parties have already agreed or language referencing intervals set forth in a tariff that may not be in effect at the time this Order is issued, we select the former because it is more specific.”]

²⁸⁹ Starkey Direct, p. 23.

1 Qwest. In its *Forfeiture Order*,²⁹⁰ the FCC expressly rejected Qwest's claim that
2 the *Declaratory Ruling* authorized posting of information regarding service
3 offerings on a website *in lieu of* an agreement filed with, and approved by, state
4 commissions.

5 **IV. SUBJECT MATTER NO. 1. INTERVAL CHANGES AND PLACEMENT**

6 *Issue No. 1-1 and subparts: ICA Sections 1.7.2; 7.4.7, 9.23.9.4.3, Exhibit C*
7 *(Group 2.0 & Group 9.0), Exhibit I (Section 3), Exhibit N, Exhibit O*

8 **Q. ARE MOST OF MS. ALBERSHEIM'S REBUTTAL ARGUMENTS**
9 **ALREADY ADDRESSED IN YOUR PREVIOUS TESTIMONY?**

10 A. Yes. In the interest of brevity, I will not repeat those arguments but will identify
11 where that issue has been addressed elsewhere in my testimony.²⁹¹ I would,
12 however, like to specifically address one point I made previously in my testimony
13 that Ms. Albersheim raises again in her rebuttal testimony. Ms. Albersheim takes
14 issue with my testimony that Qwest could make unilateral changes to
15 provisioning intervals if its proposal on Issues 1-1 and subparts is adopted,²⁹² and

²⁹⁰ Notice of Apparent Liability for Forfeiture, *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263 (March 11, 2004) ("*FCC Forfeiture Order*").

²⁹¹ Like in her direct testimony, Ms. Albersheim claims that Eschelon's goal is to "freeze" specific provisions in place. (Albersheim Rebuttal, pp. 14, 15, 36 and 73). For a response to this Qwest argument, see Starkey Rebuttal, pp. 11-13 and 51-52. Ms. Albersheim also claims that the amendment process proposed by Eschelon is a special process for Eschelon (Albersheim Rebuttal, p. 35). I explained that this is not a special process for Eschelon's proposal, rather identical, agreed-to amendments exist for new products (Starkey Rebuttal, pp. 48-50).

²⁹² I discussed in my direct testimony that the real issue here is whether Qwest can implement changes (in this instance, changes to intervals) over CLEC comments and objections in CMP and put those changed intervals in the SIG. And Qwest can (*See*, Starkey Direct, pp. 47-48; CRUNEC example at Starkey Direct, pp. 59-69; Exhibits BJJ-9, BJJ-10 and BJJ-11). Ms. Albersheim seems to believe

1 claims that there is no opportunity in any non-contractual sources for Qwest to
2 make unilateral changes to intervals.²⁹³ It bears noting that this same issue was
3 examined in Minnesota and the Administrative Law Judge's Arbitrator's Report
4 ruled in favor of Eschelon on Issues 1-1 and subparts, finding that:

5 22. Eschelon has provided convincing evidence that the CMP
6 process does not always provide CLECs with adequate
7 protection from Qwest making important unilateral changes in
8 the terms and conditions of interconnection. Service intervals
9 are critically important to CLECs, and Qwest has only
10 shortened them in the last four years. Qwest has identified no
11 compelling reason why inclusion of the current intervals in the
12 ICA would harm the effectiveness of the CMP process or
13 impair Qwest's ability to respond to industry changes. The
14 Administrative Law Judges recommend that Eschelon's first
15 proposal for Issue 1-1 be adopted and that its language for
16 Issues 1-1(a)-(e) also be adopted.²⁹⁴

17 The ALJs in Minnesota agreed with Eschelon that Qwest can make unilateral
18 changes, and that adopting Eschelon's proposal (the same proposal Eschelon has
19 offered in this proceeding for Issues 1-1 and subparts) would not harm the
20 effectiveness of CMP or Qwest's ability to respond to industry changes.

that Qwest cannot take "unilateral" actions because CMP provides the opportunity for comment, request for postponement, and escalation for some of these changes (at least for Level 4 change requests, which increased intervals are - *See* Starkey Direct, pp. 47-48 for discussion of Qwest's "Notice and Go" ability for most changes). But the point is that Qwest can implement these changes over CLEC objections once the comment/response timeframes have expired or the comments or requests for postponement have been rejected by Qwest - *i.e.*, the ability of "unilateral" actions I discuss.

²⁹³ Albersheim Rebuttal, p. 33.

²⁹⁴ Minnesota Arbitrators' Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768, paragraph 22. As of this writing of this testimony, the Minnesota Commission has not entered an order ruling on the MN Arbitrators' Report.

1 Q. DID THE MINNESOTA ARBITRATORS' REPORT MAKE OTHER
2 CONCLUSIONS THAT BEAR ON ISSUE 1-1?

3 A. Yes. As discussed in my direct²⁹⁵ and rebuttal²⁹⁶ testimonies, I explained that the
4 CMP Document's scope provision recognizes potential differences in terms
5 between ICAs and CMP, and says that when these differences arise, the ICAs
6 rule. As explained at page 27 of my rebuttal testimony, Qwest recognizes this
7 scope provision, but argues that including terms in ICAs that are different from
8 the CMP would "subvert"²⁹⁷ or "undermine"²⁹⁸ the CMP. The Minnesota
9 Arbitrators' Report found that Qwest is wrong:

10 The CMP document itself provides that in cases of conflict
11 between changes implemented through the CMP and any CLEC
12 ICA, the rates, terms and conditions of the ICA shall prevail. In
13 addition, if changes implemented through CMP do not necessarily
14 present a direct conflict with an ICA but would abridge or expand
15 the rights of a party, the rates, terms, and conditions of the ICA
16 shall prevail. Clearly, the CMP process would permit the
17 provisions of an ICA and the CMP to coexist, conflict, or
18 potentially overlap. The Administrative Law Judges agree with the
19 Department's analysis that any negotiated issue that relates to a
20 term and condition of interconnection may properly be included in
21 an ICA, subject to a balancing of the parties' interests and a
22 determination of what is reasonable, non-discriminatory, and in the
23 public interest.²⁹⁹

²⁹⁵ Starkey Direct, pp. 25-26.

²⁹⁶ Starkey Rebuttal, pp. 26-30. *See also* Exhibits BJJ-26 and BJJ-27.

²⁹⁷ *See, e.g.*, Albersheim Direct, p. 10, lines 1-2.

²⁹⁸ *See, e.g.*, Albersheim Direct, p. 94, lines 8-9.

²⁹⁹ MN Arbitrators' Report, ¶ 21.

1 Given that ICA and CMP terms can “coexist, conflict, or potentially overlap,”
2 there is no basis for Qwest’s position that intervals should be excluded from the
3 ICA because they are also addressed in CMP. The same goes for the other issues
4 that Qwest recommends excluding from the ICA and relegating to CMP (*see, e.g.*,
5 Section 12 issues).

6 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON IGNORES THE**
7 **“REALITY” THAT “TELECOMMUNICATIONS IS A DYNAMIC**
8 **INDUSTRY IN WHICH TECHNOLOGICAL ADVANCEMENTS ARE**
9 **MADE VIRTUALLY ON A DAILY BASIS.”³⁰⁰ IS THIS “REALITY”**
10 **SUPPORT FOR QWEST’S PROPOSAL TO LENGTHEN INTERVALS**
11 **WITHOUT COMMISSION APPROVAL?**

12 A. No. Ms. Albersheim made the same claim in her direct testimony,³⁰¹ and I
13 addressed this claim at pages 56-57 of my rebuttal testimony. Ms. Albersheim
14 goes on to state that “these processes and procedures are more efficiently
15 addressed through CMP.”³⁰² However, in cases in which disagreement will result
16 (as in the case of increased intervals, as Ms. Albersheim has acknowledged),³⁰³ it
17 is not “efficient” to require the parties to negotiate/arbitrate an ICA, have Qwest

³⁰⁰ Albersheim Rebuttal, p. 36, lines 5-7.

³⁰¹ Albersheim Direct, p. 43.

³⁰² Albersheim Rebuttal, p. 36, lines 6-7.

³⁰³ Ms. Albersheim: “Over all that time, and over all 41 service interval changes, there were only two that might have raised CLEC objections and might have caused CLECs to involve the Commission...” Albersheim Rebuttal, p. 34, lines 8-9. Ms. Albersheim also testified in the Minnesota arbitration proceeding that, “It is likely that there will be disputes any time Qwest attempts to lengthen an interval.” (Albersheim Minnesota Rebuttal Testimony, p. 35, lines 6-7).

1 lengthen an interval in CMP, potentially follow the dispute resolution process of
2 CMP, only to later come to the Commission for resolution. It would be more
3 efficient to require Commission approval in the first instance for lengthening
4 intervals, as Eschelon proposes. In addition, as explained above, the ALJs in the
5 Minnesota arbitration case found that Eschelon's proposal would not harm
6 Qwest's ability to respond to industry changes or harm the effectiveness of
7 CMP.³⁰⁴

8 **Q. MS. ALBERSHEIM DISAGREES WITH YOUR TESTIMONY**
9 **REGARDING COMMISSION INVOLVEMENT.³⁰⁵ PLEASE RESPOND.**

10 A. Ms. Albersheim criticizes my statement that "the Commission would have no
11 opportunity to make these determinations if Qwest has its way."³⁰⁶ She states that
12 this is not the case because a CLEC can file a complaint with the Commission if it
13 disagrees with Qwest's lengthened interval. The "determinations" I was
14 discussing in that part of my direct testimony are determinations about whether a
15 lengthened interval provided Eschelon with a "meaningful opportunity to
16 compete" (for elements with no retail analogue) or is in "substantially the same
17 manner as Qwest provides itself" (for elements with a retail analogue). Though
18 Ms. Albersheim is correct that a CLEC can pursue its disagreement at the state
19 commission, what she fails to mention is that in my testimony, I explained that

³⁰⁴ MN Arbitrator's Report, ¶22.

³⁰⁵ Albersheim Rebuttal, pp. 33-34.

³⁰⁶ See Starkey Direct, p. 94, lines 2-3.

1 with Qwest's proposal, Qwest would be able to implement an increase to an
2 interval in CMP before Eschelon can obtain a decision on Qwest's action from the
3 state commission.³⁰⁷ As a result, the Commission would have no opportunity to
4 make these determinations before Qwest's lengthened interval would take effect.
5 This would cause Eschelon to make changes to adapt to this longer interval before
6 it can receive a decision from the state commission, and even if the Commission
7 ultimately agrees with Eschelon, Eschelon would have already incurred the
8 expense to change to the longer interval, and would incur more expense to change
9 back to the shorter interval following the commission's decision. All the while,
10 Eschelon's customers are forced to wait longer for service. This would also result
11 in the Commission being asked to resolve this issue in "crisis mode." That is a
12 key difference in Eschelon's proposal: it allows the Commission to make these
13 determinations *before* an increase to an interval takes effect.

14 **Q. MS. ALBERSHEIM CRITICIZES YOUR REFERENCE TO THE**
15 **DECISIONS OF THE WASHINGTON AND MINNESOTA**
16 **COMMISSIONS THAT REJECTED PREVIOUS QWEST ATTEMPTS TO**
17 **LENGTHEN INTERVALS. SHE POINTS TO THE CHANGES TO**
18 **INTERVALS QWEST HAS PROPOSED SINCE THE 271 PROCEEDINGS**
19 **AS SUPPORT FOR HER CLAIM THAT THE WASHINGTON AND**

³⁰⁷ Starkey Direct, pp. 37-38.

1 **MINNESOTA ORDERS SHOULD HAVE NO BEARING HERE.**³⁰⁸

2 **WOULD YOU LIKE TO RESPOND?**

3 A. Yes. I'm not quite sure what point Ms. Albersheim is making here, but if her
4 point is that Qwest has not pursued lengthened intervals in CMP since the CMP
5 was approved, that makes no difference. Qwest could change its strategy to
6 pursue longer intervals at any time in CMP, and based on its testimony and
7 position on Issue 1-1, that is a very likely scenario.

8 Nonetheless, the point of my references to the state commission orders was to
9 show that other commissions have already found the need to exert their authority
10 with regard to Qwest's attempts to lengthen intervals, and that the Arizona
11 Commission's authority in this regard should be preserved so that it can decide
12 *before* the interval change takes effect and customers are harmed, as Eschelon's
13 proposal provides.

14 **Q. MS. ALBERSHEIM REFERS TO TWO INTERVAL INCREASES AND 39**
15 **SHORTENED INTERVALS SINCE THE 271 PROCEEDINGS.**³⁰⁹ **WITH**
16 **REGARD TO THE TWO LENGTHENED INTERVALS, MS.**
17 **ALBERSHEIM SAYS THAT YOU FAILED TO MENTION THAT ONE**
18 **OF THEM WAS WITHDRAWN IN PART BECAUSE OF CLEC**
19 **CONCERNS AND THE OTHER ONE RECEIVED NO CLEC COMMENT**

³⁰⁸ Albersheim Rebuttal, p. 34.

³⁰⁹ Albersheim Rebuttal, p. 34.

1 **OR OBJECTION.³¹⁰ IS MS. ALBERSHEIM'S CRITICISM**
2 **WARRANTED?**

3 A. No. I find it highly ironic that Ms. Albersheim would criticize my testimony for
4 failing to mention certain details regarding these two lengthened intervals when
5 Ms. Albersheim completely failed to mention them at all in her direct testimony.
6 In fact, Ms. Albersheim represented in her direct testimony that Qwest had never
7 to date increased intervals.³¹¹ Ms. Albersheim changes her tune in her rebuttal
8 testimony to create a concern where none exists. At least, none existed for Qwest
9 when Ms. Albersheim testified in her direct testimony that Qwest had only
10 shortened intervals, so far.³¹² Nonetheless, to the extent that Ms. Albersheim is
11 attempting to create the impression that Eschelon's proposal is not needed
12 because interval increases may not trigger CLEC objection, this is a false
13 impression and is not consistent with Ms. Albersheim's prior testimony, where
14 she stated that "it is likely that there will be disputes any time Qwest attempts to
15 lengthen an interval."³¹³ Ms. Albersheim also claims that Qwest withdrew one of
16 these proposed increases "in part because of CLEC concerns,"³¹⁴ but this claim is

³¹⁰ Albersheim Rebuttal, p. 34, lines 11-12.

³¹¹ Albersheim Direct, p. 43, line 3 ("so far, Qwest has only decreased intervals.")

³¹² Ms. Albersheim testified that she "erred when I stated on page 43 of my direct testimony that Qwest has only decreased intervals. Subsequent research found this one unopposed change request that increased an interval." Albersheim Rebuttal, p. 34, footnote 6. Ms. Albersheim does not show that one increased interval, which Qwest did not even recall and had to perform research to find, was or should be basis for concern.

³¹³ Albersheim Minnesota Rebuttal Testimony, Docket P-5340, 421/IC-06-768, September 22, 2006, p. 35, lines 6-7.

³¹⁴ Albersheim Rebuttal, p. 34, line 12.

1 not supported by Ms. Albersheim's own Exhibit RA-R1. Nowhere on Exhibit
2 RA-R1 does it say that a CLEC objected to this CR, nor does it say that Qwest
3 withdrew the CR because of CLEC objection.

4 **V. SUBJECT MATTER NO. 11: POWER**

5 Issue No. 8-21 and subparts: ICA Sections 8.2.1.29.2.1; 8.2.1.29.2.2; 8.3.1.6;
6 8.3.1.6.1; and 8.3.1.6.2 and subparts

7 **Q. DO ISSUES 8-21 AND SUBPARTS RELATE TO ESCHELON**
8 **RECEIVING NONDISCRIMINATORY ACCESS TO COLLOCATION**
9 **POWER?**

10 A. Yes. Qwest has testified to sizing power plant for Eschelon (and other CLECs')
11 equipment differently than it sizes power plant for Qwest's own equipment.
12 Unfortunately for Eschelon, this results in Qwest charging Eschelon for power
13 plant that the CLEC never uses – and could never use based on the size of the
14 power cables serving the Eschelon collocation – and provides a cost advantage for
15 Qwest, who, under Qwest's proposal, would “pay” less than Eschelon pays for the
16 very same power plant. It is clear from Qwest's testimony that it charges CLECs
17 for power plant based on the size of their power cables – which must, by
18 engineering standards, be sized based on List 2 drain (or the “worst case” scenario
19 drain). It is also clear from Qwest's testimony that it sizes power plant for its own
20 equipment based on a lower List 1 drain, which means, at most, Qwest “pays” for
21 power plant at List 1 drain. The fact that List 2 drain (the basis for Qwest's

1 charges on Eschelon) is higher, in some cases significantly higher, than List 1
2 drain (the maximum amount Qwest would “pay” for power plant) means that
3 Eschelon would pay more for power plant than does Qwest under Qwest’s
4 proposal. This is *prima facie* discrimination, and this discrimination is not
5 permitted under ICA and Act.³¹⁵

6 **Q. PLEASE EXPLAIN THIS POINT FURTHER.**

7 A. It is Eschelon’s position that when power is measured, the power plant rate should
8 be assessed on that measured usage, similar to how Qwest would bill the usage
9 charge. Qwest, on the other hand, proposes to continue to bill the power plant
10 rate based on the size of the CLEC’s power cable even when the CLEC’s power is
11 measured. Eschelon also proposes language that would commence charging for
12 power once equipment is collocated and begins to draw power, while Qwest
13 proposes language that would allow it to commence charging for power before
14 Eschelon’s equipment is collocated and before Eschelon even has the ability to
15 draw power. In both cases, Eschelon’s proposals are aimed at establishing
16 processes by which it pays for the power and power facilities it actually uses (as
17 Qwest’s internal processes ensure for Qwest’s own use), rather than processes that
18 ensure it will always pay more than Qwest does for the same amount of power.

19 **Q. MR. ASHTON SUBMITTED RESPONSIVE TESTIMONY PURPORTING**
20 **TO SHOW HOW QWEST SIZES POWER PLANT IN ITS CENTRAL**

³¹⁵ Starkey Direct, pp. 115-116.

1 **OFFICES.³¹⁶ PLEASE RECAP WHY THE SIZING OF POWER PLANT**
2 **IS IMPORTANT TO ISSUE 8-21.**

3 A. Qwest is attempting to assess a charge to recover the investment in the central
4 office power plant based on the size of the CLEC power cables. However, all
5 information points to Qwest actually sizing (or investing in) power plant based on
6 the peak *usage* of the total power plant – *i.e.*, the entire facilities as shared by both
7 CLECs and Qwest.³¹⁷ Qwest’s attempt to charge for power plant based on the
8 size of Eschelon’s power cable, yet initially size and build its power plant based
9 on total peak usage, results in Qwest overcharging Eschelon for power plant as
10 well as Qwest discriminating against Eschelon by forcing Eschelon to pay more
11 for power to serve its customers than Qwest pays to serve its customers. This
12 results from the fact that Eschelon’s cables, based on sound engineering and
13 safety reasons, will always be larger than any amount of power it will actually
14 use. Indeed, it is this exact engineering truism that drives Qwest NOT to build the
15 capacity available in its power plant equipment based on this standard – *i.e.*, List
16 2 drain. To do so would significantly “over” engineer the facility with the result
17 being wasted capital investment (or on the part of Eschelon when it is assessed
18 power plant rates in this fashion – overcharges).

19 **Q. DOES MR. ASHTON’S RESPONSIVE TESTIMONY EXPOSE A MAJOR**
20 **FLAW IN QWEST’S POSITION ON THIS ISSUE?**

³¹⁶ See, e.g., Ashton Rebuttal, pp. 3 and 9.

³¹⁷ Starkey Direct, pp. 121-126.

1 A. Yes. Mr. Ashton describes his view of how Qwest sizes power plant as follows:

2 Qwest designs and engineers power plant capacity sufficient to
3 meet the total busy hour load of all equipment present in the
4 central office, plus all CLEC ordered amounts of power, plus the
5 anticipated busy hour drain of expected future Qwest equipment
6 additions. Qwest compares the sum of these three factors against
7 the power plant capacity currently installed in the central office,
8 and ensures that the power plant capacity installed remains greater
9 than the sum of these three factors.³¹⁸

10 What Mr. Ashton is saying is that Qwest sizes power plant based on:

- 11 • the List 1 drain³¹⁹ of Qwest's equipment (and the expected increase in
12 Qwest L1 drain over a planning horizon),
13 plus;
14 • the List 1 drain of CLEC's equipment;³²⁰
15 plus;
16 • the List 2 drain of CLEC's equipment.³²¹

17 This is an obvious admission that Qwest sizes power plant differently for Qwest
18 (List 1 drain) than it does Eschelon (List 1 drain + List 2 drain) – and
19 consequently, charges CLECs for a far larger portion of its power plant

³¹⁸ Ashton Rebuttal, p. 9, lines 17-24. *See also* Ashton Rebuttal, p. 10 (“...busy hour load (which Mr. Starkey refers to as “peak drain” in his testimony) is only one of several variables that influences power plant investment. Projected future deployment of Qwest equipment and the power ordered by CLECs are also part of the power plant investment equation. Accordingly, the amount of power *ordered* by the CLEC is also a factor driving power plant investment.”)

³¹⁹ List 1 drain is explained at page 123 of my direct testimony.

³²⁰ The “total busy hour load of all equipment present in the central office” would include the List 1 drain of both Qwest's equipment and collocated CLEC equipment.

³²¹ List 2 drain is explained at pages 125-126 of my direct testimony. Qwest assumes that the power cable ordered by the CLEC represents the List 2 drain of CLEC equipment.

1 investment than CLECs will ever use.³²² Mr. Ashton makes this admission
2 because it is the only way that Qwest's application of the power plant rate based
3 on the size of the CLEC's power cables would match up with its claimed
4 engineering practices regarding power plant. In other words, Qwest claims that it
5 sizes power plant based on the size of the CLEC power cable order so that Qwest
6 can charge CLEC that amount for power plant. Unfortunately, Mr. Ashton's
7 admission is directly inconsistent with Qwest's Technical Publications that direct
8 Qwest engineers to size power plant based on the List 1 drain (or peak usage) of
9 all equipment in the central office – regardless of the equipment's owner. In other
10 words, Mr. Ashton's testimony appears to be an "after the fact" rationalization
11 meant to support Qwest's existing collocation power rate structure – even though
12 his rationalization highlights the discriminatory nature of Qwest's current
13 practice.

14 **Q. WHY WOULD MR. ASHTON CONSTRUCT A RATIONALIZATION**
15 **THAT CONFLICTS WITH THE ENTIRETY OF QWEST'S INTERNAL**
16 **ENGINEERING DOCUMENTATION DESCRIBING THE PROPER**
17 **MANNER TO ENGINEER POWER PLANT, WHEN THAT**
18 **RATIONALIZATION FURTHER HIGHLIGHTS THE**

³²² See also, Ashton Rebuttal, p. 3, lines 25-28. ("Mr. Starkey states that Qwest designs a Central Office power plant based on List 1 drain – the current that the equipment will draw when fully carded on the busiest hour of the busiest day of the year – and that is correct for Qwest equipment.") What Mr. Ashton is saying is that it sizes power plant for Qwest based on peak operating draw under normal conditions, but sizes power plant for CLECs based on peak operating draw under worst case scenario.

1 **DISCRIMINATION INHERENT IN QWEST'S PROPOSED RATE**
2 **STRUCTURE?**

3 A. Qwest places Mr. Ashton between the proverbial "rock and a hard place." If he
4 concedes that power plant is sized based on the peak usage of all equipment in the
5 central office – both Qwest and CLEC – as Qwest's Technical Publications
6 require, there would be no basis for assessing the power plant charge based on the
7 size of the CLEC power cable order, and Qwest's position on Issue 8-21 would be
8 exposed as fatally flawed. However, by blatantly disregarding Qwest's
9 engineering documentation in an attempt to avoid this problem – by claiming that
10 Qwest sizes power plant for CLECs consistent with the manner it assesses power
11 plant charges on CLECs – Mr. Ashton is forced to admit that Qwest discriminates
12 against Eschelon by requiring Eschelon to fund a larger proportion of Qwest's
13 power plant when compared to Qwest, relative to Eschelon's usage. The only
14 logical conclusion from this bevy of contractions put forward by Mr. Ashton, is
15 that the position he is trying to defend – *i.e.*, the integrity of charging Eschelon
16 power plant rates based upon the size of its power cables – is seriously flawed.

17 **Q. MR. ASHTON CRITICIZES YOUR TESTIMONY, CLAIMING THAT**
18 **BUSY HOUR LOAD "IS ONLY ONE OF SEVERAL VARIABLES THAT**
19 **INFLUENCES POWER PLANT INVESTMENT."³²³ WOULD YOU LIKE**
20 **TO RESPOND?**

³²³ Ashton Rebuttal, p. 10, lines 15-16.

1 A. Yes. Mr. Ashton's testimony only exposes the weakness in Qwest's claim that it
2 sizes power plant based on the size of CLEC power cable orders. I explained in
3 my direct testimony at pages 121-122 the process Qwest uses to size power plant,
4 which was taken directly from one of the technical publications Qwest uses to
5 size power plant (Bellcore Technical Document 790-100-652 and other Qwest
6 Technical Publications). Bellcore Document 790-100-652, at page 5-5,
7 specifically lists the variables that do influence power plant sizing and investment.
8 These variables include "initial busy hour drain" and "drain increase during
9 forecast period,"³²⁴ just as my testimony describes.³²⁵ However, what does not
10 show up on this list of "influencing factors" to power plant sizing is power cable
11 order/size or List 2 drain. Contrary to Mr. Ashton's claim, these influencing
12 factors do not include the "power *ordered* by CLECs."³²⁶ So, it is Mr. Ashton
13 who makes "a flawed leap in logic"³²⁷ when he departs dramatically from Qwest's
14 own engineering documents in claiming that Qwest sizes power plant based on
15 the size of the CLEC power cable order. Since Qwest does not – and by its own

³²⁴ There are three other influencing factors on this list: (1) AC input, (2) circuit voltage limits, and (3) grounding requirements.

³²⁵ As I testified at page p. 122, line 22 of my direct testimony, power plant is sized based on "forecasted peak usage."

³²⁶ Ashton Rebuttal, p. 9, line 19. Qwest repeatedly refers to CLEC "power orders" or "ordered amounts" of power in its rebuttal testimony (*see, e.g.*, Ashton Rebuttal, p. 3, line 24; p. 4, line 14; p. 9, line 19; p. 10, line 17; and p. 10, line 18), which as I explain at pages 59-61 of my rebuttal testimony, is actually the terms Qwest coined for the CLEC power cable order. CLECs do not order power plant capacity from Qwest. Qwest attempts to confuse this issue further in its rebuttal testimony by referring to generic terms such as power "requirement" and "power needs" in describing how Qwest designs a power plant (Ashton Rebuttal, p. 3, lines 15, 17 and 18).

³²⁷ *See* Ashton Rebuttal, p. 10, lines 8-9. ("Qwest's power plant investment is not 'driven by usage,' and Mr. Starkey makes a flawed leap in logic in the conclusion he draws in that regard.")

1 Technical Publications, should not – size power plant for CLEC equipment based
2 on the size of the CLEC power cable, there is no basis for Qwest to assess the
3 power plant rate based on Eschelon’s power cable size when power is measured.

4 **Q. MR. ASHTON TESTIFIES AT PAGE 4 OF HIS REBUTTAL TESTIMONY**
5 **THAT “QWEST CAN DETERMINE THE PEAK LOAD OR USAGE OF**
6 **ALL THE TELECOMMUNICATIONS EQUIPMENT IN A CENTRAL**
7 **OFFICE, BUT THIS WILL NOT ALLOW QWEST TO DETERMINE THE**
8 **DISCRETE LIST 1 DRAIN FOR A GIVEN CLEC’S EQUIPMENT.” IS IT**
9 **NECESSARY FOR QWEST TO DETERMINE THE DISCRETE LIST 1**
10 **DRAIN FOR A GIVEN CLEC FOR QWEST TO BE ABLE TO SIZE**
11 **POWER PLANT FOR CLECS LIKE IT DOES ITSELF?**

12 A. No. I explained why Mr. Ashton is wrong on this point at pages 63-65 of my
13 rebuttal testimony. Mr. Ashton acknowledges that Qwest is able to determine the
14 peak usage of all telecommunications equipment in the central office, which as
15 explained in Qwest’s own Technical Publications, is the appropriate standard to
16 use for sizing power plant for a central office.³²⁸ This means that Qwest should
17 size power plant based on the peak usage of the central office at the busy hour,
18 and charge all users in the central office for power plant based on their pro rata
19 share of the total usage. Given that central office power plant is sized to
20 accommodate the peak usage of all telecommunications equipment in the office

³²⁸ Starkey Direct, pp. 123-125, citing Qwest Technical Publications.

1 (both CLEC and Qwest) at the busy hour, there is no need for Qwest to build in
2 more power plant for CLECs, as Mr. Ashton claims Qwest does – or worse yet,
3 for Qwest to charge Eschelon for that unnecessary power plant.

4 Qwest creates the impression that Qwest must build-in additional power plant
5 capacity for CLECs because CLECs could add additional equipment/cards/etc.
6 and increase their power draw faster than Qwest could add power plant capacity.
7 Qwest's concern is misplaced. Not only do CLECs provide Qwest advance notice
8 of equipment it will place in their collocations (based on intervals that are not
9 being disputed) as well as the expected number of circuits served by this
10 equipment in their collocation applications, but it is also highly likely that any
11 increase in power draw for Eschelon would result in a comparable decrease in
12 power draw for another carrier. That is, because oftentimes a customer "won" by
13 Eschelon is a customer "lost" by another carrier in the central office, and because
14 the power plant is a shared resource and serves all carriers in a particular central
15 office, the power draw increase for Eschelon on that power plant will be cancelled
16 out by the power draw decrease from the other carrier, resulting in no impact on
17 the shared power plant capacity needed to serve that office. This shows that
18 Qwest's claim that it needs to know the discrete List 1 drain for a particular
19 CLEC in order to size power plant for that CLEC the same way Qwest sizes
20 power plant for its own customers is not accurate. Rather, the peak drain at the
21 busy hour is the relevant information for properly sizing power plant, and Mr.

1 Ashton acknowledges that Qwest has this information. However, even if Qwest
2 would need the discrete List 1 drain for individual CLECs to properly size power
3 plant, contrary to Mr. Ashton, Qwest can obtain this information.³²⁹

4 **Q. MR. ASHTON TESTIFIES THAT EVEN IF QWEST HAD ESCHELON'S**
5 **LIST 1 DRAIN, THIS NUMBER WOULD BE IRRELEVANT.³³⁰ WOULD**
6 **YOU LIKE TO RESPOND?**

7 A. Yes. Qwest is arguing both sides of the issue. Qwest creates the impression that
8 it needs to know Eschelon's individual List 1 drain in order for Qwest to size the
9 power plant in a nondiscriminatory fashion, because according to Qwest, Qwest
10 has no idea about Eschelon's potential power draw. But when I show that Qwest
11 does in fact have the List 1 drain information Qwest alleges it needs (or can easily
12 obtain that information), Qwest argues that a CLEC's List 1 drain information is
13 irrelevant. Qwest cannot have it both ways. I actually agree with Mr. Ashton that
14 a particular CLEC's List 1 drain is irrelevant for sizing power plant for the central
15 office (because it is sized based on the aggregate peak usage of all equipment in

³²⁹ See, Starkey Rebuttal, pp. 64-65, explaining ways Qwest could obtain a CLEC's list 1 drain or estimate the List 1 drain. Mr. Ashton claims that estimating List 1 drain for CLECs is "dangerous" (Ashton Rebuttal, p. 5, line 14), but this procedure is expressly discussed in Qwest Technical Publication 77368 ("A rough estimate of List 1 drain is 30-40% of the List 2 drain"), which was authored by Mr. Ashton. Surely, Mr. Ashton would not write dangerous processes into Qwest's Technical Publications. Power plant is sized to accommodate the peak usage of all telecommunications equipment in the central office at the busy hour, so Mr. Ashton's concern about insufficient power plant capacity is accounted for in the methodology for sizing power plant. I would also add that Mr. Ashton never answers the question posed at page 5 of his rebuttal testimony. The question is: "Can Qwest estimate the combined List 1 drain of Eschelon's collocated equipment?", but Mr. Ashton never says "yes" or "no." To the extent that Qwest needs this information, the answer is yes.

³³⁰ Ashton Rebuttal, p. 6, line 5.

1 the central office at the busy hour), and that being the case, Qwest unarguably has
2 all the information it needs to properly size power plant for CLECs the same way
3 it does for itself.

4 Mr. Ashton also argues that there is no reason for Qwest to acquire a CLEC's list
5 1 drain because the power plant rate is not based on List 1 drain,³³¹ but this
6 undermines Qwest's power plant rate proposal because the cost study does not
7 develop the power plant rate element based on any measure of CLEC power cable
8 capacity by which Qwest proposes to apply the power plant rate.

9 **Q. MR. ASHTON STATES THAT EXHIBIT CA-R1 SHOWS THAT**
10 **ESCHELON IS ATTEMPTING TO PAY FOR LESS POWER PLANT**
11 **THAN QWEST ACTUALLY MAKES AVAILABLE TO ESCHELON.³³² IS**
12 **THIS WHAT MR. ASHTON'S EXHIBIT CA-R1 SHOWS?**

13 **A.** No. Exhibit CA-R1 is flawed for a number of reasons. First, Mr. Ashton claims
14 that Exhibit CA-R1 is demonstrative of Eschelon's "ordered" and "usage"
15 amounts. However, what Exhibit CA-R1 actually shows is the power usage
16 requirements of a central office as a whole. List 2 drain of a central office (both
17 CLEC and Qwest equipment) – or the capacity of power cables – will be greater
18 than List 1 drain, and List 1 drain will be greater on a central office wide basis
19 than measured usage (at all times other than the busy hour). Therefore, if Mr.

³³¹ Ashton Rebuttal, p. 6.

³³² Ashton Rebuttal, pp. 12-13.

1 Ashton's concern about Eschelon paying less for power plant than Qwest makes
2 available was legitimate, this would hold true for the entire central office as a
3 whole (including Qwest) – not just Eschelon. Second, the labeling of Exhibit CA-
4 R1 is misleading. As I explained in my rebuttal testimony (pages 60-61), CLECs
5 do not order power plant capacity, rather they order power cables. However,
6 Exhibit CA-R1 attempts to obscure this fact by referring to a "100 amp order."
7 However, this order would be an order for power cables, which is not a factor in
8 sizing power plant capacity³³³ (as Mr. Ashton apparently acknowledges by
9 labeling List 1 "engineered" capacity), nor should it be an indication to Qwest of
10 how much power plant capacity a CLEC will need. Though Mr. Ashton claims
11 that "Qwest does in fact make the ordered capacity available,"³³⁴ this, too, is
12 misleading. Obviously at any time other than the busy hour, there will be free
13 power plant capacity available to any carrier in the central office – not just
14 Eschelon. Therefore, Qwest's insinuation that any free power plant capacity is
15 available exclusively for Eschelon's use is false because Qwest, Eschelon, or any
16 other carrier could draw upon that free capacity when it is available. This exposes
17 another problem with Exhibit CA-R1: by characterizing this exhibit as an
18 Eschelon-specific scenario, Qwest makes it appear as if the spare capacity
19 (represented by the difference between measured usage and List 1 drain) is
20 available exclusively to Eschelon. However, this spare capacity could be used by

³³³ Starkey Direct, pp. 121-126.

³³⁴ Ashton Rebuttal, p. 12, line 14.

1 Qwest or any other carriers. It is exactly because spare capacity on the power
2 plant can be used by any central office user, that it should be factored in when
3 engineering the size of the plant – *i.e.*, no rational engineer would build a power
4 plant that always had substantial additional capacity based on the irrational notion
5 that some portion of the spare capacity can be guaranteed to an individual user.
6 Yet, that is what Mr. Ashton is asking the Commission to believe Qwest does
7 with CA-R1 – even though he is contradicted by every Qwest engineering
8 document that speaks to these issues. The end result is that despite the fact that
9 spare power plant capacity is available for Qwest’s use or any other carriers’ use,
10 Qwest wants Eschelon to pick up the tab for it.

11 **Q. LET’S ASSUME FOR THE SAKE OF ARGUMENT THAT QWEST**
12 **VIOLATES ITS TECHNICAL PUBLICATIONS AND ACTUALLY DOES**
13 **SIZE POWER PLANT FOR CLEC EQUIPMENT DIFFERENTLY THAN**
14 **IT SIZES POWER PLANT FOR QWEST’S OWN EQUIPMENT, AS MR.**
15 **ASHTON DESCRIBES. IS QWEST’S ATTEMPT TO SUPPORT THIS**
16 **DIFFERENT TREATMENT CONVINCING?**

17 **A.** No. However, before I address the flaws in Mr. Ashton’s reasoning, I should
18 reiterate the point I made at page 115-116 of my direct testimony that Qwest is
19 prohibited from treating Eschelon differently than itself for power per the ICA
20 and the Act. Therefore, no reason Qwest can provide can justify Qwest treating
21 Eschelon differently than itself when sizing power plant, as it has admitted in this

1 case. In other words, the FCC does not leave room for “reasonable
2 discrimination,” it requires a strict non-discrimination.

3 **Q. WHY DOES MR. ASHTON CLAIM THAT IT MUST TREAT CLECS**
4 **DIFFERENTLY THAN QWEST IN THE PROVISIONING OF POWER**
5 **PLANT?**

6 A. One reason that Mr. Ashton provides is that “Qwest does not know, cannot know,
7 and cannot reasonably forecast the draw that CLEC equipment will take, so
8 Qwest uses the ordered amount to size the power plant capacity made available to
9 CLECs.”³³⁵ There are a number of problems with this rationale. First, Mr.
10 Ashton again erroneously claims that CLECs order power plant capacity. This is
11 not the case.³³⁶ Second, since power plant is a shared resource of the central
12 office,³³⁷ Qwest does not and cannot make available certain amounts of power
13 plant capacity to Eschelon.³³⁸ Furthermore, Mr. Ashton’s claim that Qwest must
14 size power plant based on the size of the CLEC power cable because Qwest has
15 no idea what to expect in terms of the CLEC’s power draw³³⁹ is false. Qwest has
16 a list of the CLEC’s equipment from the collocation application (vendor, model
17 number, etc.) and knows the CLECs expected number of circuits. In addition,
18 Qwest uses some of the same equipment that CLECs do, and in these instances,

³³⁵ Ashton Rebuttal, p. 4, lines 1-4.

³³⁶ Starkey Rebuttal, pp. 61-62.

³³⁷ Starkey Direct, p. 130, lines 1-3.

³³⁸ Starkey Rebuttal, pp. 68-69.

³³⁹ Ashton Rebuttal, p. 4, line 1. *See also*, Ashton Rebuttal, p. 13, line 5.

1 knows what the List 1 drain is for this equipment. And if for some reason Qwest
2 does not have access to the list 1 drain for CLEC equipment, Qwest has a specific
3 procedure to estimate List 1 drain.³⁴⁰ And, Qwest's years of experience in
4 designing power plant and measuring CLEC power usage should be a strong
5 indicator that CLECs don't use the full List 2 power of their power cables. Qwest
6 knows full well that CLECs are required to size power cables at the higher List 2
7 drain pursuant to manufacturer's recommendations and safety reasons, and have
8 no intention to "max out" those cables.³⁴¹ Finally, if Qwest needed any additional
9 information from the CLEC to size power plant properly, Qwest controls the
10 application process by which CLECs request collocation services, and it could
11 easily ask for whatever information it needs to properly gauge CLEC usage –

³⁴⁰ Qwest Technical Publication #77368 ("A rough estimate of List 1 drain is 30-40% of the List 2 drain."). List 1 drain is estimated at approximately 30-40% of List 2 drain. Therefore, if Qwest does not have access to List 1 drain for Eschelon, it could estimate that List 1 drain by assuming 30-40% of the size (in amperage) of Eschelon's power cables (which Qwest assumes is Eschelon's List 2 drain). Since Qwest has a specific procedure to estimate List 1 drain when information is not available from the vendor or through experience in using the equipment, Mr. Ashton's claim that sizing power plant for CLECs like it does for itself would force Qwest to "guess at what power the CLEC may draw over that feed" (Ashton Rebuttal, p. 4) is incorrect. Qwest would not need to guess because there is a specific engineering procedure for developing a reliable (albeit "rough") estimate of List 1 drain.

³⁴¹ Mr. Ashton complains that Eschelon doesn't tell Qwest what its anticipated usage will be, and since according to Mr. Ashton, Eschelon cannot forecast its usage, Qwest cannot forecast it either. (Ashton Rebuttal, p. 4, lines 8-12). Mr. Ashton fails to mention, however, that Qwest never asks the CLEC for its anticipated usage. All Qwest would have to do is ask the CLEC for its List 1 drain on the collocation application and then Qwest would unarguably have the information it says it needs to size power plant for CLECs in the same manner it uses to size for Qwest equipment. Nonetheless, Qwest sizes power plant based on the aggregate usage of the entire central office, so the individual power draw of a CLEC is not needed for this exercise and that's likely why Qwest does not ask for it.

1 rather than blindly relying on the power cable order which it knows is an
2 inaccurate way to gauge power plant consumption.³⁴²

3 This information seriously undercuts Mr. Ashton's notion that "the only
4 reasonable amperage to include in power plant planning for CLECs is the ordered
5 amount" because it is "the only number that Qwest has to plan to."³⁴³ Qwest has
6 a substantial amount of additional information for the purposes of sizing power
7 plant for CLECs, and if Qwest needed a different "number" to properly size
8 power plant, then it should simply ask for it.

9 **Q. DOES MR. ASHTON PROVIDE ANOTHER REASON WHY QWEST**
10 **MUST ALLEGEDLY TREAT ESCHELON DIFFERENT THAN ITSELF**
11 **WHEN SIZING POWER PLANT?**

12 **A. Yes.**³⁴⁴ Mr. Ashton says that "a good example of a situation in which the ordered
13 amount of power could be required would be if Qwest had a complete power
14 failure within a central office, and the batteries fully discharged."³⁴⁵ Mr. Ashton
15 reasons that when power is restored to this central office, CLECs and Qwest may
16 draw something close to their List 2 drain when re-starting their equipment.³⁴⁶

³⁴² Starkey Rebuttal, pp. 64-65.

³⁴³ Ashton Rebuttal, p. 4, lines 12-15.

³⁴⁴ Mr. Ashton also claims that the power plant rate should not be assessed based on usage because power plant equipment is not consumed, power plant is a fixed investment, and power plant is not amenable to measurement. *See* Ashton Rebuttal, p. 8. I addressed these issues at pages 70-71 of my rebuttal testimony.

³⁴⁵ Ashton Rebuttal, p. 7, lines 3-5.

³⁴⁶ Ashton Rebuttal, p. 7, lines 12-15.

1 Qwest claims that since a CLEC may require List 2 drain power at re-start, it is
2 reasonable for Qwest to engineer the power plant to the size of the CLEC power
3 cable.³⁴⁷

4 **Q. IS THIS A “GOOD EXAMPLE” AS MR. ASHTON CLAIMS?**

5 A. No. First, I find it interesting that Mr. Ashton would characterize this as a “good”
6 example, while failing to explain that this is the *only* example of a situation that
7 Qwest can dream up in which Qwest would need to provide CLECs the List 2
8 drain amount of power associated with the size of their power cables at the same
9 time – and even then, Qwest can provide no example of this “List 2 event” ever
10 happening. Further, the hypothetical “List 2 Event” that Mr. Ashton creates
11 should never happen if Qwest is properly monitoring the draw on its power plant.
12 For Qwest’s scenario to happen, the following would have to occur:

- 13 • Qwest assumes the central office completely loses power: this should not
14 happen (especially in central offices in which CLECs are collocated) because
15 Qwest is required to have backup generation on site to power equipment if it
16 loses AC power from the utility.³⁴⁸ Indeed, Qwest charges CLECs in its
17 power plant rate costs associated with diesel generator backup. Therefore,

³⁴⁷ Though Mr. Ashton acknowledges that both Qwest and CLECs would both draw an amount of power approaching or reaching the maximum power draw of the equipment, or List 2 drain (Ashton Rebuttal, p. 7, lines 12-15), Qwest admittedly does not size power plant at List 2 drain for Qwest equipment. If Qwest actually needed to size power plant for CLEC equipment at List 2 drain because the CLEC may need to draw that amount of power, Qwest would also need to size power plant at List 2 drain for Qwest equipment (based on Mr. Ashton’s admission that Qwest may also need this amount of power in Mr. Ashton’s hypothetical List 2 drain event).

³⁴⁸ Backup AC generation is described at pages 112-114 of my direct testimony.

1 Qwest will not lose power to the central office so long as Qwest continues to
2 pour diesel fuel into the backup generator and Mr. Ashton's singular example
3 will not occur.³⁴⁹

- 4 • Qwest assumes all CLECs would require List 2 drain amount of power
5 simultaneously once power is restored to the central office: this would not
6 happen. First of all, Mr. Ashton is assuming that every CLEC in the central
7 office is using its collocation to maximum capacity – *i.e.*, bays are entirely full
8 and equipment fully carded. This is highly unlikely. However, even if all
9 CLECs were using their collocation to the maximum capacity and Qwest lost
10 power to the central office and had to restart, Qwest would monitor re-start so
11 that power surges do not occur. One way Qwest would prevent the List 2
12 drain event that Mr. Ashton describes is by pulling fuses in the central
13 office³⁵⁰ so that not all equipment starts up simultaneously.³⁵¹
- 14 • Qwest assumes it has some obligation to provide the full List 2 drain amount
15 of power to CLECs under this "List 2 Event": the List 2 event that Mr.
16 Ashton describes is something that could, if at all, take place only during a

³⁴⁹ Mr. Ashton testifies that "For a time, a diesel engine would be supplying additional backup power for the batteries. If the engine cannot be refueled, the batteries would become the sole source of power." (Ashton Rebuttal, p. 7, lines 7-9). However, Mr. Ashton never explains why Qwest could not refuel its backup generator or why the backup generator would only operate "for a time."

³⁵⁰ Technical Document 790-100-654RG, p. 14, describes "pulling the discharge fuses" as a procedure for starting to charge batteries from low voltage resulting from complete battery discharge, and explains that it "has no harmful consequences."

³⁵¹ Mr. Ashton makes the unsupported assertion that Qwest somehow makes power available to CLECs at restart "ahead of even Qwest's own switch." (Ashton Rebuttal, p. 7, line 17). This is not the case. Qwest has no ability to parse out power plant capacity to any user or users, and that capacity is available indiscriminately to all users (both CLECs and Qwest).

1 major catastrophe, or what is referred to as a “force majeure.” Qwest would
2 certainly invoke the force majeure clause of the ICA (Section 5.7) if it was
3 unable to provide power during the hypothetical “List 2 Event” Mr. Ashton
4 describes, and a subsequent disagreement with a CLEC arose regarding
5 Qwest’s inability to provide that power. So even if all of the stars aligned to
6 bring about Mr. Ashton’s List 2 Event example – something that has never
7 happened to Qwest – Qwest has built in protection in the ICA from a CLEC
8 claiming breach of contract if Qwest did not provide full List 2 power.

9 **Q. LET’S ASSUME FOR THE SAKE OF ARGUMENT THAT MR.**
10 **ASHTON’S “LIST 2 DRAIN EVENT” DID COME TO PASS AND**
11 **ASSUME FURTHER THAT CLECS DO NEED THE FULL LIST 2 DRAIN**
12 **ASSOCIATED WITH THEIR POWER CABLES AT RE-START. WOULD**
13 **THIS SUPPORT MR. ASHTON’S EXPLANATION OF HOW QWEST**
14 **SIZES POWER PLANT?**

15 **A.** No. Mr. Ashton testifies that Qwest sizes power plant capacity by using the
16 following equation: List 1 drain of Qwest equipment + List 1 drain of CLEC
17 equipment + List 2 drain of CLEC equipment. If a central office did actually lose
18 power and CLECs needed List 2 drain at re-start, according to Mr. Ashton’s own
19 testimony, Qwest would still have spare power plant capacity in the amount of
20 CLEC List 1 drain. Therefore, even under Qwest’s view of power plant sizing,

1 Qwest is oversizing the power plant and attempting to force Eschelon to pay for
2 power plant capacity that it could never use.

3 **Q. MS. MILLION STATES THAT NOTHING IN THE FCC'S TELRIC**
4 **RULES REQUIRES QWEST TO ADD TO ITS EXISTING POWER**
5 **PLANT TO ACCOMMODATE CLEC DEMAND FOR CAPACITY.³⁵² IS**
6 **IT YOUR TESTMONY THAT QWEST MUST ADD POWER PLANT**
7 **CAPACITY IN ORDER TO CHARGE FOR IT?**

8 A. No,³⁵³ and Ms. Million provides no cite where I made this claim in my testimony.
9 Nonetheless, Ms. Million misses the point.³⁵⁴ TELRIC (which is the basis for
10 collocation power rates) calculates rates based on total demand (or the "total" in
11 Total Element Long Run Incremental Cost). A properly constructed TELRIC cost
12 study will calculate the total investment for a UNE and then divide that number
13 by total demand to calculate chargeable units. This results in an average cost for
14 an element and accounts for total investment and total demand. In this way,

³⁵² Million Rebuttal, p. 6, lines 5-6.

³⁵³ Ms. Million also testifies that the "problem with Eschelon's position is that it ignores the fact that the rate for an element and its application on a unitized basis result in the amount of TELRIC cost recovery awarded to Qwest by a Commission." (Million Rebuttal, p. 3, lines 9-11). Eschelon does not ignore the relationship between the rate and its application and the importance of this to proper cost recovery, and I actually agree with Ms. Million that the way the rate is developed is important to its application. That is why in my rebuttal testimony, *see* Starkey Rebuttal, pp. 71-74, I explained that Qwest developed its cost study for the power plant rate based on *usage* – the same way that Eschelon wants Qwest to apply the power plant rate. There is nothing in the development of Qwest's power plant rate to suggest that it is based on CLEC power cable orders, as Qwest wants to apply the rate.

³⁵⁴ Ms. Million also claims that Qwest "sometimes" does add power plant capacity based on CLEC orders (Million Rebuttal, p. 6, line 11). However, I showed at pages 65-67 of my rebuttal testimony that Qwest's claims about augmenting power plant based on CLEC orders for power cables are false.

1 TELRIC accounts for the total investment Qwest makes to serve total demand and
2 assumes away the short run marginal cost concerns Ms. Million raises.

3 **Q. QWEST CLAIMS THAT THE DISAGREEMENTS UNDER ISSUE 8-21**
4 **ARE BETTER ADDRESSED IN A COST PROCEEDING WHERE ALL**
5 **INTERESTED PARTIES CAN BE REPRESENTED.³⁵⁵ HAVE YOU**
6 **ALREADY ADDRESSED THIS POINT?**

7 A. Yes. I addressed this issue at pages 79-80 of my rebuttal testimony and will not
8 repeat those arguments here.³⁵⁶

9 **Q. QWEST COMPLAINS THAT ESCHELON WANTS TO BE BILLED ON**
10 **DAY TO DAY USAGE, WHILE QWEST SIZES POWER PLANT ON**
11 **BUSY HOUR USAGE, AND THESE ARE TWO TOTALLY DIFFERENT**
12 **THINGS.³⁵⁷ WOULD YOU LIKE TO RESPOND?**

13 A. Yes, I addressed this issue at page 74 of my rebuttal testimony and explained that
14 Qwest's concern is exaggerated. Qwest is fully knowledgeable about the busy
15 day busy hour for each central office, and if it so chooses, it can measure

³⁵⁵ Ashton Rebuttal, p. 3, lines 6-8. *See also*, Million Rebuttal, pp. 2 and 3-4.

³⁵⁶ At page 9 of his rebuttal testimony, Mr. Ashton discusses my testimony about the Qwest DC Power Measuring Amendment and states that "I'm not sure what point Mr. Starkey is making, though, in this regard. Does Qwest offer the option to pay for power usage on a measured basis? Yes, it does." (Ashton Rebuttal, p. 9, lines 5-8). The point I was making in my testimony (Starkey Direct, p. 117) is that Qwest originally assessed both power charges – usage and power plant – on the size of the CLEC power cable, and changed the application of one of these rate elements (usage) to be applied on measured usage, and now claims that it is unreasonable to assume that both rate elements should be assessed on measured usage. If Qwest applied both power rate elements in the same manner before the change, it is logical that the change should apply to both rate elements so that they will be applied on the same basis after the change.

³⁵⁷ Ashton Rebuttal, pp. 6 and 10.

1 Eschelon's usage at that time. Though Mr. Ashton refers to these measurements
2 as "random," they would really only be random if Qwest wants them to be
3 random.³⁵⁸ For instance, Mr. Ashton shows three hypothetical power
4 measurements on which a CLEC could be billed (47 amps, 25 amps and 32
5 amps), and claims that "NONE of these numbers are any part of the equation that
6 drives Qwest power plant augment decisions."³⁵⁹ This is not entirely true. If the
7 47 amp measurement represents the CLEC's usage at the busy hour, then it would
8 be a fundamental component of the primary engineering equation used to size
9 power plant (along with the aggregate busy hour usage of the other power users in
10 the central office).³⁶⁰

11 Mr. Ashton goes on to claim that if the CLEC had ordered a 100 amp power
12 cable, it is this 100 amps that would be part of the equation. Mr. Ashton is wrong.
13 Since this 100 amps associated with the power cable (which is based on List 2

³⁵⁸ Though the ICA calls for Qwest to measure power on a semi-annual basis and the busy hour busy day only occurs once per year, Qwest could measure the power at the peak times during those time periods. And though CLEC's can request Qwest to take a power measurement, Qwest can select the time of the measurement over a 30 day period after the request, so it can pick a time at which Qwest believes that Eschelon's power draw will be at its greatest. Furthermore, through my work with other CLECs on collocation power issues, I have examined time series data for power measurements taken by Qwest and have determined that they do not vary by large degrees from measurement to measurement.

³⁵⁹ Ashton Rebuttal, p. 12, lines 1-3. *See also*, Ashton Rebuttal, p. 11, lines 20-22 ("A specific CLEC's discrete and randomly measured usage throughout the year is never a factor in planning power plant investment.") I agree with Mr. Ashton that a specific CLEC's usage is not a factor in planning power plant investment, rather it is the aggregate peak usage of the entire central office (Qwest and all CLECs) at the busy hour that is relevant. That is why Qwest does not need to know Eschelon's individual power usage in order to size power plant for Eschelon's equipment in a nondiscriminatory manner.

³⁶⁰ It would represent the CLEC's portion of the aggregate peak usage at the busy hour used to size power plant in the central office.

1 drain by engineering requirements) has no relationship to the peak usage that a
2 CLEC draws over that cable (List 1 drain), this 100 amps would not drive power
3 plant investment and would not be “part of the equation.”³⁶¹ It is telling that Mr.
4 Ashton never claims that a CLEC’s busy hour usage would ever reach anywhere
5 close to the List 2 drain capacity of its power cables, but Qwest wants to charge
6 Eschelon for power plant as if Eschelon draws that amount every month.

7 **Q. QWEST CLAIMS THAT “IT IS UP TO ESCHELON TO MANAGE ITS**
8 **POWER REQUIREMENTS” THROUGH THE POWER REDUCTION**
9 **AND POWER MEASUREMENT OPTIONS.³⁶² DOES THIS MEAN THAT**
10 **QWEST SHOULD NOT APPLY THE POWER PLANT RATE ON NON-**
11 **DISCRIMINATORY MEASURED USAGE?**

12 A. No.³⁶³ Qwest’s Power Reduction offering addresses the ability of changing fuses
13 at the BDFB, changing breakers at the power plant, or potentially re-engineering
14 smaller power cables aimed at re-engineering a CLEC’s power *distribution*
15 infrastructure. Power *distribution* is a different component than power *plant*, and
16 the two are sized differently – power distribution is sized at List 2 drain and
17 power plant is sized at a lower List 1 drain. Therefore, the Power Reduction
18 offering is irrelevant to the proper application of the power plant rate.

³⁶¹ As explained above, Qwest’s own technical documents belie Mr. Ashton’s claim and do not list power cables or List 2 drain as influencing factors for power plant sizing.

³⁶² Ashton Rebuttal, p. 14, lines 14-15.

³⁶³ I also address this point at pages 75-76 of my rebuttal testimony.

1 Q. QWEST POINTS TO DECISIONS IN WASHINGTON AND UTAH
2 RELATED TO A MCLEODUSA COMPLAINT AGAINST QWEST AND
3 THE MINNESOTA ARBITRATORS' REPORT FROM THE
4 COMPANION ESCHELON/QWEST ARBITRATION AS SUPPORT FOR
5 QWEST'S POSITION ON ISSUE 8-21.³⁶⁴ WOULD YOU LIKE TO
6 RESPOND?

7 A. Yes. First, The Washington and Utah decisions Qwest references are based on a
8 McLeodUSA/Qwest ICA amendment and specific agreed upon language between
9 those two parties that does not apply to Eschelon and Qwest. Second, the
10 Minnesota Arbitrators' Report has not yet been entered by the Minnesota
11 Commission (though a Commission order is expected very soon after the filing of
12 this testimony), and McLeodUSA may still file a petition for reconsideration of
13 the Washington decision on its complaint case against Qwest.

14 Moreover, contrary to Qwest's claims, the Minnesota Arbitrators' Report did not
15 reject the notion that Qwest discriminates in its application of the power plant
16 rate. In fact, the Minnesota Arbitrators' Report finds that "it is theoretically
17 possible that the current pricing scheme results in a discriminatory rate or over-
18 recovers capacity costs from CLECs," but the Report finds that the evidence
19 provided was not sufficient to draw this conclusion, so the Minnesota Arbitrators'

³⁶⁴ Ashton Rebuttal, pp. 14-15 and Million Rebuttal, pp. 7-8.

1 find that these issues should be dealt with in a UNE cost case.³⁶⁵ It is possible
2 that Qwest's application of the power plant rate based on the size of CLEC's
3 cable could indeed be found to be discriminatory in a future Minnesota UNE cost
4 case. Similarly, the decision in the McLeodUSA Washington complaint case
5 does not reject the notion of discrimination as Mr. Ashton claims. The
6 Washington decision states: "Although it may be possible for the Commission to
7 require Qwest to implement a nondiscriminatory rate for DC power, the record in
8 this case does not provide a sufficient basis for such a determination."³⁶⁶ This
9 decision goes on to explain that the scope of that particular complaint case
10 between McLeodUSA and Qwest focused on the intent of those companies at the
11 time they entered into an ICA amendment that does not apply to Eschelon and
12 Qwest.³⁶⁷

13 Furthermore, Qwest fails altogether to mention the Iowa decision in the
14 McLeodUSA complaint against Qwest, which is currently on reconsideration
15 before the Iowa Board, which found that "The available evidence indicates a valid
16 concern exists regarding possible discrimination, but the record has not been fully
17 developed on this issue."³⁶⁸ The Iowa Board also found that "it is clear that
18 Qwest treats CLECs differently in this respect" as it relates to assigning power

³⁶⁵ MN Arbitrators' Report, ¶108.

³⁶⁶ Exhibit CA-R2, p. 22.

³⁶⁷ Id.

³⁶⁸ Iowa Utilities Board, Final Order in Docket No. FCU-06-20, issued 7/27/06, p. 14.

1 plant costs, and found that “[m]oreover, Qwest admits that it assigns Power Plant
2 costs to itself based on List 1 drain (which approximates its actual use), but
3 charges CLECs based on the amount of power ordered (which approximates List
4 2 Drain).”³⁶⁹ The Board went on to state that, “the Board is concerned about
5 Qwest’s practices in this respect” and suggested that this issue be revisited in an
6 appropriate docket (such as an arbitration proceeding) in which the Board can
7 order relief.³⁷⁰

8 **Q. A COMMON THEME IN QWEST’S REFERENCES TO THE DECISIONS**
9 **IN OTHER STATES IS THE NOTION THAT THERE IS A LACK OF**
10 **BASIS FOR A FINDING THAT QWEST’S APPLICATION OF THE**
11 **POWER PLANT RATE BASED ON THE SIZE OF CLEC POWER**
12 **CABLE ORDERS IS DISCRIMINATORY. PLEASE SUMMARIZE WHY**
13 **QWEST’S POWER PLANT RATE APPLICATION IS**
14 **DISCRIMINATORY TO ESCHELON.**

15 **A.** The problem is relatively basic. As the Iowa Board’s Order indicates, Qwest has
16 admitted to assigning power plant costs to itself based on List 1 drain and
17 assigning power plant costs to CLECs based on List 2 drain. List 2 drain (which
18 represents a “worst case scenario” load) is higher than List 1 drain (which is based
19 on normal operating load). Therefore, what Qwest is doing is assigning higher
20 power plant costs on CLECs (List 2 drain) than it is assigning to itself (List 1

³⁶⁹ *Id.*

³⁷⁰ *Id.*, p. 15.

1 drain). For example, let's assume that both Qwest's and Eschelon's List 1 drain is
2 100 amps and their List 2 drains (or the size of their power cables) is 200 amps.
3 Further assume that the TELRIC rate for power plant is \$10.75 (Exhibit A,
4 Section 8.1.4). Under this hypothetical scenario, Qwest would assign \$1,075
5 (\$10.75 times 100 amps) in power plant costs to itself, but would assign \$2,150
6 (\$10.75 times 200 amps) in power plant costs to Eschelon. This is despite the fact
7 that in this example both Qwest and Eschelon have identical power and load
8 characteristics (List 1 drain and List 2 drain). If we change the example to
9 assume that Qwest's List 1 drain increases to 150 amps, Qwest would assign
10 \$1,612.50 (\$10.75 times 150 amps) in power plant costs to itself (less than to
11 Eschelon), even though Qwest is consuming more power plant capacity than is
12 Eschelon. This is discrimination prohibited by the Act and the companies'
13 ICA.³⁷¹

14 **Q. BUT QWEST CLAIMS THAT IT MAKES THE FULL 200 AMPS OF**
15 **POWER PLANT CAPACITY AVAILABLE TO ESCHELON BASED ON**
16 **ITS POWER CABLE ORDER. DOES THIS HAVE ANY BEARING ON**
17 **THE DISCRIMINATION EXAMPLE YOU PROVIDE ABOVE?**

18 **A.** No, because Qwest does not invest in power plant based on CLEC orders for
19 power cables. As the Iowa Utilities Board found, "Typically, an order for power
20 from an individual CLEC does not require additional investment in power plant

³⁷¹ See, Starkey Direct, pp. 115-116.

1 facilities. Instead, it is the total power consumption by Qwest and all CLECs that
2 would trigger the need for additional power plant facilities.”³⁷² Because Qwest’s
3 investments in power plant facilities are not incremental to CLEC orders for
4 power cables, there is no basis for Qwest assigning costs to CLECs as if it does,
5 which is what assigning power plant costs to CLECs based on List 2 drain does.
6 Further, as the Iowa Board found, “power plant facilities are not dedicated to
7 individual companies, but are common to all those within a central office. This
8 includes Qwest and all CLECs collocating in that office.”³⁷³ Therefore, even if
9 Qwest did invest in power plant based on the size of a CLEC power cable order
10 (which would violate its own Technical Publications), the excess power plant
11 capacity that Qwest would be building into its central office power plant would be
12 available for the use of any company in the central office (Qwest and all CLECs).
13 Despite this power plant capacity being equally available for Qwest’s and
14 Eschelon’s (and other collocators’) use, Qwest is attempting to make Eschelon
15 pay for it.

16 **Q. MS. MILLION STATES THAT THE WASHINGTON AND UTAH**
17 **DECISIONS IN THE MCLEODUSA COMPLAINT CASES IN THOSE**
18 **STATES FOUND THAT QWEST’S POWER PLANT COST STUDY IS**
19 **NOT BASED ON USAGE.³⁷⁴ WOULD YOU LIKE TO RESPOND?**

³⁷² IUB Order, pp. 13-14.

³⁷³ IUB Order, p. 13.

³⁷⁴ Million Rebuttal, pp. 4-5.

1 A. Yes. As shown at page 72 of my rebuttal testimony, Qwest's cost study divides
2 the total power plant investment by "DC power usage" to calculate chargeable
3 units of power plant. Though Ms. Million acknowledges the appearance of
4 "usage" in the cost study,³⁷⁵ she essentially claims that it was a bad choice of
5 words on Qwest's part when developing the cost study. Qwest's hindsight aside,
6 it is undisputable that no measure of "power order" or "power cable" is used to
7 develop Qwest's power plant rate (which is the basis for Qwest's proposed
8 application of the power plant rate). Qwest simply stating that its use of the term
9 "usage" in the cost study is something different than electrical usage does not
10 explain why it is more appropriate then for Qwest to apply the power plant rate
11 based on the size of the CLEC power cable order. Though Qwest claims that its
12 application is what the Commission approved when its power plant rate was
13 previously approved,³⁷⁶ I explained at page 68 of my rebuttal testimony that the
14 Arizona Commission did not approve Qwest's proposed application of the power
15 plant rate based on the size of power cables orders in its 6/12/02 UNE Order.

16 **Q. QWEST REFERENCES THE MINNESOTA ARBITRATORS' REPORT**
17 **AND THE WASHINGTON DECISION AS SUPPORT FOR QWEST'S**
18 **POSITION THAT THIS ISSUE IS BETTER ADDRESSED IN A UNE**

³⁷⁵ Million Rebuttal, p. 4, lines 15-16.

³⁷⁶ Million Rebuttal, p. 5.

1 **COST CASE.³⁷⁷ DOES THIS MEAN THAT THIS IS THE CASE IN**
2 **ARIZONA?**

3 A. No. For example, in Minnesota there is an open investigation into Qwest's UNE
4 rates in which the proper application of the power plant rate will be reviewed, and
5 as explained above, the Arbitrators' Report left open the possibility of a finding of
6 discrimination related to Qwest's proposed application of power plant rates.
7 There is no comparable open 252 UNE rate proceeding in Arizona. Qwest's
8 reference to the Washington McLeodUSA/Qwest complaint case is also
9 misplaced. The fact that the Washington McLeodUSA/Qwest case was a
10 complaint case and this case is an arbitration case is an important factor in the
11 Washington decision. The Washington decision states: "Within the scope of this
12 docket, the Commission may only determine the intent of the parties with regard
13 to the DC power measuring amendment. A cost docket, or similar cost review, is
14 the forum for judging the adequacy of rates and rate structures for CLEC access to
15 ILEC networks."³⁷⁸ Notably, the decision referenced "a cost docket, or similar
16 cost review" as the appropriate forum for addressing this issue. This arbitration is
17 a "similar cost review" and is, therefore, an appropriate forum for addressing
18 these issues according to the Washington decision.

³⁷⁷ Million Rebuttal, pp. 3-4.

³⁷⁸ Exhibit CA-R2, p. 22.

1 **VI. SUBJECT MATTER NO. 14: NONDISCRIMINATORY ACCESS TO**
2 **UNES**

3 *Issue No. 9-31: ICA Section 9.1.2*

4 **Q. WHAT IS AT STAKE UNDER ISSUE 9-31?**

5 A. Just as the title of this Subject Matter indicates, nondiscriminatory access to
6 UNES is at issue. Qwest disagrees with Eschelon's language in 9.1.2 that states
7 that "Access to Unbundled Network Elements includes moving, adding to,
8 repairing and changing the UNE (through *e.g.*, design changes, maintenance of
9 service including trouble isolation, additional dispatches, and cancellation of
10 orders)." Yet, Qwest never denies that it provides these functions for its retail
11 customers and has provided these functions for UNES in the past. Qwest points to
12 no authority – other than Qwest's own opinion – to support the notion that
13 something has changed that would free Qwest from the obligations of providing
14 these functions for UNES on a nondiscriminatory basis and at cost-based rates.
15 For example, what if Qwest repaired the facilities that its retail customers use, but
16 restricted this access for Eschelon's UNE facilities (or demanded such high
17 charges for the repairs that the repairs are cost prohibitive)? Would this give
18 Eschelon a reasonable opportunity to compete with Qwest? Obviously not, but
19 Qwest makes no commitment that this scenario could not become a reality. And
20 Qwest's attempts to remove these functions from the nondiscriminatory access
21 requirements of Section 251 of the Act, such as Qwest's attempt to apply tariff
22 rates to these functions, has been done outside of ICA negotiations/arbitrations

1 and outside of CMP. With this context, it is not surprising that Eschelon is not
2 willing to accept Qwest's "trust us" attitude with respect to providing
3 nondiscriminatory access to UNEs, as displayed in Qwest's rebuttal testimony.³⁷⁹
4 Qwest has made it clear that, though the functions listed in Section 9.1.2 are
5 performed for UNEs and are functions that Qwest normally provides for itself or
6 its retail customers, Qwest believes that they are not subject to the
7 nondiscriminatory provisions of Section 251 and, therefore, are not subject to
8 cost-based pricing rules.³⁸⁰ Qwest is wrong, and the Commission should reject
9 Qwest's misguided view by adopting Eschelon's proposal for Issue 9-31 and
10 preserve nondiscriminatory access to UNEs.

11 **Q. WHAT ARE QWEST'S PRIMARY CRITICISMS OF ESCHELON'S**
12 **POSITION ON ISSUE 9-31?**

13 A. Qwest contends that Eschelon is attempting to "impermissibly expand the access
14 Qwest provides to UNEs beyond the requirements imposed by governing law."³⁸¹

³⁷⁹ Ms. Stewart testifies that Qwest will provide nondiscriminatory "access" to UNEs, but will not agree to language that memorializes that commitment in the ICA by identifying certain functions that Qwest has provided for UNEs and provides for itself or its retail customers.

³⁸⁰ Stewart Rebuttal, p. 3.

³⁸¹ Stewart Rebuttal, p. 11, lines 13-14. *See also*, Stewart Rebuttal, p. 15, lines 16-17 ("go beyond the routine network modifications"); p. 15, lines 11-13 ("violates the long-established rule that an ILEC is only required to provide access to its existing network, not access to 'a yet unbuilt superior one.'") I addressed Qwest's "superior network" argument in my rebuttal testimony at pages 81 and 86-88. I also addressed Ms. Stewart's claim that the terms "add to" and "changing the UNE" are vague and could require Qwest to build new facilities. *See* Starkey Rebuttal, pp. 100-102. Ms. Stewart, at page 15, lines 5-6 of her rebuttal testimony, states that Eschelon's proposal "would potentially obligate" Qwest to provide Eschelon access it doesn't provide to other CLECs or Qwest retail customers, but she makes no attempt to support this claim. The word "potentially" is important because this means that Ms. Stewart can provide no concrete examples of Eschelon's

1 Qwest also claims that Eschelon is attempting to keep Qwest from recovering its
2 costs for UNE-related functions.³⁸²

3 **Q. IS ANY OF THIS TRUE?**

4 A. No. I explained at pages 138-141 of my direct testimony how Eschelon's
5 proposals are consistent with Qwest's existing obligation under governing law.
6 For brevity, I will not repeat those arguments here. I would like to add, however,
7 that Qwest's claim of Eschelon attempting to expand Qwest's obligations with
8 regard to UNE access rings hollow when one considers that Qwest has provided
9 these functions in the past for CLECs, and Eschelon is only asking for certainty
10 that Qwest will continue to provide them in the future (unless the ICA is
11 amended).³⁸³ This need for certainty is illustrated by Qwest's recent non-CMP
12 announcement changing the Exhibit As to Qwest's Negotiations Templates to
13 impose tariff rates for the functions listed in Section 9.1.2. This need for certainty

language going beyond the FCC's requirements despite four specific functions listed in Eschelon's language.

³⁸² Stewart Rebuttal, p. 16.

³⁸³ Ms. Stewart claims that Eschelon's language is not necessary to ensure nondiscriminatory access to UNEs. Stewart Rebuttal, p. 11. Yet, Qwest has made it very clear that it does not view these functions as related to "access" to UNEs under Section 251 of the Act. *See e.g.*, Stewart Rebuttal, p. 3, lines 23-24. If Qwest disagrees that these functions are governed by Section 251, then obviously language is needed to make that obligation clear, or Qwest will impose its misguided judgment (resulting in less "access" and higher, non-cost based rates). Ms. Stewart points to other language in the ICA that speaks to Qwest's obligations to provide access to UNEs, and I do not dispute that other sections may discuss Qwest's obligations in this regard, but Eschelon's proposed language in 9.1.2 makes clear that these activities are required as part of Qwest's obligation to provide nondiscriminatory "access" to UNEs at cost-based rates. Based on Qwest's view of these activities, just because they are mentioned in the ICA, does not mean that Qwest will provide (or continue to provide) nondiscriminatory access to them, which is why Eschelon's Section 9.1.2 is crucial. Eschelon has identified a business need and proposed language to address that need, and like the other sections of the ICA referenced by Ms. Stewart, that language is designed to spell out Qwest's obligations regarding access to UNEs.

1 is also demonstrated by Qwest's continued effort to restrict access to design
2 changes.³⁸⁴

3 With regard to Qwest's claims regarding cost recovery, I have already addressed
4 this in my rebuttal testimony at pages 97-98.³⁸⁵ The truth is that nothing in
5 Eschelon's language in 9.1.2 keeps Qwest from recovering its costs. Indeed
6 Eschelon is proposing language under Issue 4-5³⁸⁶ (some of which has been
7 agreed to by Qwest) that expressly allows Qwest to assess a charge for design
8 changes so long as Qwest is not recovering these costs elsewhere and the rates are
9 cost-based – this proposal is imminently reasonable.³⁸⁷ Simply put, no reasonable
10 reading of Eschelon's language leads to the conclusions that Ms. Stewart draws.

11 **Q. DID THE ALJs IN THE MINNESOTA ARBITRATION PROCEEDING**
12 **DISAGREE WITH QWEST ON THESE POINTS – I.E., THAT**
13 **ESCHELON'S LANGUAGE IMPERMISSABLY EXPANDS QWEST'S**

³⁸⁴ See, e.g., Exhibit DD-19 (CFA Change Chronology for Limit of One). Mr. Denney provided Exhibit DD-19 with his rebuttal testimony. Exhibit DD-19 (Updated), included with his surrebuttal testimony, provides additional information that has become available on this issue since the filing of rebuttal testimony.

³⁸⁵ Ms. Stewart references Mr. Denney's testimony at the Minnesota hearing as support for Qwest's concern that Eschelon's proposal may be designed to prevent Qwest from recovering the costs of the activities listed in Section 9.1.2 (Stewart Rebuttal, p. 17). I addressed Qwest's stated concern about cost recovery at pages 83-84 of my rebuttal testimony. Mr. Denney addresses Ms. Stewart's claims regarding his testimony in Minnesota in his testimony on design changes (Issue 4-5 and subparts).

³⁸⁶ Issue 4-5 is discussed in the testimony of Mr. Denney.

³⁸⁷ Qwest cannot convincingly argue that it should be allowed to assess separate charges for design changes if it recovers those costs in other rates, nor should Qwest be allowed to be unjustly enriched by charging rates that exceed costs for functions related to Section 251 UNEs.

1 **OBLIGATIONS AND WOULD KEEP QWEST FROM RECOVERING ITS**
2 **COSTS FOR THESE ACTIVITIES?**

3 A. Yes. The Minnesota Arbitrators' Report finds as follows:

4 It is difficult to understand Qwest's position that Eschelon's
5 language might require Qwest to provide access to an "as yet
6 unbuilt, superior network" or that it might mean Qwest would be
7 unable to charge at all for making such changes. It is a real stretch
8 to find this kind of ambiguity in Eschelon's language. Qwest has
9 pointed to nothing in the language that would require it to perform
10 an activity that is obviously outside of its existing § 251
11 obligations.³⁸⁸

12 The ALJs recommended adoption of Eschelon's proposed language for this
13 section.³⁸⁹

14 **Q. QWEST PROVIDES ALTERNATIVE LANGUAGE IN ITS REBUTTAL**
15 **TESTIMONY FOR ISSUE 9-31.³⁹⁰ IS THIS LANGUAGE ACCEPTABLE**
16 **TO ESCHELON?**

17 A. No. I addressed the shortcomings of Qwest's alternative language at pages 103-
18 105 of my rebuttal testimony.

19 **Q. IS MS. STEWART'S DISCUSSION OF QWEST'S ALTERNATIVE**
20 **LANGUAGE FOR 9.1.2 ACCURATE?**

³⁸⁸ MN Arbitrators' Report, ¶130.

³⁸⁹ MN Arbitrators' Report, ¶132.

³⁹⁰ Stewart Rebuttal, p. 16 ("Additional activities for Access to Unbundled Network Elements includes moving, adding to, repairing and changing the UNE (through e.g., design changes, maintenance of service including trouble isolation, additional dispatches, and cancellation of orders) at the applicable rate.")

1 A. No. Ms. Stewart's presentation of Qwest's alternative language is misleading.
2 The testimony leading up to Qwest's alternative proposal suggests that Issue 9-31
3 boils down to Qwest's ability to charge for activities and recover its costs for the
4 functions in 9.1.2.³⁹¹ This is not the case. This issue boils down to whether
5 Qwest will continue to provide nondiscriminatory access to UNEs at TELRIC-
6 based rates. Since Qwest designed its alternative language with the incorrect
7 "perception"³⁹² in mind that this issue is about Qwest's ability to recover its costs,
8 the premise of Qwest's alternative language is flawed.

9 The language Qwest proposes, which states that Qwest will make the
10 abovementioned functions "available" for UNEs instead of as "access" to UNEs,
11 is a half-hearted attempt at a compromise. Qwest claims that "with the benefit of
12 Eschelon's testimony," it crafted alternative language "that addresses both parties'
13 concerns."³⁹³ However, Qwest knows that Eschelon's concern is related to
14 nondiscriminatory access to UNEs, and as a result, knows that striking the word
15 "access" in favor of "available" is a deal breaker. Qwest complicates matters by
16 stating in its proposed language that it will make these functions available "at the
17 applicable rate." Again, one of Eschelon's major concerns is that because these
18 functions are necessary for access to UNEs, they should be cost-based.³⁹⁴ It is

³⁹¹ Stewart Rebuttal, p. 16, lines 8-14.

³⁹² Stewart Rebuttal, p. 16, line 13.

³⁹³ Stewart Rebuttal, p. 16, lines 14-16.

³⁹⁴ If the Commission considers adopting Qwest's language in any form, the Commission should add "Commission-approved TELRIC cost-based" before "rates" in Qwest's proposal.

1 really irrelevant whether these functions are “available” if the “applicable rate” is
2 set at such a high level as to make them uneconomic (or give Qwest a cost
3 advantage over its competitors). The Minnesota Arbitrator’s Report recognized
4 the problem with Qwest’s proposed “applicable rate” language as follows:

5 Qwest’s proposed language is in fact more ambiguous than
6 Eschelon’s, because it would leave unanswered the question
7 whether routine changes in the provision of a UNE would be
8 priced at TELRIC or at some other “applicable rate.”

9 Federal law requires that when a CLEC leases a UNE, the ILEC
10 remains obligated to maintain, repair, or replace it. Unless and
11 until the Commission or other authority determines to the contrary,
12 these types of routine changes to UNEs should be provided at
13 TELRIC rates. Eschelon’s language should be adopted for this
14 section.³⁹⁵

15 For these reasons, Qwest’s alternative language does not address Eschelon’s
16 concerns and Eschelon cannot agree to it.

17 **Q. MS. STEWART TAKES ISSUE WITH TWO EXAMPLES³⁹⁶ YOU**
18 **PROVIDED IN YOUR TESTIMONY TO DEMONSTRATE WHY**
19 **CONTRACT LANGUAGE IS NEEDED TO ENSURE**
20 **NONDISCRIMINATORY ACCESS TO UNES.³⁹⁷ PLEASE COMMENT.**

21 **A.** With regard to the first example, Ms. Stewart notes that Qwest withdrew its
22 December 2005 CMP notice that would have barred UNEs from being used to

³⁹⁵ MN Arbitrators’ Report, ¶¶131-132.

³⁹⁶ Ms. Stewart focuses on two examples, but I actually provided three examples in my testimony. In addition to the two examples to which Ms. Stewart responds, I also provided an example of Qwest attempting to restrict access to CFA design changes. *See* Starkey Direct, pp. 134-135.

³⁹⁷ Stewart Rebuttal, p. 14.

1 serve another CLEC, IXC or other telecommunications provider, and is not
2 imposing this limitation.³⁹⁸ She also notes Qwest has not attempted to impose this
3 limitation on Eschelon. Ms. Stewart misses the point. Whether or not Qwest
4 ultimately withdrew this particular notice or not, this example shows that absent
5 clear and unambiguous language in the ICA about what nondiscriminatory access
6 is, Qwest can and will attempt to make this determination for itself through CMP
7 (or outside of CMP) after the arbitration is over – at a time that is convenient for
8 Qwest. This example also shows that Qwest has no problem pursuing changes in
9 CMP even when that change conflicts with the terms and conditions of an ICA,
10 which seriously undercuts Qwest’s claim that terms and conditions in an ICA
11 prevents Qwest and other CMP participants from pursuing different terms and
12 conditions in CMP. And though Qwest withdrew this particular notice, nothing
13 prevents Qwest from pursuing this notice or a similar notice at a later date in
14 CMP.

15 Ms. Stewart also takes issue with the example I provided regarding Qwest’s non-
16 CMP notice indicating that Qwest will assess tariff charges for the activities listed
17 in Section 9.1.2.³⁹⁹ Ms. Stewart claims that “Qwest is not requesting that the

³⁹⁸ Stewart Rebuttal, p. 14.

³⁹⁹ See Starkey Direct, pp. 135-136. See also, Starkey Rebuttal, pp. 88-92.

1 interconnection agreement with Eschelon include tariffed design change
2 charges.”⁴⁰⁰

3 **Q. WHAT IS YOUR RESPONSE TO MS. STEWART’S CRITICISM OF**
4 **YOUR SECOND EXAMPLE?**

5 A. Ms. Stewart’s testimony suggests that Qwest intends to impose tariff charges for
6 design changes *after* this arbitration has concluded, as Ms. Stewart has
7 admitted.⁴⁰¹ Qwest has made it very clear that it does not consider these activities
8 to be required by Section 251 of the Act, and therefore, Qwest does not believe
9 that they are required to be cost based.⁴⁰² There is no reason to believe that Qwest
10 will continue to offer these activities at cost-based rates in the future when it
11 believes that cost-based rates are not required. This makes it all that much more
12 important for the Commission to adopt Eschelon’s language in 9.1.2 and make
13 clear that these functions are required for nondiscriminatory access to UNEs.
14 Otherwise, Eschelon will get all the way through this arbitration, only to have
15 Qwest impose tariff rates for these functions after the conclusion of this
16 proceeding, which is sure to trigger future disputes.⁴⁰³ If Qwest in the future

⁴⁰⁰ Stewart Rebuttal, p. 14, lines 24-26.

⁴⁰¹ Ms. Stewart testified as follows at page 6 of her Minnesota Rebuttal testimony: “Qwest will raise that issue in a separate proceeding that permits all interested parties – not just Qwest and Eschelon – to present their views on the subject.”

⁴⁰² See *e.g.*, Stewart Rebuttal, p. 3, lines 23-25.

⁴⁰³ Starkey Rebuttal, pp. 88-92.

1 seeks and obtains the ruling it desires, the agreement already provides a
2 mechanism for Qwest to obtain an amendment pursuant to that change in law.⁴⁰⁴

3 Furthermore, design changes is only one of a number of activities in Section
4 9.1.2, and though Ms. Stewart has testified that Qwest is not seeking to apply
5 tariff charges to *design changes* “in this proceeding,” she does not make this same
6 claim with regard to the other activities in Section 9.1.2 (*e.g.*, trouble isolation,
7 additional dispatches, cancellation of orders). However, charges for all of these
8 activities should be TELRIC-based because they are activities related to providing
9 nondiscriminatory access to UNEs pursuant to Section 251 of the Act.

10 **VII. SUBJECT MATTER NO. 16. NETWORK MAINTENANCE AND**
11 **MODERNIZATION**

12 *Issue Nos. 9-33, 9-33(a), and 9-34: ICA Sections 9.1.9 and 9.1.9.1*

13 **Q. WHY ARE THE NETWORK MAINTENANCE AND MODERNIZATION**
14 **ISSUES UNDER SUBJECT MATTER NO. 16 IMPORTANT TO**
15 **ESCHELON’S BUSINESS?**

16 A. The issues involved with Network Maintenance and Modernization were covered
17 in Eschelon’s Direct and Rebuttal Testimony. *See*, Webber Direct (adopted), pp.
18 6-29 and Starkey Rebuttal, pp. 105-125.⁴⁰⁵ In sum, the ICA should make clear

⁴⁰⁴ See ICA Section 2.2.

⁴⁰⁵ Ms. Stewart references at pages 22 and 28 of her rebuttal testimony Eschelon alternative language for Issues 9-33 and 9-34 that she says was not “formally presented in this proceeding.” However, Eschelon’s alternative for Issue 9-33 was provided at page 109 of my rebuttal testimony and

1 that “minor changes to transmission parameters” should not adversely affect
2 service to Eschelon’s End User Customers. The network changes described in
3 Section 9.1.9 are defined as “minor changes,” and “minor changes” should not
4 degrade or disrupt a customer’s service. The ICA contains separate provisions for
5 changes that are not “minor” and which could affect End User Customers, so
6 Section 9.1.9 is not an attempt to hold Qwest to a zero outage standard when
7 making changes in its network. Therefore, the Commission should adopt
8 Eschelon’s proposal for Issues 9-33 and 9-33(a). And when Qwest makes
9 changes that are specific to an End User Customer, Qwest should provide
10 sufficient information to inform Eschelon where the changes will occur.
11 Otherwise, Eschelon will be unable to assist its customers when these types of
12 changes are made. The ALJs in the Minnesota arbitration proceeding found that
13 “if this information is readily available, Qwest should provide it[,]” and I have
14 shown that Qwest provides the information Eschelon is requesting to itself – so
15 this Commission should likewise find that Qwest should provide this information
16 to Eschelon. To this end, the Commission should adopt Eschelon’s proposal for
17 Issue 9-34.

Eschelon’s alternative for Issue 9-34 is shown at page 110 of my rebuttal testimony. These alternatives were based on the MN Arbitrators’ report, which was issued on January 10, 2006, after the direct testimony was filed in this proceeding.

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Issue 9-33

**Q. IT APPEARS THAT QWEST'S PRIMARY COMPLAINT⁴⁰⁶ ABOUT
ESCHELON'S PROPOSAL ON ISSUE 9-33 IS THAT THE TERM
"ADVERSELY AFFECT" IS VAGUE AND NOT TIED TO INDUSTRY
STANDARDS.⁴⁰⁷ IS QWEST'S REASONING FLAWED?**

A. Yes. Ms. Stewart claims that there is no legitimate need for Eschelon's "adversely affect" language because Qwest has already agreed that the changes would be "minor" as well as within industry standards.⁴⁰⁸ Because of this, Qwest states that Eschelon should have no concern about whether Qwest's maintenance and modernization activities would adversely affect Eschelon's customers. However, if there was no concern in this regard, then Qwest should have no problem with agreeing to Eschelon's language. Qwest appears to agree with my point⁴⁰⁹ that "minor" changes in transmission parameters should not adversely

⁴⁰⁶ Qwest also claims that Eschelon's language inappropriately focuses on the service quality experienced by Eschelon's End User Customers. Stewart Rebuttal, p. 20, lines 9-15. Eschelon already addressed this issue in its direct testimony (see, Webber Direct (adopted), p. 13) and rebuttal testimony (see, Starkey Rebuttal, pp. 115-115). I explained that the FCC rules contain the very same focus as contained in Eschelon's proposal (*i.e.*, "service quality perceived by the requesting telecommunications carrier's end-user customer.") 47 CFR § 51.316(b). Ms. Stewart also expresses concerns about Eschelon's use of the term "end user customer" at pages 23-24 of her rebuttal testimony, which I already addressed at pages 119-121 of my rebuttal testimony.

⁴⁰⁷ Stewart Rebuttal, pp. 19-20.

⁴⁰⁸ Stewart Rebuttal, p. 19.

⁴⁰⁹ Starkey Rebuttal, p. 106.

1 affect customers whose service is working fine.⁴¹⁰ And that being the case, Qwest
2 should have no objection to making that point clear in the ICA. Qwest's
3 objection to Eschelon's language suggests that Qwest believes that "minor"
4 changes can adversely affect Eschelon's End User Customers.

5 Eschelon is not arguing against the use of industry standards, and in fact, under
6 Eschelon's proposal industry standards would be met.⁴¹¹ Eschelon's language
7 would require the circuit to be both within industry standards and, when it is, also
8 *to work*.⁴¹² Again, Issue 9-33 addresses customers that have working service and
9 should not have that working service interrupted through Qwest's network
10 maintenance and modernization activities – activities that are by Qwest's own
11 admission supposed to be "minor."

12 **Q. MS. STEWART REFERS TO THE "HYPOTHETICAL" AND**
13 **"EXAGGERATED"⁴¹³ NATURE OF YOUR CONCERNS RELATED TO**
14 **QWEST PUTTING ESCHELON'S CUSTOMERS OUT OF SERVICE**
15 **DURING MAINTENANCE OR MODERNIZATION ACTIVITIES.**
16 **WOULD YOU LIKE TO RESPOND?**

⁴¹⁰ See Stewart Rebuttal, p. 19, lines 14-20.

⁴¹¹ See, e.g., closed Section 23 of the ICA ("Network Standards"). See also, ICA Sections 9.2.2.1, 9.2.6, 9.5.2, 9.6.4.5, 12.2.7.2 ("industry standard").

⁴¹² See dB level example, Webber Direct (adopted), pp. 16-21; Exhibit BJJ-21.

⁴¹³ Stewart Rebuttal, p. 18, line 28 and p. 19, line 2.

1 A. Yes. Ms. Stewart does not state that Qwest has never put Eschelon's customers
2 out of service, rather she states that I did not identify any examples of this
3 occurring and that she was personally not aware of any examples. In Ms.
4 Stewart's testimony, she poses the following question: "Has Qwest ever put an
5 Eschelon customer out of service because of network maintenance or
6 modernization activities?"⁴¹⁴ However, she never answers this question with a
7 "yes" or "no." Notably, Qwest has not claimed that it has never put Eschelon's
8 (or other CLECs') customers out of service with its network maintenance and
9 modernization activities, and the dB loss example⁴¹⁵ shows that if Qwest has not
10 already done so, the potential for Qwest doing so exists. The dB loss example
11 also shows that it may be very difficult for Eschelon to determine whether it is
12 Qwest's maintenance and modernization activities that cause service problems for
13 its customers.⁴¹⁶ Eschelon's proposal is needed to make sure that any such
14 adverse effect does not happen going forward.

15 **Q. MS. STEWART CHARACTERIZES YOUR DESCRIPTION OF THE DB**
16 **LOSS EXAMPLE AS "VAGUE"⁴¹⁷ AND CLAIMS THAT THIS SINGLE**
17 **EXAMPLE "HARDLY JUSTIFIES THE CONCLUSION THAT**

⁴¹⁴ Stewart Rebuttal, p. 18, lines 21-23.

⁴¹⁵ Webber Direct (adopted), pp. 16-21; Exhibit BJJ-21.

⁴¹⁶ Qwest only revealed its new policy related to dB settings after Eschelon brought examples of service problems to Qwest's attention.

⁴¹⁷ Stewart Rebuttal, p. 21, line 7.

1 **COMPLIANCE WITH INDUSTRY STANDARDS IS IRRELEVANT...**⁴¹⁸

2 **WOULD YOU LIKE TO RESPOND?**

3 A. Yes. Ms. Stewart's testimony is inaccurate and misleading. With respect to Ms.
4 Stewart's claim that my description of the dB loss example is "vague," one only
5 needs to review my description of the dB loss example⁴¹⁹ and the supporting
6 documentation Eschelon provided as Exhibit BJJ-21 to the direct testimony of
7 Ms. Johnson (and the description of this exhibit in Ms. Johnson's testimony),⁴²⁰ to
8 understand that there is no substance to Ms. Stewart's complaint. For instance,
9 Eschelon dedicated about five pages of testimony to describing this example (*see*
10 Webber Direct (adopted), pp. 16-21), where Eschelon: (1) explained the Eschelon
11 business issue behind the dB loss example,⁴²¹ (2) provided background
12 information on the example,⁴²² (3) described the applicable standard,⁴²³ (4)
13 explained the source of the problem,⁴²⁴ (5) explained how Eschelon learned of
14 Qwest's network maintenance and modernization policy to reset dB settings,⁴²⁵
15 (6) quoted directly from a Qwest email for the source of the network maintenance

⁴¹⁸ Stewart Rebuttal, p. 21, lines 22-24. *See also*, Stewart Rebuttal, p. 21, lines 10-15 ("According to Mr. Webber, the fact that the circuits allegedly were non-working even though they met industry standards for db loss demonstrates that industry standards are of limited utility in measuring performance. This claim ignores the long-standing importance of industry standards for establishing performance and quality expectations and for measuring performance.")

⁴¹⁹ *See* Webber Direct (adopted), pp. 16-21.

⁴²⁰ Johnson Direct, p. 21.

⁴²¹ Webber Direct (adopted), p. 17, lines 7-10.

⁴²² Webber Direct (adopted), pp. 17-20.

⁴²³ Webber Direct (adopted), p. 17, lines 10-11 and footnote 13.

⁴²⁴ Webber Direct (adopted), p. 18.

⁴²⁵ Webber Direct (adopted), pp. 18-19.

1 and modernization policy,⁴²⁶ and (7) explained why the dB loss example supports
2 Eschelon's proposal.⁴²⁷ In addition, Eschelon provided a ten page exhibit
3 (Exhibit BJJ-21) consisting of emails and a letter between Qwest and Eschelon
4 addressing the dB loss problem. These are accurate and correct copies of the
5 correspondence, and they show that the description and quotes related to the dB
6 loss example in my testimony are accurate. Furthermore, Eschelon provided the
7 facts of this example to Qwest in ICA negotiations. I don't know what else
8 Eschelon could have provided to clear this issue up for Ms. Stewart, and she does
9 not point to any information that Eschelon omitted from its testimony and exhibits
10 related to the dB loss example. The bottom line is that this example shows that
11 Qwest will defend a non-working circuit as being acceptable, within transmission
12 limits, and meeting the ICA, even when the circuit does not work – when another
13 setting also within industry standard would both meet the standard and work.

14 **Q. DID YOU CONCLUDE THAT COMPLIANCE WITH INDUSTRY**
15 **STANDARDS IS "IRRELEVANT" OR OF "LIMITED UTILITY," AS MS.**
16 **STEWART CLAIMS?⁴²⁸**

17 **A.** No. My conclusion is that Qwest should provide circuits to Eschelon that are
18 both within industry standards *and* work,⁴²⁹ and the ICA should recognize this

⁴²⁶ Webber Direct (adopted), p. 18, line 18 – p. 19, line 2, citing Qwest email to Eschelon 10/21/04, Exhibit BJJ-21, p. 1.

⁴²⁷ Webber Direct (adopted), pp. 19-20.

⁴²⁸ Stewart Rebuttal, p. 21, line 23 and line 12.

1 point. Obviously, industry standards are important – primarily because they result
2 in working service to customers – and Eschelon is neither attempting to ignore
3 those standards,⁴³⁰ nor asking Qwest to provide service outside of those
4 standards.⁴³¹

5 In the dB loss example, the applicable industry standard was a range of between -
6 16.5 and 0,⁴³² not a specific number (-7.5, for example) – because service will
7 work somewhere within that range, but, based on certain factors, may not work at
8 all points within that range.⁴³³ It was Qwest’s network maintenance and
9 modernization policy⁴³⁴ that pegged the number at -7.5 to move “the network over
10 time to a default setting of -7.5.”⁴³⁵ However, the -7.5 default selected by Qwest
11 is not the industry standard, and it results in loops not working in some instances.
12 Therefore, it was Qwest who was ignoring the industry standard range through its
13 network maintenance and modernization policy.

⁴²⁹ Webber Direct (adopted), p. 20. The point is that the circuit should both meet industry standards and work.

⁴³⁰ See, e.g., closed Section 23 of the ICA (“Network Standards”). See also, ICA Sections 9.2.2.1, 9.2.6, 9.5.2, 9.6.4.5, 12.2.7.2 (“industry standard”).

⁴³¹ Webber Direct (adopted), pp. 20-21.

⁴³² Webber Direct (adopted), p. 17, footnote 13.

⁴³³ Webber Direct (adopted), p. 17.

⁴³⁴ Eschelon addressed Ms. Stewart’s claim that this is an installation issue and not a network maintenance and modernization issue (Stewart Rebuttal, p. 21, lines 15-17). See Webber Direct (adopted), pp. 19-20.

⁴³⁵ See Webber Direct (adopted), p. 19, lines 1-2, citing Qwest email to Eschelon 10/21/04, Exhibit BJJ-21, p. 1.

1 **Q. MS. STEWART STATES THAT ESCHELON'S OPTION #3 FOR ISSUE 9-**
2 **33 (SHOWN AT PAGE 109 OF MY REBUTTAL TESTIMONY) DOES**
3 **NOT ELIMINATE QWEST'S CONCERNS.⁴³⁶ PLEASE COMMENT.**

4 A. Ms. Stewart's criticisms of Eschelon's option #3 are largely duplicative of its
5 criticisms of Eschelon's other options. She claims that the language is vague and
6 not tied to industry standards. I incorporate my previous responses on these
7 issues here and will not repeat them. Notably, however, Eschelon's option #3 was
8 crafted based on the Department of Commerce's recommendation in Minnesota
9 and proposed to Qwest in the spirit of compromise. Despite Eschelon's attempts
10 to resolve these issues by proposing alternatives that address Qwest's stated
11 concerns (such as option #3 which is based on the recommendation of an
12 independent third party) that address Qwest's stated concerns, Qwest dismisses
13 them with nebulous concerns (e.g., they are "vague") and makes no attempt to
14 propose counter language.

15 **Q. YOU STATE THAT ESCHELON'S OPTION #3 FOR ISSUE 9-33 IS**
16 **BASED ON THE DEPARTMENT OF COMMERCE'S**
17 **RECOMMENDATION IN MINNESOTA - A RECOMMENDATION**
18 **THAT MS. STEWART HAS CHARACTERIZED IN HER REBUTTAL**
19 **TESTIMONY AS "VAGUE" AND "OVER REACHING." WHAT DID**

⁴³⁶ Stewart Rebuttal, pp. 22-23.

1 **THE ALJS CONCLUDE ABOUT THIS RECOMMENDATION IN THE**
2 **MINNESOTA ARBITRATION PROCEEDING?**

3 A. The ALJs in Minnesota adopted this language for Issue 9-33 and rejected the
4 concerns Qwest raised about the language – the same concerns Ms. Stewart raises
5 here. The Minnesota Arbitrators’ Report states (at paragraph 142) that, “The
6 Department’s recommended language should be adopted. It appears to balance
7 the reasonable needs of both parties in an even-handed manner.” And to Ms.
8 Stewart’s claim that the reference to “unacceptable” in option #3 is vague and not
9 tied to industry standards,⁴³⁷ the Minnesota ALJs state, “The reference to
10 correcting transmission quality to ‘an acceptable level’ does not, as Qwest argues,
11 make this language unacceptably vague. The language merely commits Qwest to
12 taking action to restore transmission quality to that which existed before the
13 network change.”

14 **Issue 9-33(a)**

15 **Q. MS. STEWART CLAIMS THAT ESCHELON’S PROPOSAL “CREATES**
16 **THE INACCURATE IMPRESSION THAT THE RETIREMENT OF**
17 **COPPER LOOPS IS ADDRESSED ONLY IN SECTION 9.2.1.2.3.”⁴³⁸**
18 **WOULD YOU LIKE TO RESPOND?**

19 A. Yes. Eschelon’s proposed language for Issue 9-33(a) in Section 9.1.9 states:
20 “This Section 9.1.9 does not address retirement of copper Loops or Subloops (as

⁴³⁷ Stewart Rebuttal, p. 22.

⁴³⁸ Stewart Rebuttal, p. 25, lines 9-10 and lines 20-22.

1 that phrase is defined in Section 9.2.1.2.3) See Section 9.2.1.2.3.” This language
2 simply makes clear that 9.1.9 does not address copper retirement. Contrary to
3 Ms. Stewart’s testimony, Eschelon’s language for 9.1.9 says nothing about the
4 scope of the ICA that applies to copper retirement, and only references 9.2.1.2.3
5 to point the reader to the definition of copper retirement. Simply put, no
6 reasonable reading of this language would leave the impression that Ms. Stewart
7 discusses in her testimony. It is ironic that Ms. Stewart would criticize
8 Eschelon’s language for 9-33(a) for attempting to govern copper retirement
9 because the entire purpose of Eschelon’s language for 9-33(a) is to make clear
10 that 9.1.9 excludes copper retirement and applies only to “minor” changes in
11 transmission parameters. It is Qwest who is proposing language that leaves the
12 inaccurate impression that 9.1.9 addresses copper retirement.⁴³⁹ Notably, out of
13 all the sections of the ICA that Ms. Stewart claims apply to copper retirement
14 (see, Stewart Rebuttal, p. 25, lines 10-16), she does not reference Section 9.1.9.
15 Yet, Qwest opposes Eschelon’s language making clear that 9.1.9 does not address
16 copper retirement in favor of language that could be interpreted as if it does.
17 Eschelon’s language is clearer and would avoid future disputes.

18 **Q. MS. STEWART CLAIMS THAT ESCHELON’S LANGUAGE COULD**
19 **CREATE CONFUSION AND LEAD TO FUTURE DISPUTES THAT**
20 **COULD BE AVOIDED, PRESUMABLY BY ADOPTING QWEST’S**

⁴³⁹ Starkey Rebuttal, pp. 121-122.

1 **LANGUAGE.⁴⁴⁰ DID THE ALJS IN THE MINNESOTA ARBITRATION**
2 **REJECT QWEST'S CLAIM THAT ITS PROPOSAL IS CLEARER?**

3 A. Yes. The Minnesota Arbitrators' Report in the companion Minnesota arbitration
4 proceeding states:

5 Because the parties previously agreed to language that takes
6 retirement of copper loops and subloops entirely out of Section
7 9.1.9, and because Qwest's proposed language might be read to
8 take it out of Section 9.1.9 only if such retirements involve more
9 than minor changes to transmission parameters, the
10 Administrative Law Judges recommend use of Eschelon's
11 language to eliminate any ambiguity.⁴⁴¹

12 **Issue 9-34**

13 **Q. MS. STEWART STATES THAT "LOCATION" REFERRED TO BY THE**
14 **FCC IN RULE 51.327 MEANS THE PLACE IN THE NETWORK WHERE**
15 **THE CHANGE WILL TAKE PLACE RATHER THAN THE**
16 **CUSTOMER'S PREMISES.⁴⁴² DO YOU READ RULE 51.327 THE SAME**
17 **WAY?**

18 A. No. There are at least two points to be made here. First of all, Eschelon's
19 language only requires Circuit ID and customer address information when the
20 change is "specific to an End User Customer." As a result, the location at which
21 the change takes place should identify the location of the End User Customer to
22 be affected. If a change is not specific to an End User Customer, as in the case of

⁴⁴⁰ Stewart Rebuttal, p. 25, lines 18-23.

⁴⁴¹ MN Arbitrators' Report, ¶147. (emphasis added)

⁴⁴² Stewart Rebuttal, p. 26.

1 a dialing plan change for example, the circuit ID and customer address
2 information would not be needed to determine the “location” at which the changes
3 are taking place, and would not be required under Eschelon’s proposal. Ms.
4 Stewart ignores that Eschelon’s requirement would only apply in narrow
5 circumstances.

6 Second, FCC Rule 51.327 is not meant to be all-inclusive (“Public notice of
7 planned network changes must, at a minimum, include...”).⁴⁴³ Therefore, just
8 because Rule 51.327 does not expressly say that change notices that are specific
9 to an End User Customer must include Circuit ID and customer address
10 information, this does not mean that Qwest should not provide it. The FCC
11 obviously included the words “at a minimum” to allow supplementing the
12 information to be required for these notices. And I have already shown that
13 requiring this information in these narrow circumstances gives meaning to the
14 FCC’s rules.⁴⁴⁴ So, contrary to Ms. Stewart’s insinuation,⁴⁴⁵ I am not reading
15 anything into the FCC’s rule that is not there.

16 **Q. MS. STEWART NOTES THAT THE COMMISSION HAS FOUND**
17 **QWEST’S NOTICES TO COMPLY WITH THE FCC’S RULES IN A**
18 **RECENT COVAD ARBITRATION.⁴⁴⁶ SHOULD THAT RULING GUIDE**

⁴⁴³ Webber Direct (adopted), p. 23.

⁴⁴⁴ Webber Direct (adopted), pp. 24-25.

⁴⁴⁵ Stewart Rebuttal, p. 26.

⁴⁴⁶ Stewart Rebuttal, pp. 26-27.

1 **THE COMMISSION’S DECISION ON ISSUE 9-34?**

2 A. No, that decision applies to copper retirement situations, and copper retirement
3 has been carved out of Eschelon’s proposal and is addressed elsewhere in the
4 ICA. *See* Section 9.2.1.2.3.

5 In addition, as I explained at pages 26-27 of my rebuttal testimony, Qwest
6 provides the requested information to itself (as demonstrated by Exhibit JW-2),
7 and should, therefore, provide it to Eschelon. Qwest does not explain whether the
8 Commission had this information in the record in the Covad case.⁴⁴⁷ In any event,
9 the Commission’s decision in the Covad case relates to copper retirement, which
10 is not addressed under Issue 9-34 and is addressed in another section of the ICA.

11 **Q. MS. STEWART CLAIMS THAT ESCHELON’S PROPOSAL WOULD**
12 **“FORCE QWEST TO RESEARCH THIS INFORMATION – WHICH**
13 **WOULD HAVE TO BE DONE MANUALLY...”⁴⁴⁸ IS MS. STEWART’S**
14 **CLAIM SUPPORTED BY THE RECORD?**

15 A. No. I provided Exhibit JW-2, which shows that Qwest already collects this
16 information (both circuit ID and customer address information) for CLEC circuits
17 that are impacted by network changes. This means that Eschelon’s proposal
18 would not require any work of Qwest because Qwest is already collecting the
19 information. Qwest would only need to share this information with Eschelon – as

⁴⁴⁷ As indicated in Exhibit JW-2, Eschelon only received this information because Qwest provided it in error. Exhibit JW-2, p. 3.

⁴⁴⁸ Stewart Rebuttal, p. 27, lines 24-25.

1 it did (apparently in error)⁴⁴⁹ in the case of Exhibit JW-2.⁴⁵⁰ The Minnesota
2 Arbitrators' Report found that "if this information is readily available, Qwest
3 should provide it."⁴⁵¹ Exhibit JW-2 shows that this information is readily
4 available to Qwest, so Qwest should provide it to Eschelon.

5 **Q. MS. STEWART CRITICIZES ESCHELON'S OPTION #2 FOR ISSUE 9-34**
6 **(SHOWN AT PAGE 110 OF MY REBUTTAL TESTIMONY) AND**
7 **STATES THAT ESCHELON'S ALTERNATIVE DOES NOT ELIMINATE**
8 **QWEST'S CONCERN. WOULD YOU LIKE TO COMMENT?**

9 A. Yes. Eschelon's option #2 for Issue 9-34 is based on the Department of
10 Commerce's recommendation in the Minnesota arbitration proceeding and has
11 been offered by Eschelon in the spirit of compromise to resolve Issue 9-34. The
12 ALJs in the Minnesota proceeding have recommended adoption of the
13 Department's language to resolve Issue 9-34, and as discussed above, have found
14 that if the information is readily available, Qwest should provide it. Ms. Stewart
15 claims that Eschelon's option #2 shifts the burden of determining circuit IDs from
16 Eschelon to Qwest,⁴⁵² but as the language in option #2 indicates, this information
17 would be provided "if readily available." If the information is readily available,
18 as Exhibit JW-2 indicates, then there is no burden being imposed on Qwest –

⁴⁴⁹ Exhibit JW-3, p. 3.

⁴⁵⁰ Webber Direct (adopted), p. 28, citing Section 251 of the Act and 47 CFR § 51.313(b).

⁴⁵¹ MN Arbitrators' Report, ¶153.

⁴⁵² Stewart Rebuttal, p. 28, lines 12-14.

1 rather it's a matter of passing this information along to Eschelon. Ms. Stewart
2 also raises the issue of an area code split, which as I have explained at pages 111
3 and 123-124 of my rebuttal testimony, is a red herring and not a change "specific
4 to an End User Customer" that would be covered under Issue 9-34.

5 **VIII. SUBJECT MATTER NO. 18. CONVERSIONS**

6 *Issue Nos. 9-43 and 9-44 and subparts: ICA Sections 9.1.15.2.3; 9.1.15.3 and*
7 *subparts; 9.1.15.3.1; 9.1.15.3.1.1; 9.1.15.3.1.2*

8 **Q. ISSUES 9-43 AND 9-44 AND SUBPARTS RELATE TO CONVERSIONS**
9 **FROM UNES TO ALTERNATIVE/ANALOGOUS SERVICES DUE TO A**
10 **FINDING OF NON-IMPAIRMENT. SHOULD THESE CONVERSIONS**
11 **INVOLVE PHYSICAL WORK THAT COULD NEGATIVELY AFFECT**
12 **ESCHELON'S BUSINESS AND END USER CUSTOMERS?**

13 **A.** No. According to the FCC's rules and orders, conversions should be "seamless"
14 to the End User Customer, should amount to largely a billing function, and
15 should, therefore, not negatively affect Eschelon's business or the service quality
16 perceived by Eschelon's End User Customers. However, Qwest ignores the
17 FCC's decisions on conversions, and instead asks the Commission to exclude
18 language from the ICA on conversions so that Qwest can impose its onerous and
19 potentially service-affecting APOT "procedure" for conversions that Qwest
20 developed unilaterally outside of negotiation/arbitration and outside of CMP.
21 Qwest's non-proposal should be rejected.

1 Rather, the ICA language should preserve the FCC's conclusions regarding
2 conversions, and should ensure that service quality to Eschelon's End User
3 Customers is not disrupted – especially since a “conversion” should be a simple
4 records change and Qwest's customers do not face any risk associated with
5 conversions. Eschelon's proposal for Issues 9-43 and 9-44 and subparts
6 accomplishes this objective by keeping circuit IDs assigned to the facility the
7 same during conversions (Issue 9-43) and identifying a conversion as a billing
8 records change, just as the FCC has referred to it (Issues 9-44 and subparts). In
9 addition to discussing these issues in my previous testimony,⁴⁵³ I also discuss
10 aspects of this issue in the Secret TRRO PCAT example.

⁴⁵³ Starkey Direct, pp. 145-171; Starkey Rebuttal, pp. 125-137. Ms. Million testifies that the repricing for QPP is different than repricing facilities that were UNEs prior to a conversion. Million Rebuttal, pp. 15-17. I addressed this argument at pages 134-135 my rebuttal testimony. The fact of the matter is that in the QPP scenario, Qwest is no longer required to provide UNE-P at TELRIC rates and has effectuated this regulatory change through a price change via USOCs to bill the difference between the UNE rates associated with UNE-P to new non-UNE rates associated with QPP. This is the same thing that is occurring in a conversion – that is, if Qwest is no longer required to provide a UNE loop at TELRIC rates (because of a finding of non-impairment), a price change must be effectuated to change from the non-UNE rates associated with the UNE loop to non-UNE rates associated with the alternative/analogous service. According to Ms. Million's account, Qwest chose to “voluntarily” create a new product QPP in order to effectuate the regulatory change associated with UNE-P, which allowed these price changes to take place via USOCs. This “voluntary” decision was made without any FCC rules or orders requiring Qwest to create the QPP product. However, when it comes to conversions, Qwest ignores clear FCC rules and orders requiring conversions to be effectuated via price changes, and instead of working with CLECs to convert circuits found to be non-impaired (as Qwest claims it did in the case of UNE-P/QPP) in a seamless fashion, attempts to make conversions manually-intensive and costly. Even if Qwest experienced difficulty in the past keeping circuit IDs the same during conversions (Million Rebuttal, p. 12), this does not justify Qwest ignoring the FCC's rules and orders that require conversions to be performed in a seamless manner via largely a billing change. The fact that Qwest has effectuated price changes for QPP via USOCs and the fact that Qwest actually performed conversions in the past without changing circuit IDs shows that Qwest can, in fact, convert circuits without changing circuit IDs, but has simply chosen not to, opting instead to unilaterally create a conversion “procedure” outside of ICA negotiation/arbitration and outside of CMP that does not comply with the FCC's rules.

1 Q. MS. MILLION TESTIFIES THAT CONTRARY TO YOUR CLAIM AT
2 PAGE 166 OF YOUR DIRECT TESTIMONY, QWEST INCURS COSTS
3 TO PERFORM CONVERSIONS AND SHOULD BE ALLOWED TO
4 ASSESS A TARIFF RATE FOR THESE CONVERSIONS.⁴⁵⁴ PLEASE
5 RESPOND.

6 A. Ms. Million points to the word “untariffed” in FCC rule 51.316(c) and suggests
7 that this means that the FCC concluded that ILECs can assess a “tariffed”
8 conversion NRC. Ms. Million’s claim is misguided for a number of reasons.
9 First, Ms. Million is misreading the FCC’s rule. FCC Rule 51.316(c) states in its
10 entirety:

11 c) Except as agreed to by the parties, an incumbent LEC shall not
12 impose any untariffed termination charges, or any disconnect fees,
13 re-connect fees, or charges associated with establishing a service
14 for the first time, in connection with any conversion between a
15 wholesale service or group of wholesale services and an unbundled
16 network element or combination of unbundled network elements.

17 As this language shows, the FCC prohibits ILECs from assessing “any untariffed
18 termination charges” as well as any – not just untariffed – disconnect and
19 reconnect fees or any other charges associated with establishing service for the
20 first time. Ms. Million’s testimony makes it appear as if the FCC allowed
21 conversion charges so long as they were tariffed. However, what the FCC
22 actually did was prohibit all conversion charges, *except for* tariffed termination
23 charges. The FCC explained at paragraph 587 of the *TRO* that this exception

⁴⁵⁴ Million Rebuttal, p. 14.

1 applies to tariffed early termination charges. The FCC found that CLECs cannot
2 dissolve a long-term contract it entered into to receive discounted prices for
3 access services and avoid the tariffed early termination charges by converting
4 access circuits to UNEs.⁴⁵⁵ Other than this limited exception – which does not
5 even apply to Issues 9-43 and 9-44⁴⁵⁶ – the FCC prohibits the ILEC from charging
6 CLECs for conversions because “incumbent LECs are never required to perform a
7 conversion in order to continue serving their own customers” and because these
8 charges “are inconsistent with an incumbent LEC’s duty to provide
9 nondiscriminatory access to UNEs and UNE combinations on just, reasonable,
10 and nondiscriminatory rates, terms and conditions.”⁴⁵⁷

11 Second, if the FCC’s order says what Ms. Million claims it says (which it does
12 not), Qwest should be seeking to assess a tariff charge for conversions (which she
13 claims is allowed under the FCC’s rules). However, Qwest is not seeking to
14 apply a tariff charge to conversions; rather, Qwest’s proposed conversion charge
15 is based on rates “contained in other CLECs’ ICAs”⁴⁵⁸ In other words, even if
16 Ms. Million’ interpretation of the FCC’s rule were correct and Qwest were
17 allowed to charge for conversions via a tariff charge, this is not Qwest’s proposal.

⁴⁵⁵ *TRO*, ¶ 587.

⁴⁵⁶ The conversions discussed under Issues 9-43 and 9-44 involve conversions from UNEs to alternative/analogous services (e.g., access product), not from access products to UNEs. Therefore, the issue of tariffed early termination charges associated with Qwest’s access products does not apply here.

⁴⁵⁷ *TRO*, ¶ 587.

⁴⁵⁸ Million Direct, p. 21, line 17.

1 Finally, Qwest is envisioning a different and much more manually-intensive
2 “conversion” than what the FCC requires in its rules and orders, and then claims
3 that Eschelon is attempting to keep Qwest from recovering its costs for this
4 additional work. However, if Qwest simply performs conversions as the FCC
5 requires, Qwest would not be performing additional work or incurring additional
6 costs. The answer is to remain true to the conversion process in the FCC’s rules
7 and order.

8 **Q. MS. MILLION STATES THAT “THE PROCESS THAT QWEST HAS**
9 **ESTABLISHED FOR CONVERTING UNE CIRCUITS TO PRIVATE**
10 **LINES IS SPECIFICALLY DESIGNED TO *ENSURE* THAT THE**
11 **CONVERSION IS TRANSPARENT TO BOTH THE END-USER**
12 **CUSTOMER AND THE CLEC...”⁴⁵⁹ AND THAT “THIS PARTICULAR**
13 **PROCESS COMES WITH A COST.”⁴⁶⁰ DO YOU HAVE CONCERNS**
14 **WITH HER TESTIMONY ON THIS POINT?**

15 **A.** Yes. It is important to point out that Ms. Million acknowledges that the process
16 she is referring to for conversions (*i.e.*, the APOTs procedure)⁴⁶¹ was established
17 by Qwest – and as a result, neither CLECs nor the Commission had any input into
18 its development. In fact, Qwest refused to negotiate this issue with Eschelon,

⁴⁵⁹ Million Rebuttal, p. 9.

⁴⁶⁰ Million Rebuttal, p. 9.

⁴⁶¹ Starkey Direct, pp. 146-151.

1 instead telling Eschelon that this should be addressed in CMP despite the fact that
2 Qwest was not using CMP to establish the process.⁴⁶²

3 In addition, Ms. Million's claim that Qwest established a conversion procedure –
4 one that by Ms. Million's own admission "interjects manual processes" and
5 "comes with a cost" – so that conversions would be transparent to CLECs and
6 their customers does not make sense.⁴⁶³ Interjecting manual processes and
7 increasing costs for conversions (not to mention the "freeze" on the facilities
8 required by Qwest's APOT procedure)⁴⁶⁴ is not indicative of an attempt to make
9 conversions transparent, as Ms. Million claims and as the FCC's rules require.
10 Then, Ms. Million adds insult to injury by claiming that the conversion procedure
11 unilaterally established by Qwest "comes with a cost." Following Ms. Million's
12 reasoning, Qwest should be allowed to set the rules regarding conversions
13 (despite FCC rules to the contrary) and then CLECs should be required to fork
14 over a blank check to cover the costs that Qwest imposes on CLECs through this
15 procedure. Other state commissions have found that conversions are within the

⁴⁶² Starkey Direct, p. 150, footnote 203, citing email from Kathleen Salverda (Qwest), dated 9/6/06. Qwest's refusal to negotiate this issue flies in the face of the FCC's *TRO*, which states that "as contemplated by the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of our rules." Starkey Direct, p. 154, citing *TRO*, pp. 14-15.

⁴⁶³ I responded to Ms. Million's claim that Qwest has performed 500 conversions without complaints at pages 133-134, footnote 326 of my rebuttal testimony. I also responded to Ms. Million's testimony about the *TRRO* transition period (Million Rebuttal, p. 13) at pages 135-137 of my rebuttal testimony.

⁴⁶⁴ Starkey Direct, pp. 77 and 148.

1 scope of Sections 251/252.⁴⁶⁵ The FCC has already established the ground rules
2 for conversions and conversion charges, and this authority does not grant Qwest
3 the latitude it is seeking to develop conversion procedures on its own and charge
4 CLECs for them.

5 **Q. MS. MILLION STATES THAT CONVERSIONS SHOULD BE**
6 **ADDRESSED IN A SEPARATE COST PROCEEDING.⁴⁶⁶ WOULD YOU**
7 **LIKE TO COMMENT?**

8 A. Yes. I find it ironic that Ms. Million would now advocate that the Commission
9 punt this issue to another Commission docket when it is Qwest who has
10 developed a conversion “procedure” on its own outside of a Commission docket
11 and outside of CMP, a procedure that Qwest is now calling its “existing
12 product”⁴⁶⁷ for conversions. This is also inconsistent with Qwest’s prior
13 statement that this is “best managed through CMP.”⁴⁶⁸ Now that Qwest has
14 developed this “existing product” without input from the Commission or CLECs,
15 and Eschelon has expended the money and resources to arbitrate the issue in this
16 case, Qwest now appears willing to address conversions in a Commission
17 proceeding (just not this Commission proceeding), and will undoubtedly argue

⁴⁶⁵ Starkey Direct, p. 154, citing Washington ALJ Report, ¶ 150.

⁴⁶⁶ Million Rebuttal, pp. 3-4.

⁴⁶⁷ Million Rebuttal, p. 10, line 16.

⁴⁶⁸ Starkey Direct, p. 150, footnote 203, citing email from Kathleen Salverda (Qwest), dated 9/6/06.

1 that any changes to this “existing product” will cause costs and be too time-
2 consuming.

3 **IX. SUBJECT MATTER NO. 24. LOOP-TRANSPORT COMBINATIONS**

4 Issue No. 9-55: ICA Sections 9.23.4; 9.23.4.4; 9.23.4.4.1; 9.23.4.5; 9.23.4.6;
5 9.23.4.5.4

6 **Q. PLEASE SUMMARIZE ISSUE 9-55 RELATING TO LOOP TRANSPORT**
7 **COMBINATIONS.**

8 A. At least one component of a Loop Transport Combination is a UNE, and as a
9 result, Loop Transport Combinations should be referenced in Section 9 of the ICA
10 (UNEs). This is important so that the ICA recognizes that the UNE component of
11 the Loop Transport Combination is governed by the ICA (and Section 9 of the
12 ICA) even when that UNE is commingled with a non-UNE component. At the
13 same time, the ICA is very clear about how non-UNE components of a Loop
14 Transport combination are to be treated. To this end, Eschelon proposes to define
15 the term Loop-Transport Combinations in the ICA and refer to Loop Transport
16 Combinations in Section 9 (UNEs). Qwest proposes to exclude these references
17 from the ICA and limit references in Section 9 to only one type of Loop Transport
18 Combinations – EELs. The problem with Qwest’s proposal is that it raises the
19 question of how UNEs in a commingled Loop Transport Combination are to be
20 treated and leaves the door open for Qwest to subject these UNEs to terms and
21 conditions of its tariffs.

1 Q. QWEST CLAIMS THAT CONFUSION WOULD RESULT BY DEFINING
2 THE TERM "LOOP-TRANSPORT" TO INCLUDE THREE
3 OFFERINGS.⁴⁶⁹ IS QWEST'S PURPORTED CONCERN ABOUT
4 CONFUSION WARRANTED?

5 A. No. I addressed this issue at pages 145-146 of my rebuttal testimony. Though
6 Ms. Stewart refers to "confusion" no fewer than five⁴⁷⁰ times in her rebuttal
7 testimony as it relates to Eschelon's proposal for Issue 9-55, she provides no
8 substance to back up these claims. The closest that Ms. Stewart comes to
9 identifying any confusion that would allegedly reign is her focus on the last
10 portion of Eschelon's language for 9.23.4, which according to Ms. Stewart, is an
11 attempt by Eschelon to govern non-UNEs in Section 9 of the ICA.⁴⁷¹ However,
12 Ms. Stewart quotes the wrong language for Eschelon's proposed Section 9.23.4.
13 To address the very concern Ms. Stewart raises in her rebuttal testimony,
14 Eschelon added to its language for Section 9.23.4 a reference to Section 24.1.2.1
15 of the ICA that addresses how non-UNE portions of a commingled Loop
16 Transport combination are to be treated. The language in Section 24.1.2.1 makes
17 clear that non-UNE components of any commingled arrangement are "governed
18 by the terms of the alternative service arrangement..."⁴⁷² Even without

⁴⁶⁹ See, e.g., Stewart Rebuttal, p. 52, lines 8-10.

⁴⁷⁰ Stewart Rebuttal, p. 46, line 25; p. 48, lines 9 and 17; p. 51, line 14; and p. 52, line 8.

⁴⁷¹ Stewart Rebuttal, p. 49.

⁴⁷² The Minnesota Arbitrator's Report concludes that Qwest's language should be adopted for Issue 9-55 (MN Arbitrators' Report, ¶176) because Eschelon's "language would permit the inference that if any part of a combination is a UNE, the entire combination would be covered by the ICA."

1 Eschelon's added clarification in 9.23.4 that references 24.1.2.1, Qwest's concern
2 that Eschelon's language would govern non-UNEs in Section 9 would be
3 unjustified because 24.1.2.1 explains precisely how non-UNEs in a commingled
4 arrangement are to be treated. But now that Eschelon added the reference to
5 24.1.2.1 in Section 9.23.4, Qwest certainly cannot convincingly argue that
6 Eschelon's language for 9.23.4 would govern non-UNEs in Section 9 of the ICA.

7 In addition, Ms. Stewart is reading too much into Eschelon's language. Note that
8 Ms. Stewart testifies that Eschelon's language *implies* that non-UNE components
9 would be governed by the ICA.⁴⁷³ She must use the word "implies" because that
10 is not what Eschelon's language actually *says*. Eschelon's language in 9.23.4
11 says three things about components of a Loop Transport Combination: (1) if no
12 component is a UNE, the ICA does not govern the combination, (2) UNE
13 components of a Loop-Transport combination are governed by the ICA, and (3)
14 further clarification is provided in 24.1.2.1, which explains that non-UNE
15 components are governed by the alternative service arrangement, and not the ICA.
16 Nowhere in 9.23.4 does it say that the ICA governs non-UNE components, nor
17 does Eschelon's proposed language, reasonably read, imply that is the case –
18 especially with the added reference to Section 24.1.2.1. As a result, there is no
19 basis for Ms. Stewart's concerns about having the entire commingled arrangement

However, Eschelon added the reference to Section 24 in its proposed Section 9.23.4 to address this very issue. Based on this clarification, Eschelon's language cannot be read to imply that the entire commingled circuit would be governed by Section 9.23.4.

⁴⁷³ Stewart Rebuttal, p. 49, line 11.

1 (not just the UNE circuit) governed by the ICA, nor is there any basis for Ms.
2 Stewart's claim that Eschelon's proposal "goes way beyond, and is not consistent
3 with the Eschelon stated objectives..."⁴⁷⁴ According to Ms. Stewart, Eschelon's
4 stated objective is to ensure that only the UNE components of the Loop Transport
5 Combination are subject to the ICA,⁴⁷⁵ and that is precisely what Eschelon's
6 language for Section 9.23.4 does.

7 **Q. MS. STEWART EXPRESSES CONCERNS ABOUT "HAVING THE**
8 **ENTIRE COMMINGLED ARRANGEMENT (NOT JUST THE UNE**
9 **CIRCUIT) GOVERNED BY THE ICA UNDER ESCHELON'S LOOP**
10 **TRANSPORT UMBRELLA TERM."**⁴⁷⁶ **ARE MS. STEWART'S**
11 **CONCERNS WARRANTED?**

12 A. No. As I explain above, Eschelon's proposal clearly distinguishes between UNE
13 and non-UNE components of a Loop Transport Combination and there is nothing
14 in Eschelon's language that could be read as an attempt to govern non-UNEs by
15 Section 9 (UNEs) of the ICA. Eschelon's language in Section 9.23.4 contains a
16 cross reference to Section 24.1.2.1, which expressly states in closed language that
17 the non-UNE component is "governed by the terms of the alternative service
18 arrangement pursuant to which that component is offered (e.g., Qwest's
19 applicable Tariffs, price lists, catalogs, or commercial agreements)." Given that

⁴⁷⁴ Stewart Rebuttal, p. 47, lines 13-14.

⁴⁷⁵ Stewart Rebuttal, p. 47, lines 4-10.

⁴⁷⁶ Stewart Rebuttal, pp. 49-50.

1 Eschelon's proposal would not govern non-UNEs by the ICA, the concerns that
2 Ms. Stewart raises⁴⁷⁷ are actually non-issues.⁴⁷⁸

3 **Q. MS. STEWART STATES THAT YOU HAVE PROVIDED NO SUPPORT**
4 **FOR YOUR CLAIM THAT QWEST HAS ATTEMPTED TO HAVE**
5 **ACCESS TO UNES DICTATED BY ITS ACCESS TARIFFS.⁴⁷⁹ IS THIS**
6 **TRUE?**

7 A. No. I provided examples of this at pages 143-144 of my rebuttal testimony.⁴⁸⁰
8 One example is Qwest's attempt to apply tariff rates to activities related to
9 nondiscriminatory access to UNEs.⁴⁸¹ Another example is Mr. Denney's
10 discussion of intervals for commingled arrangements under Issue 9-58(e).⁴⁸² I
11 also provided an example of Qwest attempting to subject UNEs to other non-ICA,
12 non-CMP terms and conditions, as in the case of Qwest's non-CMP notice related
13 to the APOT procedure for conversions.⁴⁸³

⁴⁷⁷ Stewart Rebuttal, pp. 59-60.

⁴⁷⁸ Mr. Denney addresses Ms. Stewart's claims regarding a single LSR and CRIS billing in his testimony. *See* Denney Rebuttal, pp. 83 and 87.

⁴⁷⁹ Stewart Rebuttal, p. 50, lines 22-23.

⁴⁸⁰ *See also* Starkey Direct, pp. 172-173.

⁴⁸¹ *See* Starkey Direct, pp. 136-137 and Starkey Rebuttal, pp. 85-86. *See also*, Denney Direct, pp. 22-23 and Exhibit DD-18.

⁴⁸² Denney Direct, pp. 154-156.

⁴⁸³ Starkey Rebuttal, p. 143, line 20-p. 144, line 3, and p. 128 (footnote 307) and 133-134. *See also*, Starkey Direct, pp. 147-150.

1 **Q. MS. STEWART TAKES ISSUE WITH YOUR REFERENCES TO THE**
2 **TERM “LOOP TRANSPORT COMBINATIONS” IN THE FCC’S *TRO*.⁴⁸⁴**
3 **WOULD YOU LIKE TO RESPOND?**

4 A. Yes, I will address each of Ms. Stewart’s criticisms, but before I do, it is
5 important to reiterate the purpose of my testimony to which Ms. Stewart responds.
6 The purpose of my testimony (at pages 180-181 of my direct) was to show that
7 Eschelon’s language for Issue 9-55 (specifically Section 9.23.4) uses the term
8 “Loop Transport Combinations” in the same way as the FCC uses the term. Ms.
9 Stewart testified in her direct that Eschelon’s proposal was troubling given that
10 Eschelon’s definition of Loop Transport includes commingled arrangements, but
11 the references to the FCC order in my testimony shows that Eschelon’s definition
12 is consistent with the way the FCC uses the term.⁴⁸⁵ I now turn to Ms. Stewart’s
13 criticisms.

14 First, she states that references to both paragraphs 575 and 576 of the *TRO* discuss
15 UNE combinations, so “neither of these cites discusses combinations between
16 UNEs and non-UNEs.”⁴⁸⁶ Ms. Stewart misses the point. References to these
17 paragraphs were provided to show that the FCC has referred to a UNE
18 combination of loop and transport as a “Loop Transport Combination,” just as
19 Eschelon’s language for Section 9.23.4 does (“Loop Transport Combination

⁴⁸⁴ Stewart Rebuttal, pp. 51-52.

⁴⁸⁵ Starkey Rebuttal, p. 139.

⁴⁸⁶ Stewart Rebuttal, p. 51, lines 19-22.

1 includes Enhanced Extended Links (“EELs”)...”). Contrary to Ms. Stewart’s
2 assertions, I make no “leap of logic” to “thrust upon Qwest a new loop transport
3 definition”;⁴⁸⁷ rather, the FCC refers to combinations between UNE transport and
4 UNE loops as Loop Transport Combinations, and so does Eschelon’s Section
5 9.23.4.⁴⁸⁸

6 Second, Ms. Stewart claims that the references to paragraphs 584, 593 and 594 of
7 the *TRO* support Qwest’s position because they refer to “*commingled* Loop
8 Transport combinations.”⁴⁸⁹ Again, Ms. Stewart misses the point: paragraphs 584
9 and 593 of the *TRO* show that the FCC has referred to commingled arrangements
10 as “loop transport combinations,” just as Eschelon’s language for 9.23.4 does
11 (“Loop Transport Combinations include...Commingled EELs...”).

12 To sum up, Eschelon’s language for 9.23.4 defines a Loop Transport Combination
13 to include: (1) EELs, (2) Commingled EELs, and (3) High Capacity EELs, and
14 the FCC has used the same term to refer to all three.⁴⁹⁰

15 **Q. MS. STEWART PROPOSES ALTERNATIVE LANGUAGE FOR ISSUE 9-**
16 **55.⁴⁹¹ IS THIS LANGUAGE ACCEPTABLE TO ESCHELON TO SETTLE**
17 **THIS ISSUE?**

⁴⁸⁷ Stewart Rebuttal, p. 51, lines 22-26.

⁴⁸⁸ See Starkey Direct, p. 178.

⁴⁸⁹ Emphasis added.

⁴⁹⁰ Starkey Direct, p. 179.

⁴⁹¹ Stewart Rebuttal, p. 48.

1 A. No. Qwest's language states that the, "non-UNE circuit will be governed by the
2 rates, terms and conditions of the appropriate Tariff." But as I explain at page 142
3 of my rebuttal testimony, the non-UNE circuit could be governed by a section 271
4 price, a commercial agreement, etc. It will not necessarily be governed by a
5 tariff.⁴⁹² In addition, as mentioned above, the parties have already agreed to
6 language in Section 24.1.2.1, which is not limited to Qwest's tariffs, but also
7 recognizes other alternative arrangements. Section 24.1.2.1 not only makes
8 Qwest's proposed alternative language unnecessary, but Section 24.1.2.1 is also
9 more accurate.

10 **X. SUBJECT MATTER NO. 27: MULTIPLEXING (LOOP-MUX**
11 **COMBINATIONS)**

12 *Issue No. 9-61 and subparts: ICA Sections 9.23.9 and subparts; 24.4 and*
13 *subparts; 9.23.2; 9.23.4.4.3; 9.23.6.2; 9.23.9.4.3; 9.23.4.4.3; 9.23.6.2; Exhibit C;*
14 *24.4.4.3; Exhibit A; Section 9.23.6.6 and subparts*

15 **Q. SUBJECT MATTER 27 (ISSUES 9-61 AND SUBPARTS) ADDRESSES**
16 **LOOP MUX COMBINATIONS ("LMC"). WHY IS THIS SUBJECT**
17 **MATTER IMPORTANT TO ESCHELON?**

⁴⁹² Footnote 11 at page 48 of Ms. Stewart's rebuttal testimony states, "Tariff as used in the ICA is a defined term that refers to Qwest interstate Tariffs and state tariffs, price lists and price schedules." Ms. Stewart's testimony is misleading. Tariff is a defined term in the ICA not limited to Qwest's tariffs and price lists. See Section 4 ["Tariff refers to the applicable tariffs, price lists, and price schedules that have been approved or are otherwise in effect pursuant to applicable rules and laws, *whether the Tariff is a Qwest retail Tariff or a CLEC Tariff.*"] (emphasis added)

1 A. There is no dispute that the loop component of a LMC is a Section 251 UNE. So,
2 regardless of how multiplexing is treated,⁴⁹³ the LMC should be included in
3 Section 9 of the ICA,⁴⁹⁴ which is Eschelon's proposal for Issue 9-61. Under Issue
4 9-61(a), the LMC should be defined as a UNE combination in the ICA instead of
5 a commingled arrangement. Qwest has previously provided multiplexing in three
6 ways: (1) as part of a multiplexed EEL, (2) as part of a Loop-Mux Combination,
7 and (3) as a stand alone UNE.⁴⁹⁵ All Eschelon is asking for is Qwest to provide
8 multiplexing in two distinct scenarios in combination with Section 251 UNEs.
9 The Commission should not allow Qwest to severely restrict access to
10 multiplexing in this arbitration, especially when this restriction is not based in the
11 FCC rules or orders. To this end, intervals and rates for LMC should be included
12 in the ICA and changed via ICA amendment under Issues 9-61(b) and 9-61(c).

13 **Q. DO YOU HAVE ANY GENERAL OBSERVATIONS ABOUT MS.**
14 **STEWART'S REBUTTAL TESTIMONY ON ISSUE 9-61?**

15 A. Yes. As I explained at pages 151-152 of my rebuttal testimony, despite Eschelon
16 and Qwest asking the Commission to determine how multiplexing should be
17 treated when combined with a UNE loop, Qwest's testimony makes it appear as if
18 this issue has already been decided in Qwest's favor. For instance, in the very

⁴⁹³ Eschelon's position is that multiplexing should be provided at TELRIC-based rates in two specific scenarios when it is combined with a Section 251 UNE. Qwest's position is that multiplexing should be obtained pursuant to Qwest's tariff.

⁴⁹⁴ Qwest claims that the proper location is Section 24. *See* Stewart Rebuttal, p. 85, line 13.

⁴⁹⁵ Starkey Direct, p. 197.

1 first Q&A in Ms. Stewart's rebuttal testimony on this issue, she testifies:
2 "Accordingly, a CLEC *must* order the multiplexed facility used for LMCs
3 through the applicable tariff."⁴⁹⁶ Ms. Stewart repeats this mantra several more
4 times in her rebuttal testimony on Issue 9-61, testifying that, "LMC is comprised
5 of an unbundled loop...combined with a DS1 or DS3 multiplexed facility...that a
6 CLEC obtains from a tariff."⁴⁹⁷ Ms. Stewart couches her rebuttal testimony as if
7 Qwest's position on this issue is fact, but it is not a fact, and Eschelon and Qwest
8 are asking the Commission to resolve that very issue under Issue 9-61(a).

9 **Q. IS A GOOD PORTION OF MS. STEWART'S REBUTTAL TESTIMONY**
10 **ON ISSUES 9-61 AND SUBPARTS SPENT REHASHING ISSUES YOU**
11 **HAVE ALREADY ADDRESSED IN YOUR TESTIMONY?**⁴⁹⁸

12 A. Yes. Ms. Stewart's primary rebuttal argument is that Eschelon is seeking access
13 to multiplexing as a "stand alone UNE."⁴⁹⁹ I addressed this claim at pages 147-
14 148 of my rebuttal testimony. It appears that Ms. Stewart believes that the more
15 she says this (about a dozen times in her rebuttal testimony alone), the more likely
16 the Commission is to believe it. It is not true, however, and Eschelon's proposed
17 ICA language makes that clear.

⁴⁹⁶ Stewart Rebuttal, p. 85, lines 5-8. (emphasis added)

⁴⁹⁷ Stewart Rebuttal, p. 84, lines 24-27. *See also*, Stewart Rebuttal, p. 93, lines 4-7 ("Because an LMC is a combination of a UNE and a tariffed multiplexed service, it is not a UNE combination...")

⁴⁹⁸ Ms. Stewart cites to the Verizon-Virginia arbitration decision (e.g., Stewart Rebuttal, p. 86). I addressed this issue at pages 148-149 of my rebuttal testimony.

⁴⁹⁹ Stewart Rebuttal, p. 85, line 1; p. 85, line 15; p. 88, line 17; p. 88, line 25; p. 91, lines 1-2; p. 91, lines 5-8; p. 91, line 9; p. 91, lines 25-27; p. 92, lines 23-25; p. 93, lines 9-10; and p. 93, lines 12-13.

1 **Q. MS. STEWART CLAIMS THAT MULTIPLEXING IS A FEATURE OR**
2 **FUNCTION OF UDIT,⁵⁰⁰ BUT NOT LOOPS. IS SHE CORRECT?**

3 A. Ms. Stewart is only partly correct. I agree with Ms. Stewart that multiplexing is a
4 feature or function of UDIT and should be provided at TELRIC rates in these
5 instances.⁵⁰¹ However, I disagree with the notion that multiplexing is not a
6 feature or function of loops.⁵⁰²

7 Ms. Stewart argues that since loops can function independently of multiplexing,
8 then multiplexing is not a feature/function of the loop.⁵⁰³ Ms. Stewart describes
9 her determination of whether multiplexing is a feature of function of a UNE as
10 follows:

11 central office based multiplexing is not required for a UNE loop
12 facility to function. If the functioning of a DS1 loop, for example,
13 was dependent upon multiplexing, there might be a factual
14 argument that multiplexing is a feature or function of the loop. But
15 since a DS1 loop functions regardless whether there is
16 multiplexing used with the loop, multiplexing cannot reasonably
17 be viewed as a “feature, function, or capability” of the loop. In
18 addition, the multiplexing function is provided through equipment
19 that is physically separate from and independent of UNE loops.⁵⁰⁴

20 Ms. Stewart’s test makes no sense and does not support Qwest’s proposal to
21 provide multiplexing as a feature or function of UDIT, but not UNE loops. First,
22 there are a whole host of items that are features or functions of the loop on which

⁵⁰⁰ Stewart Rebuttal, p. 87.

⁵⁰¹ Stewart Rebuttal, p. 91.

⁵⁰² Starkey Direct, pp. 194-197.

⁵⁰³ Stewart Rebuttal, p. 90, lines 15-24.

⁵⁰⁴ Stewart Rebuttal, p. 90, lines 15-24.

1 the loop is not *dependent*. For instance, repeaters and load coils are features and
2 functions of the loop, but a properly functioning loop is not always dependent on
3 the existence of these features or functions, and when the loop is used for data
4 service, they are oftentimes removed altogether from the loop during loop
5 conditioning. Contrary to Ms. Stewart's claim, the loop does not have to be
6 dependent on the item in question for it to be a feature or function of the loop.
7 Second, transport is not "dependent" on multiplexing either, but Ms. Stewart
8 agrees that multiplexing is a feature or function of UNE transport.⁵⁰⁵ For
9 instance, a CLEC could combine a DS1 UNE transport with a DS1 UNE loop,
10 and this would not require multiplexing.

11 **Q. MS. STEWART ARGUES THAT YOUR RELIANCE ON FCC**
12 **AUTHORITY IS MISPLACED BECAUSE THE CITES YOU POINT TO**
13 **ARE TALKING ABOUT A DIFFERENT TYPE OF MULTIPLEXING**
14 **THAN WHAT IS DISCUSSED IN ISSUE 9-61.⁵⁰⁶ WOULD YOU LIKE TO**
15 **RESPOND?**

16 **A.** Yes. At pages 196-197 of my direct testimony I discussed the routine network
17 modifications rules and pointed out that these rules include deploying a new
18 multiplexer and reconfiguring existing multiplexers for loops as part of the
19 nondiscriminatory obligations of the ILEC. 47 CFR § 51.319(a)(7). Ms. Stewart

⁵⁰⁵ Stewart Rebuttal, p. 91.

⁵⁰⁶ Stewart Rebuttal, p. 92.

1 claims that the FCC “is being clear”⁵⁰⁷ that the multiplexing being discussed
2 under this rule is different from the multiplexing discussed under Issue 9-61. I
3 disagree with Ms. Stewart’s narrow view of the FCC’s rules.

4 If the routine network modifications rule for loops under § 51.319(a)(7) is
5 compared to the routine network modifications rule for transport under §
6 51.319(e)(4), they are nearly identical. Like the rule applying to loops, the
7 transport rule states that routine network modifications include “deploying a new
8 multiplexer or reconfiguring an existing multiplexer.” There is no distinction in
9 the routine network modification rules between different types of multiplexing –
10 though the FCC could have easily written one into the rule. The FCC could have
11 made such a distinction if it so desired, given that it did make the loop rule
12 specific to loops and the transport rule specific to transport.⁵⁰⁸ What this means is
13 that the FCC crafted a specific rule to apply to loops versus transport, rather than
14 simply “cutting and pasting” the same routine network modification rule for each
15 UNE, and the FCC could have written a multiplexing distinction into the rule at
16 that time – but didn’t. Therefore, the distinction that Ms. Stewart makes
17 regarding multiplexing is not grounded in the FCC’s rules.

⁵⁰⁷ Stewart Rebuttal, p. 92, lines 9-11.

⁵⁰⁸ For instance, the only differences between the loop and transport rules (besides referring to loops versus transport) is that the transport rule does not include mention of “adding a smart jack”, “adding a line card”, or attaching electronics/equipment for DS1 loop as routine network modifications – all of which are included in the loop rule.

1 **Q. ARE THERE OTHER REASONS WHY MS. STEWART'S CLAIM THAT**
2 **MULTIPLEXING IS A FEATURE OR FUNCTION OF UNE TRANSPORT**
3 **BUT NOT UNE LOOPS IS UNCONVINCING?**

4 A. Yes. At page 92 of her rebuttal testimony, Ms. Stewart states that Qwest agrees
5 that when multiplexing is used to connect a UNE transport and UNE loop, then
6 multiplexing should be provided at TELRIC.⁵⁰⁹ In support of this position Ms.
7 Stewart states: "because multiplexing is not a feature or function of the UNE loop,
8 multiplexing used to commingle UNE loops with tariffed private line transport (as
9 opposed to UNE transport) is stand-alone multiplexing..."⁵¹⁰ Ms. Stewart
10 entirely misses the point: what is being addressed under Issue 9-61 is Loop Mux
11 Combination, or an arrangement in which multiplexing connects a UNE loop
12 directly to a CLEC's collocation – without transport. Therefore, Ms. Stewart's
13 comparison to a commingled EEL is misplaced.

14 Furthermore, Qwest agrees that multiplexing should be provided at TELRIC rates
15 when UNE transport provided at TELRIC rates is connected to a UNE loop
16 provided at TELRIC rates. Following this same logic, multiplexing used to
17 connect UNE loop provided at TELRIC rates to collocation provided at TELRIC
18 rates (which LMC is) should be provided at TELRIC rates. The fact that Qwest
19 does not agree in this instance exposes an inconsistency in Qwest's position.

⁵⁰⁹ Stewart Rebuttal, p. 91, lines 18-20.

⁵¹⁰ Stewart Rebuttal, p. 91, lines 23-26.

1 Q. MS. STEWART ARGUES THAT SINCE THE FCC'S *TRO* LIFTED THE
2 COMMINGLING RESTRICTION, QWEST WILL STOP PROVIDING
3 LOOP MUX COMBINATIONS AS IT HAS IN THE PAST.⁵¹¹ DID THE
4 *TRO* SAY ANYTHING ABOUT A QUID PRO QUO ASSOCIATED WITH
5 COMMINGLING OR THAT LIFTING THE COMMINGLING
6 RESTRICTION RELIEVED THE ILECS OF THEIR OBLIGATION TO
7 PROVIDE MULTIPLEXING AS THEY HAVE PREVIOUSLY PROVIDED
8 IT?

9 A. No, and Ms. Stewart provides no support for this insinuation. Ms. Stewart's
10 support for her claim that Qwest was acting "voluntarily" in providing Loop Mux
11 Combinations is not grounded in any FCC order or rules. Rather, she cites to the
12 Wireline Competition Bureau's decision in the Verizon-Virginia Arbitration as
13 support, and I have explained that Ms. Stewart's reliance on this decision is
14 misplaced.⁵¹²

15 Ms. Stewart also claims that the FCC's reference to multiplexing as an "interstate
16 access service" in paragraph 583 of the *TRO* "refutes any claim by Eschelon [sic]
17 that it is entitled to multiplexing at UNE rates, terms, and conditions when it
18 obtains multiplexing for use with commingled arrangements."⁵¹³ However,
19 multiplexing, like loops and transport, is available both within the context of

⁵¹¹ Stewart Rebuttal, pp. 87-89.

⁵¹² Starkey Rebuttal, pp. 148-150.

⁵¹³ Stewart Rebuttal, p. 89, lines 16-18.

1 Section 251 of the Act (as part of the ILEC's obligation to provide
2 nondiscriminatory access to UNEs) as well as under interstate access tariffs
3 (which are not governed by Section 251 of the Act). And contrary to Ms.
4 Stewart's claim, just because a facility or function is available as an "interstate
5 access service" does not mean that it cannot also be available under the Act and
6 the FCC's rules for UNEs/interconnection, as evidenced by the fact that both
7 loops and transport also are available within both contexts. Indeed, the same
8 sentence in paragraph 583 of the *TRO* also referred to transport as an "interstate
9 access service," but transport is unarguably available also within the context of
10 Section 251 of the Act.

11 **Q. MS. STEWART CLAIMS THAT QWEST VOLUNTARILY PROVIDED**
12 **LMC.⁵¹⁴ PLEASE RESPOND.**

13 A. Eschelon does not agree that Qwest is voluntarily providing LMC. As I
14 mentioned above, the basis for Ms. Stewart's claim that Qwest voluntarily
15 provided Loop Mux Combinations appears to be the Wireline Competition
16 Bureau's Verizon Virginia arbitration decision,⁵¹⁵ and I have shown that Ms.
17 Stewart's reliance on this decision is misplaced.⁵¹⁶ In fact, the Minnesota
18 Arbitrators' Report, when addressing Issue 9-61, also disagrees with Qwest and
19 finds that in the Verizon Virginia Arbitration Order, "the FCC declined to address

⁵¹⁴ Stewart Rebuttal, p.87.

⁵¹⁵ Stewart Rebuttal, p. 87, lines 21-24.

⁵¹⁶ Starkey Rebuttal, pp. 148-150.

1 the issue of whether multiplexing can also be a feature, function, or capability of a
2 UNE loop in the circumstances at issue here.”⁵¹⁷ The Arizona Commission
3 ordered UNE rates for multiplexing and Qwest is obligated to provide it at UNE
4 rates.

5 **XI. SUBJECT MATTER NO 29. ROOT CAUSE ANALYSIS AND**
6 **ACKNOWLEDGEMENT OF MISTAKES**

7 *Issues Nos. 12-64, 12-64(a) and 12-64(b): ICA Section 12.1.4*

8 **Q. HAS ESCHELON OFFERED AN ALTERNATIVE PROPOSAL**
9 **REGARDING THIS ISSUE?**

10 A. Yes. Eschelon has provided an alternative proposal for Section 12.1.4.1 regarding
11 the single phrase on this issue that remains open in Minnesota. Although in
12 Arizona Qwest *opposes* all of Eschelon’s proposed language for Issue 12-64,⁵¹⁸
13 Qwest has now⁵¹⁹ *agreed* in Minnesota to all of Eschelon’s proposed language
14 (which is the same in both states), except one phrase (“a mistake relating to
15 products and services provided under this Agreement.”). Eschelon’s alternate
16 proposal regarding that one open phrase is provided on pages 160-161 of my

⁵¹⁷ MN Arbitrators’ Report, ¶196. And to Ms. Stewart’s point that the FCC found in the TRO that multiplexing is an interstate access service, the MN Arbitrators’ Report finds that, “neither the Verizon Virginia Arbitration Order nor the TRO expressly addresses the question whether multiplexing must be offered at UNE rates under this circumstance.” MN Arbitrators’ Report, ¶198.

⁵¹⁸ Albersheim Rebuttal, p. 37, lines 6-10.

⁵¹⁹ There were several open provisions regarding Issue 12-64 going in to the Minnesota arbitration (as shown in the Arizona direct testimony of Ms. Albersheim at pages 48-49). After the Minnesota ALJs’ ruling, additional issues closed so the remaining language that is not agreed upon in Minnesota is the one phrase (“a mistake relating to products and services provided under this Agreement”).

1 rebuttal testimony.

2 **Q. QWEST SUGGESTS THAT THE JUDGES IN THE MINNESOTA**
3 **ARBITRATION AGREED WITH QWEST.⁵²⁰ DID THE JUDGES IN**
4 **MINNESOTA RECOMMEND ADOPTION OF QWEST'S LANGUAGE?**

5 A. No. The Minnesota ALJs concluded that "Qwest's proposed language for the
6 ICA is inconsistent with commitments it made in its compliance filings in the *MN*
7 *616* Docket."⁵²¹ They found that "Eschelon's language is not vague or
8 burdensome . . . and it is more consistent with the Commission's order."⁵²²
9 Regarding the single remaining open phrase in Minnesota, the ALJs in the
10 Minnesota arbitration specifically found that *Eschelon's language* (Eschelon's
11 Proposal #1) is "consistent with the record and in the public interest."⁵²³ As an
12 alternative for the Commission, the ALJs also noted that the Commission could
13 modify the recommended language to use the phrase "mistake[s] in processing
14 wholesale orders."⁵²⁴ As I discussed in my rebuttal testimony, however, the latter
15 alternative is likely to lead to future disputes because the companies already
16 disagree on the meaning of that phrase.⁵²⁵ There is a discussion of the ALJs'
17 ruling, the Minnesota Department of Commerce's testimony regarding this issue,

⁵²⁰ Albersheim Rebuttal, pp. 38-39.

⁵²¹ MN Arbitrators' Report ¶208.

⁵²² MN Arbitrators' Report ¶208.

⁵²³ MN Arbitrators' Report ¶208 (last sentence).

⁵²⁴ MN Arbitrators' Report ¶208.

⁵²⁵ Starkey Rebuttal, pp. 158-159.

1 and Eschelon's alternate proposal for this single open phrase in Minnesota on
2 pages 158-160 of my rebuttal testimony.

3 **Q. MS. ALBERSHEIM ARGUES AT PAGE 36 OF HER REBUTTAL**
4 **TESTIMONY THAT QWEST DOES NOT CONTRADICT ITS OWN**
5 **ADVOCACY BY OPPOSING ALLEGEDLY UNIQUE PROCEDURES**
6 **FOR OTHER TERMS OF THE ICA WHILE SUPPORTING A UNIQUE**
7 **PROCEDURE FOR ACKNOWLEDGEMENTS OF MISTAKES IN**
8 **MINNESOTA ONLY. PLEASE COMMENT.**

9 A. A simple comparison of Qwest's previous testimony about the disadvantages of
10 alleged unique "one-off" processes⁵²⁶ with Qwest's current testimony about the
11 disadvantages of uniformity⁵²⁷ demonstrates the contradiction in Qwest's own

⁵²⁶ See, e.g., Albersheim Direct, p. 5, lines 14-16 ("Eschelon seeks to expand Qwest's obligations and create *one-off, unique processes* for CMP-related ICA issues in dispute: service intervals, jeopardy notices, and expedited orders. Eschelon's approach to these issues has a *dire effect* on the CMP . . . ") (emphasis added). [Ms. Albersheim has testified that it believes its proposal of a Minnesota-only provision for Issue 12-64 is a "one-off" process. Qwest-Eschelon ICA MN Arbitration, Vol. I, p. 15, line 17 – p. 16, line 3 (Albersheim).] See also Qwest-Eschelon ICA MN Arbitration, Qwest (Mr. Linse) MN Direct, p. 12, lines 12-19 ("Even if Eschelon were to agree that its language constitutes a standing request to tag whenever necessary, this would still represent a significant 'one-off' from Qwest's existing process. Eschelon's proposed language would create a unique process that would apply only to Eschelon and other CLECs that may opt into Eschelon's agreement. Qwest's technicians on service calls would be unreasonably burdened with the responsibility of understanding this one-off process and keeping straight for which CLECs it applied. This would create significant administrative and logistical difficulties.") (Issue 12-75, now closed).

⁵²⁷ See Albersheim Direct, pp. 36-37. Qwest attempts to distinguish Issue 12-64 because it "was not necessary for Qwest to undertake systems changes" (Albersheim Rebuttal, p. 36, lines 17-18), but it was also not necessary for Qwest to undertake system changes for the now closed Issue 12-75 (tag at the demarcation point) (see previous footnote). See Qwest-Eschelon ICA MN Arbitration, Transcript, Vol. I, p. 104, line 10 – p. 105, line 11 (quoted below) (where Ms. Albersheim lists the issues in Section 12 that "anticipate systems change requests" and does not include tag at the demarcation point (Issue 12-75)). If the real reason for Qwest's objection were opposition to "one-off" terms, Qwest could have simply made the acknowledgement of mistakes terms available to all CLECs in CMP (as it says it is currently doing for tag at the demarcation point, Issue 12-75). As

1 advocacy. Ms. Albersheim claims that the Minnesota procedures affect only one
2 CLEC.⁵²⁸ As I discuss in more detail below, however, the procedures ordered by
3 the Minnesota Commission apply on their face to CLECs generally, and not only
4 Eschelon.⁵²⁹ Ms. Albersheim also argues, without providing any cost support,
5 that following unique procedures in 14 states would drive changes in processes
6 and additional costs. Eschelon does not maintain interconnection agreements
7 with Qwest in all 14 states. Additionally, Eschelon has not even sought unique
8 processes in those states where it currently operates. Rather, for all of its
9 operating states, it has sought the same process, much of which Qwest generally
10 claims it already provides CLECs.⁵³⁰ Ms. Albersheim's suggestion that, if it must
11 implement the Minnesota procedures in other states as well, there would be a
12 "systems" burden that would "multiply exponentially"⁵³¹ is equally unconvincing
13 and unsupported by any evidence. In fact, when asked to identify which issues in
14 Section 12 would involve any systems changes at all, Ms. Albersheim did not
15 identify acknowledgement of mistakes and root cause analysis (Issue 12-64).⁵³²

previously discussed, however, Qwest has chosen not to deal with this particular subject which is unfavorable to Qwest in CMP. *See* Starkey Direct, pp. 166-168.

⁵²⁸ Albersheim Direct, p. 36, lines 16-17.

⁵²⁹ *See also* Starkey Direct, p. 168; Exhibit MS-7.

⁵³⁰ *See* Albersheim Rebuttal at pp. 41-43 where Ms. Albersheim generally claims that Qwest provides root cause analyses upon request. *See also* Exhibit BJJ-34, p. 2 (Qwest description of its Service Managers' role, which states: "Qwest will conduct a root cause analysis of the examples of the problem, and provide its analysis to the reporting CLEC in a timely manner.")

⁵³¹ Albersheim Direct, p. 37, lines 2-3.

⁵³² Qwest-Eschelon ICA MN Arbitration, Transcript, Vol. I, p. 104, line 21 – p. 105, line 11 (Oct. 16, 2006) (Judge Sheehy Questions and Ms. Albersheim Answers) ("Q Are there any of these issues that you've talked about that are more clearly OSS issues in your view than others? A If you mean

1 As the plain language of Eschelon's proposal for this issue shows,⁵³³ this is not a
2 systems issue. The language provides for a written request to the Qwest service
3 manager, who then responds to the request, much like any other request for the
4 Qwest service manager.⁵³⁴

5 **Q. MS. ALBERSHEIM CLAIMS THAT ESCHELON'S PROPOSAL, WHICH**
6 **IS NOT LIMITED TO ERRORS IN PROCESSING LSRs,**
7 **INAPPROPRIATELY EXPANDS THE SCOPE OF QWEST'S**
8 **OBLIGATIONS UNDER THE MINNESOTA COMMISSION'S ORDER IN**
9 **DOCKET NO. P-421/C-03-616. PLEASE RESPOND.**

10 A. There is no reason that an ICA provision that will apply on a going forward basis
11 needs to be limited to the scope of the single example in that case. Nonetheless,
12 regarding the scope of that action, as I explained in my direct and rebuttal
13 testimonies, there should be no arbitrary limitation to the context in which the
14 customer-affecting error occurs before Qwest should acknowledge such errors or
15 analyze the errors such that they can be avoided, or minimized, on a going-
16 forward basis.⁵³⁵ Ms. Albersheim testifies that Eschelon's language expands the

issues that anticipate systems change requests? Q Yes. A Well, the systems notices that included the PSON and the fatal reject notices, loss and completion reports, potentially the trouble reports issued because that involves a system that was created for those. Q Trouble report or trouble report closure? Are they different? A I believe it was the trouble report closure. And the controlled production OSS testing is very definitely an OSS issue. . . .").

⁵³³ Proposed ICA Section 12.1.4 and subparts.

⁵³⁴ See Exhibit BJJ-34 (listing the kinds of inquiries, including requests for root cause analysis, to which the Qwest Service Manager provides responses).

⁵³⁵ See, e.g., Webber Direct (adopted), pp. 43-45; Starkey Rebuttal, pp. 161-163.

1 scope in two ways (1) by not limiting the provisions to the processing of LSRs;
2 and (2) by providing for root cause analysis.⁵³⁶ Regarding the first of these
3 claims, see my above responses. In addition, in the Minnesota arbitration
4 proceeding, the Department of Commerce's witness on this very issue, Ms.
5 Doherty, indicated that Eschelon's contract proposal, which is the same in
6 Minnesota as it is here, better captures both the plain language and the spirit of the
7 Commission's order in Docket No. P-421/C-03-616⁵³⁷ than does Qwest's
8 proposal on this point. I quoted her testimony on pages 159-160 of my rebuttal
9 testimony. Regarding the second of these claims, the Minnesota ALJs rejected
10 Qwest's argument. They found, consistent with the evidence presented by
11 Eschelon,⁵³⁸ that "to acknowledge a mistake, Qwest has to determine that one was
12 made and why."⁵³⁹ Overall, they found that Eschelon's language "is more
13 consistent with the Commission's Order."⁵⁴⁰ Regardless of whether it exceeds the
14 scope of one order in one case, Eschelon's proposed language best serves the
15 public interest, for the reasons provided in all of Eschelon's testimony on this
16 issue. As both the Minnesota Department and the Minnesota ALJs concluded,
17 Eschelon's proposed language is also consistent with the Minnesota ruling in that
18 case.

⁵³⁶ Albersheim Direct, p. 37, lines 12-14 & 18-20.

⁵³⁷ Doherty Rebuttal in MN Docket No. P-5340, 421/IC-06-768 at p. 19, lines 8-10.

⁵³⁸ Webber Direct (adopted), p. 43.

⁵³⁹ MN Arbitrators' Report ¶208.

⁵⁴⁰ MN Arbitrators' Report ¶208.

1 **Q. SPECIFICALLY REGARDING SECTION 12.1.4.2.1, MS. ALBERSHEIM**
2 **CLAIMS THAT ESCHELON'S PROPOSED LANGUAGE, WHICH USES**
3 **THE WORD "SUFFICIENT" CREATES "AMBIGUITY."⁵⁴¹ PLEASE**
4 **RESPOND.**

5 A. Ms. Albersheim refers to a requirement that the acknowledgement letter include
6 "a recap of sufficient pertinent information to identify the issue."⁵⁴² Qwest has
7 agreed to this language, including the term "sufficient," in Minnesota. Under
8 Qwest's proposal in Arizona, this phrase would be truncated to "a recap of
9 pertinent information." Clearly, it is Qwest's proposal that introduces vague
10 requirements because it does not require that the provided information is adequate
11 (sufficient) to understand the issue. Without the word "sufficient," Qwest could
12 arguably be allowed to withhold the necessary information without which the
13 acknowledgement letter would not serve its intended purpose.

14 **Q. SPECIFICALLY REGARDING SECTION 12.1.4.2.5, MS. ALBERSHEIM**
15 **ARGUES THAT ESCHELON'S PROPOSAL THAT THE**
16 **ACKNOWLEDGEMENT LETTERS BE PROVIDED ON A NON**
17 **CONFIDENTIAL BASIS COULD FORCE QWEST TO PUBLICLY**
18 **REVEAL SENSITIVE AND PROTECTED INFORMATION SUCH AS**
19 **CPNI.⁵⁴³ PLEASE COMMENT.**

⁵⁴¹ Albersheim Rebuttal at p. 39.

⁵⁴² Eschelon Proposed ICA language, Section 12.1.4.2.1.

⁵⁴³ Albersheim Rebuttal, p. 39.

1 A. Qwest is required to provide this information in Minnesota on a non-confidential
2 basis and yet Qwest has provided no evidence that it has been forced to publicly
3 reveal sensitive and protected confidential information. The only basis Qwest
4 provides for this allegation is that “the phrase ‘will be provided on a non-
5 confidential basis’ could give Eschelon the right to claim that Qwest must provide
6 all data associated with a root cause analysis in its letter to the end-user
7 customer.”⁵⁴⁴ Qwest arrives at this far-fetched conclusion by omitting the noun in
8 the sentence (*i.e.*, the thing to be provided on a non-confidential basis).
9 Eschelon’s proposed language in Section 12.1.4.2.5 specifically states that “The
10 *acknowledgment response* described in Section 12.1.4.2.3 and provided by the
11 Qwest Service Manager to CLEC” is what must be provided on a “non-
12 confidential” basis. There is no mention of root cause analysis in either Sections
13 12.1.4.2.3 or 12.1.24.2.5. The first sentences of both Sections 12.1.4.1 and
14 12.1.4.2 refer to requests for “root cause analysis and/or acknowledgement” –
15 identifying them as two separate things. There is no basis for this Qwest claim. It
16 is based on a sentence fragment and, when the entire sentence is provided, the
17 claim disappears.

18 **Q. QWEST STATES THAT ESCHELON HAS ARGUED THAT QWEST**
19 **SHOULD HAVE SUBMITTED THE ACKNOWLEDGEMENT OF**

⁵⁴⁴ Albersheim Rebuttal, p. 39, lines 11-13.

1 **MISTAKES ISSUE TO CMP.⁵⁴⁵ IS THAT AN ACCURATE**
2 **DESCRIPTION OF ESCHELON'S POSITION?**

3 A. No. Qwest cites page 40 of Mr. Webber's direct testimony⁵⁴⁶ (which I have
4 adopted). On that page, Eschelon addresses not its own position but the
5 "inconsistent conduct" of Qwest,⁵⁴⁷ because Qwest has argued both that this issue
6 should be dealt with in CMP and that it should not.⁵⁴⁸ In the Joint Disputed Issues
7 Matrix, Qwest's position statement says "this issue involves processes that affect
8 all CLECs... should be addressed through CMP...would require Qwest to modify
9 its systems or processes..."⁵⁴⁹ while Ms. Albersheim says that this issue should
10 not be addressed in CMP because "this process is not one that requires Qwest to
11 alter its procedures overall, nor does it apply to all CLECs."⁵⁵⁰ As I indicated in
12 my rebuttal testimony, Eschelon is not advocating use of CMP procedures, as it
13 has consistently maintained that this issue should be addressed in the
14 interconnection agreement.⁵⁵¹ In contrast, Qwest has been inconsistent at best,
15 and this inconsistency should be taken into account when evaluating Qwest's
16 claims.

⁵⁴⁵ Albersheim Rebuttal, p. 40, lines 1-4.

⁵⁴⁶ Albersheim Rebuttal, p. 40, lines 1-4.

⁵⁴⁷ Webber Direct (adopted), p. 40, line 7.

⁵⁴⁸ Webber Direct (adopted), p. 20, lines 2-6; *see also* Starkey, p. 167.

⁵⁴⁹ Exhibit 3 to Arbitration Petition (Joint Disputed Issues Matrix), Qwest Position Statement, p. 156.

⁵⁵⁰ Albersheim Rebuttal, p. 40 lines 9-11.

⁵⁵¹ Starkey Rebuttal, p. 167, lines 3-5.

1 Q. WHEN ARGUING THAT THIS IS NOT A CMP ISSUE, MS.
2 ALBERSHEIM DESCRIBES THE MINNESOTA RULING AS A
3 “SETTLEMENT”⁵⁵² OF A CASE APPLICABLE TO “ONE CLEC.”⁵⁵³ IS
4 QWEST’S CHARACTERIZATION OF THE MINNESOTA ORDER AS A
5 “SETTLEMENT” ACCURATE?

6 A. No. Qwest is attempting to explain why Qwest did not use CMP, despite its
7 statements about CMP in its position statement.⁵⁵⁴ In her direct testimony, Ms.
8 Albersheim described the *MN 616 Case* order as a “decision” by the
9 Commission.⁵⁵⁵ The word “settlement” did not appear in the direct testimony of
10 Ms. Albersheim. Section 4.1 of the CMP Document contains procedures
11 applicable to regulatory changes requests.⁵⁵⁶ Now, in her rebuttal testimony, Ms.
12 Albersheim has started to describe the decisions of the Minnesota Commission
13 erroneously as a “settlement.”⁵⁵⁷ By portraying the ruling as a voluntary
14 settlement, Qwest may argue that the Commission-ordered requirements did not
15 fall within the CMP’s definition of a regulatory change, because Section 4.1 of
16 the CMP Document (Ex. RA-1) provides that regulatory changes “are not

⁵⁵² Albersheim Rebuttal, p. 37, line 20 & p. 40, line 6.

⁵⁵³ Albersheim Rebuttal, p. 36, lines 16-17; *see also id.* p. 40, line 6 (“The settlement was between Qwest and Eschelon.”).

⁵⁵⁴ Exhibit 3 to Arbitration Petition (Joint Disputed Issues Matrix), Qwest Position Statement, p. 156 (quoted above).

⁵⁵⁵ *See* Albersheim Direct, p. 50, line 4.

⁵⁵⁶ Starkey Rebuttal, p. 167 (quoting Section 4.1 in footnote 399). The CMP Document outlines procedures for voluntarily initiating a change request, if a regulatory change request is not required. *Id.* p. 166, line 18 – p. 167, line 2.

⁵⁵⁷ Albersheim Rebuttal, p. 37, line 20 & p. 40, line 6.

1 voluntary.” The requirements, however, were not voluntary. In the *MN 616*
2 *Case*, the Commission ruled that “Qwest failed to provide adequate service at
3 several key points in the customer transfer process and that these inadequacies
4 reflect system failures that must be addressed.”⁵⁵⁸ The Commission made this
5 ruling based on documented facts and not a settlement.⁵⁵⁹ The Commission
6 exercised its “general authority to require telephone companies to provide
7 adequate service” without a contested case *not* because of a settlement but
8 because the Commission found there were insufficient disputed facts to require a
9 contested case hearing before making its findings.⁵⁶⁰ In the Minnesota arbitration,
10 the ALJs said that the “Commission *ordered* Qwest to make a compliance
11 filing”⁵⁶¹ and, with respect to the compliance filing, said that Qwest “made three
12 compliance filings, eventually agreeing, in response to *increasingly specific*
13 *direction from the Commission*, to implement procedures.”⁵⁶² At the Minnesota
14 arbitration hearing, Ms. Albersheim acknowledged that, in fact, the result of the
15 *MN 616 Case* was not a settlement, but a Commission Order.⁵⁶³

16 **Q. WHEN ARGUING THAT THIS IS NOT A CMP ISSUE, MS.**
17 **ALBERSHEIM ALSO ARGUES THAT THE MINNESOTA-ORDERED**

⁵⁵⁸ Exhibit MS- 7 [Order, *MN 616 Case* (July 30, 2003), p. 5].

⁵⁵⁹ *See, e.g., id.*, p. 3 (“Interpretations aside, the following facts are not disputed.”) (quoting Qwest email to Eschelon customer).

⁵⁶⁰ *Id.*

⁵⁶¹ MN Arbitrators’ Report ¶206.

⁵⁶² MN Arbitrators’ Report ¶207 (emphasis added).

⁵⁶³ MN Transcript, Vol. 1, p. 15, lines 10-16 (testimony of Ms. Albersheim).

1 **PROCEDURES DO NOT “APPLY TO ALL CLECS.”⁵⁶⁴ PLEASE**
2 **RESPOND.**

3 A. The Minnesota Commission’s orders in the MN 616 Case clearly apply to all
4 CLECs and not only Eschelon. The Minnesota Commission found that Qwest
5 had “failed to adopt operational procedures to promptly acknowledge and take
6 responsibility for mistakes in processing wholesale orders.”⁵⁶⁵ The order did not
7 say “Eschelon orders.” The Minnesota Commission also found that “[p]roviding
8 adequate wholesale service includes taking responsibility when the wholesale
9 provider’s actions harm customers who could reasonably conclude that *a*
10 *competing carrier* was at fault. Without this kind of accountability and
11 transparency, retail competition cannot thrive.”⁵⁶⁶ The order did not say that the
12 customer would blame “Eschelon.”

13 Similarly, in its later order finding Qwest’s compliance filing inadequate, the
14 Minnesota Commission’s fourteen ordering paragraphs (a-n) regarding the
15 required contents of Qwest’s next compliance filing included, for example, the
16 following items that referred to “all” Qwest wholesale orders and CLECs
17 generally (not only Eschelon):

⁵⁶⁴ Albersheim Rebuttal, p. 40, lines 10-11.

⁵⁶⁵ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) p. 8].

⁵⁶⁶ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) 8] (emphasis added).

- 1 (f) Procedures for extending the error acknowledgment procedures set forth in
2 part (e) to *all* Qwest errors in processing wholesale orders.⁵⁶⁷
- 3 (i) Procedures for providing the acknowledgement to the *competitive local*
4 *exchange carrier*, who in turn may provide it to the end user customer, to prevent
5 improper contacts with the other carrier's customer.⁵⁶⁸
- 6 (j) Procedures for preventing use of a confidentiality designation in
7 acknowledgements, to ensure that the *competitive local exchange carrier* can
8 provide the acknowledgment to its end user customer.⁵⁶⁹
- 9 (k) Procedures for making the acknowledgement process readily accessible to
10 competitive local exchange *carriers*, including procedures for identifying clearly
11 the person(s) to whom requests for acknowledgments should be directed.⁵⁷⁰
- 12 (l) Procedures for ensuring that persons designated to provide acknowledgements
13 have been appropriately trained and have the authority to provide
14 acknowledgements.⁵⁷¹
- 15 Qwest's required compliance filing reflecting this same use of references to "all"
16 Qwest wholesale orders and CLECs generally (not only Eschelon).⁵⁷² Despite

⁵⁶⁷ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) p. 4] (emphasis added).

⁵⁶⁸ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) p. 4] (emphasis added).

⁵⁶⁹ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) p. 4] (emphasis added).

⁵⁷⁰ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) p. 4] (emphasis added). With respect to ordering paragraph (k), Qwest committed to comply with this Commission requirement by providing "external documentation" regarding requests for acknowledgements. See Exhibit RA-5 [Qwest Compliance Filing (Dec. 15, 2003), p. 5]; See Proposed ICA Section 12.1.4.2.6 (closed language in Minnesota). Qwest provided no evidence that Qwest posted this requirement regarding acknowledgment of mistakes on its website.

⁵⁷¹ Exhibit MS-7 [Order, *MN 616 Case* (Nov. 13, 2003) p. 5]. Regarding ordering paragraph (l) on training, Qwest represented that "Service managers will be provided direction for responding to all requests for acknowledgments." Exhibit RA-5 [Qwest Compliance Filing (Dec. 15, 2003), p. 5] (emphasis added). Qwest did not limit this commitment to service managers on Eschelon's account. See *id.*

⁵⁷² Exhibit RA-5 [Qwest Compliance Filing (Dec. 15, 2003), pp. 3-5]. RA-1, p. 19 (§2.4.4) (Regarding the topics covered by items (k) and (l), the Qwest CMP Document provides: "When Qwest commits to make a change pursuant to CMP, Qwest will review and revise internal and external documentation, as needed, to ensure that the change is appropriately reflected. Qwest will conduct training to communicate the changes to all appropriate Qwest personnel so that they are made aware of relevant changes. If Sections 5.0, 7.0, 8.0 or 9.0 require notification of the change, such notification will be provided in accordance with that section and will include references to

1 these Commission-ordered requirements that are clearly not limited to Eschelon
2 and its own earlier filing stating that this issue “involves processes that affect all
3 CLECs, not just Eschelon,”⁵⁷³ Qwest supports its choice not to use CMP by
4 stating: “This process is not one that requires Qwest to alter its procedures
5 overall, nor does it apply to all CLECs.”⁵⁷⁴ This is results-oriented conduct. It is
6 not a process affecting all CLECs, because Qwest did not want to use CMP, so it
7 says it is not one. Qwest’s own inconsistency on this issue demonstrates that
8 Qwest’s approach to CMP is one of convenience and does not offer Eschelon any
9 certainty upon which Eschelon may plan its business.⁵⁷⁵

10 **Q. MS. ALBERSHEIM STATES THAT IT IS NOTEWORTHY THAT, SINCE**
11 **THE MINNESOTA CASE, ESCHELON HAS NEVER ASKED QWEST**
12 **FOR AN ACKNOWLEDGEMENT LETTER.⁵⁷⁶ PLEASE RESPOND.**

13 **A.** This comment exposes the weaknesses of arguments made in Ms. Albersheim’s
14 direct testimony, in which she claimed that Eschelon’s proposal imposes a burden
15 on Qwest,⁵⁷⁷ and in her rebuttal testimony in which she claims that the burden

external Qwest documentation that will be modified to reflect the change, if applicable. All of the forgoing activities will take place by the implementation date of the change.”).

⁵⁷³ Exhibit 3 to Arbitration Petition (Joint Disputed Issues Matrix), Qwest Position Statement, p. 156 (Qwest position statement said: “Further, this issue involves processes that affect all CLECs, not just Eschelon. . . Processes that affect all CLECs should be addressed through CMP, not through an arbitration involving a single CLEC.”).

⁵⁷⁴ Albersheim Rebuttal, p. 40, lines 9-11.

⁵⁷⁵ Starkey Rebuttal, pp. 167-169.

⁵⁷⁶ Albersheim Rebuttal, p. 40, lines 11-13.

⁵⁷⁷ Albersheim Direct, p. 40.

1 would “multiply exponentially”⁵⁷⁸ if the Minnesota procedures are adopted in
2 other states. Also, after previously testifying under oath that other CLECs have
3 not expressed an interest in root cause analyses,⁵⁷⁹ Ms. Albersheim now testifies
4 that “CLECs can and do ask for root cause analyses,”⁵⁸⁰ which Qwest service
5 managers “routinely grant,”⁵⁸¹ and that CLECs already have a mechanism for
6 requesting root cause analyses.⁵⁸² The fact that a mechanism is already in place
7 for all states also contradicts Ms. Albersheim’s burdensomeness argument. Her
8 own testimony on these points indicates there is no undue burden.

9 **Q. AT PAGE 41 OF HER REBUTTAL TESTIMONY, MS. ALBERSHEIM**
10 **NOTES THAT QWEST HAS TAKEN STEPS TO MINIMIZE ERRORS IN**
11 **PROVISIONING AND THAT THE PIDS MEASURE HOW WELL**
12 **QWEST PERFORMS IN TERMS OF PROCESSING LSRS. GIVEN**
13 **THESE STATEMENTS, WHY DOESN'T ESCHELON SIMPLY**
14 **WITHDRAW ITS PROPOSALS REGARDING THE**
15 **ACKNOWLEDGEMENT OF MISTAKES AND ROOT CAUSE**
16 **ANALYSES?**

⁵⁷⁸ Albersheim Direct, p. 37, lines 2-3.

⁵⁷⁹ Qwest-Eschelon ICA MN Arbitration, Albersheim MN Direct, p. 40, lines 19-23 (“Q. HAS THE CLEC COMMUNITY AS A WHOLE EXPRESSED A NEED FOR ROOT CAUSE ANALYSIS? A. No. Anecdotal evidence from Qwest's account managers indicates that the only CLEC that has expressed a desire for root cause analysis is Eschelon. Again, this is an indication that this issue does not need to go to the CMP.”).

⁵⁸⁰ Albersheim Rebuttal, p. 42, lines 17-18.

⁵⁸¹ Albersheim Rebuttal, p. 42, line 18.

⁵⁸² Albersheim Rebuttal, p. 41, lines 1-5; *see also id.* p. 42, lines 1-8.

1 A. My direct testimony speaks to the inadequacies of the performance measures and
2 I won't repeat those arguments here.⁵⁸³ I'd note, however, that simply because
3 some performance is measured does not mean that issues won't arise on a going-
4 forward basis as they have in the past. And, if Qwest is not required by ICA
5 language to acknowledge mistakes and/or provide root cause analyses pursuant to
6 enforceable contract provisions, Eschelon may well be stuck without a realistic
7 way to insure Qwest will acknowledge mistakes and/or provide root cause
8 analyses when circumstances warrant either or both. Although Qwest took steps
9 in response to the Minnesota 616 Order, that fact did not prevent the ALJs in the
10 Minnesota arbitration from recommending rejection of Qwest's proposal.⁵⁸⁴

11 **Q. MS. ALBERSHEIM SUGGESTS THAT QWEST ALREADY HAS A**
12 **PROCESS THROUGH WHICH IT IS WILLING TO PROVIDE ROOT**
13 **CAUSE ANALYSIS ON REPAIR MISTAKES, AND THEREFORE,**
14 **THERE IS NO NEED TO INCLUDE THIS LANGUAGE TO THE ICA.⁵⁸⁵**
15 **PLEASE RESPOND.**

16 A. Ms. Albersheim refers to Qwest's PCAT, which does not constitute a binding
17 contract, and therefore, cannot be treated as a commitment and certainly cannot be
18 viewed as a reasonable replacement for contractual language. Ms. Albersheim
19 fails to explain why Qwest does not agree to commit to root cause analysis of

⁵⁸³ See, e.g., Webber Direct (adopted), pp. 46-48.

⁵⁸⁴ MN Arbitrators' Report ¶208.

⁵⁸⁵ Albersheim Rebuttal, p. 41 lines 3-5 and p. 40, lines 6-8; see also *id.* p. 43, lines 3-7.

1 Qwest mistakes⁵⁸⁶ in the ICA. If, indeed, Qwest is making a commitment to
2 Eschelon in this regard, it should agree to put the commitment into the ICA.

3 **Q. AT PAGE 42 OF HER REBUTTAL, MS. ALBERSHEIM INDICATES**
4 **THAT ESCHELON'S CONTRACT PROPOSAL PROVIDES ESCHELON**
5 **"UNFETTERED LEEWAY" TO DEMAND A ROOT CAUSE ANALYSIS**
6 **EVEN WHEN IT IS READILY APPARENT THAT A PROBLEM HAS**
7 **NOT BEEN CAUSED BY QWEST. IS IT LIKELY THAT ESCHELON**
8 **WOULD SEEK SUCH ANALYSES SIMPLY FOR ENTERTAINMENT'S**
9 **SAKE?**

10 A. No. Why would Eschelon spend its time and resources preparing requests for root
11 cause analyses only to have Qwest point back to Eschelon's error when Eschelon
12 knows full well that its processes and procedures failed (i.e., it's *readily apparent*
13 that the problem is Eschelon's)? Moreover, should Qwest ever feel as though its
14 being asked to perform root cause analyses when it is readily apparent that it is
15 not the culprit, it could pursue dispute resolution under the closed language in
16 Section 5 of the ICA. Indeed, Qwest would prefer to maintain all the "discretion"
17 - and "protection" - "as to when it is appropriate for the company to undertake a
18 root cause analysis" while denying Eschelon any and all discretion or
19 protection.⁵⁸⁷ The Commission should adopt Eschelon's proposed language with

⁵⁸⁶ In fact, Qwest's own documented process for providing root cause analysis is not limited to repair.
See Exhibit BJJ-34 (last paragraph).

⁵⁸⁷ See Albersheim Rebuttal, p. 42, line 18 - p. 43, line 2.

1 respect to acknowledgement of mistakes and root cause analyses.

2 **XII. SUBJECT MATTER NO. 31. EXPEDITED ORDERS**

3 Issues Nos. 12-67 and 12-67(a)-(g)

4 **Q. DO BOTH YOU AND MR. DENNEY ADDRESS ASPECTS OF SUBJECT**
5 **MATTER 31 IN ESCHELON'S SURREBUTTAL TESTIMONY?**

6 A. Yes. Mr. Denney addresses Issue 12-67 and subparts in his surrebuttal
7 testimony.⁵⁸⁸ Mr. Denny addresses Eschelon's proposed language and proposed
8 interim rate and the basis for Eschelon's Issue 12-67 proposals,⁵⁸⁹ including
9 discussion of both the Arizona Staff's and the Minnesota Administrative Law
10 Judges' recommendations in support of a cost-based rate for expedites.⁵⁹⁰

11 In the first section of this surrebuttal testimony, I also address expedited orders, in
12 the context of Qwest's actions in CMP.⁵⁹¹ While it is necessary to respond to
13 Qwest's testimony on this point, the CMP background (and Qwest's claims about
14 its changes to the PCAT that are allegedly based on the differences between
15 "designed" and "non-designed" facilities) is less pertinent if Eschelon's proposal

⁵⁸⁸ See also Denney Rebuttal, pp. 90-115 & Exhibits DD-20 and DD-21.

⁵⁸⁹ Regarding nondiscriminatory access to unbundled network elements, see also Mr. Starkey's discussion of Subject Matter 15 (Issue 9-31).

⁵⁹⁰ Exhibit DD-21, p. 2, Staff Conclusion No. 7 ("Staff recommends that . . . the rate(s) for expedites be considered as part of the next cost docket."); MN Arbitrators' Report (attached to the testimony of Mr. Denney), ¶221 ("As to pricing, Eschelon's position should be adopted. When Eschelon requests an expedite, it will be for accessing a UNE. Under 47 C.F.R. §§51.307 and 51.313, it must be provided under Section 251 and the Act and, thus, at TELRIC rates.").

⁵⁹¹ See also Exhibits BJJ-42 and BJJ-43.

1 number two is adopted for Issue 12-67(a) regarding Section 12.2.1.2.1. Section
2 12.2.1.2.1 addresses when Qwest makes exception(s) to charging an additional fee
3 for expedites. Eschelon's proposal number two states that Qwest will grant and
4 process CLEC's expedite request, and expedite charges are not applicable, if
5 Qwest does not apply expedite charges to its retail Customers, such as when
6 certain emergency conditions (*e.g.*, fire or flood) are met and the applicable
7 condition is met with respect to CLEC's request for an expedited order. If the
8 purpose of Qwest's CMP-related and "designed services" testimony is to show
9 that any one or more of the conditions identified in Eschelon's proposal number
10 one for Section 12.2.1.2.1 should not be included in the contract for unbundled
11 loops because it is not discriminatory to charge Eschelon for expedites (*i.e.*, create
12 no exception to charging) as it charges its own retail customers and itself, then
13 this purpose does not apply to Eschelon's proposal two (which contains no list of
14 conditions). If Qwest offers an exception to charging a separate expedite fee
15 either at the commencement of the term of the ICA or during its term, Eschelon's
16 proposal number two simply provides that Qwest must offer that exception to
17 Eschelon as well when the same emergency conditions are met. The issue then
18 becomes whether, when there is no exception to charging for retail or wholesale
19 customers, what rate applies. Mr. Denney discusses that issue, and the need for
20 cost-based rates, in his surrebuttal testimony.

1 **XIII. SUBJECT MATTER NO. 33. JEOPARDIES**

2 Issues Nos. 12-71 through 12-73: ICA Section 12.2.7.2.4.4 and subparts

3 **Q. DO YOU ALSO DISCUSS JEOPARDIES IN ANOTHER SECTION OF**
4 **YOUR TESTIMONY?**

5 A. Yes. Please refer to the “Jeopardies Example” in the first section of my
6 surrebuttal testimony, regarding CMP and the need for contractual certainty, for a
7 discussion of Qwest’s claims regarding jeopardies in the context of CMP.

8 **Q. QWEST INDICATES THAT ESCHELON’S PROPOSAL WOULD**
9 **“FORCE EXTRA TIME INTO THE PROCESS” THAT COULD**
10 **GUARANTEE A DUE DATE IS MISSED.⁵⁹² IS THAT AN ACCURATE**
11 **DESCRIPTION?**

12 A. No. Eschelon’s proposal provides for *advance* notice to ensure *timely* delivery of
13 the circuit.⁵⁹³ Timely delivery of service to the customer is of the utmost
14 importance to Eschelon.⁵⁹⁴ Delays are more likely to occur when Qwest provides
15 an untimely Firm Order Confirmation (“FOC”) or no FOC after a Qwest facility

⁵⁹² Albersheim Rebuttal, p. 59, lines 5-7.

⁵⁹³ See, e.g., Webber Direct (adopted), pp. 125-126 (“Timely delivery of the Firm Order Confirmation (FOC) after a Qwest jeopardy is at the heart of this scenario.”).

⁵⁹⁴ Starkey Rebuttal, pp. 177, 182 & 189. See also Webber Direct (adopted by Mr. Starkey), p. 130, lines 6-7 (“Perhaps the *most important consequence* of being assigned fault is the *effect on the due date* for providing service.”); see also *id.* p. 140, lines 13-16 (“Eschelon will attempt to overcome these obstacles and arrange staffing to accept service *the same day*, as stated in Eschelon’s proposal, *because delivery of service to its Customer is of the utmost importance to Eschelon.*”) (emphasis added); see also *id.* pp. 132, 134 & 138-141.

1 jeopardy,⁵⁹⁵ because a proper FOC allows Eschelon to be prepared to accept the
2 circuit on time.⁵⁹⁶ If Qwest provides an untimely FOC or no FOC after a Qwest
3 facility jeopardy, the problem is compounded when Qwest classifies the resulting
4 delay as Eschelon-caused (Customer Not Ready or "CNR"). As previously
5 discussed, this pushes out the due date at least three days.⁵⁹⁷ When Qwest
6 provides an untimely FOC or no FOC after a facility jeopardy, it should be a
7 Qwest jeopardy because Qwest failed to provide any notice or sufficient notice to
8 allow Eschelon to obtain any needed access to the customer premises and prepare
9 to accept the circuit.

10 **Q. MS. ALBERSHEIM SUGGESTS THAT SENDING AN FOC AFTER A**
11 **QWEST FACILITY JEOPARDY IS CLEARED MAY BE A**
12 **"FORMALITY."⁵⁹⁸ PLEASE RESPOND.**

⁵⁹⁵ The term "Qwest facility jeopardy" refers generally to a Qwest-caused issue or potential issue that places delivery of the requested facility on the due date at risk (i.e., in "jeopardy") due to an issue relating to facilities in the Qwest network (such as lack of facilities, bad pairs, etc.). Further information about the type of jeopardy dealt with in Eschelon's proposed language for this issue is provided in footnotes 4, 5, and 6 to Exhibit BJJ-6 and BJJ-44. In particular, see the discussion of "K jeps" in footnote 6.

⁵⁹⁶ Exhibit MS-6, MN ICA Arbitration Transcript, Vol. 1, p. 37, line 20 – p. 38, line 6 (Ms. Albersheim) (Q So you agree with me that Qwest's current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes. Q And the reason for that is you want to let the CLEC know that the CLEC should be expecting to receive the circuit, right? A Yes. Q And the CLEC needs to have personnel available and it needs to also perhaps make arrangements with the customer to have the premises available; right? A Yes.").

⁵⁹⁷ See Webber Direct (adopted), p. 130; Starkey Rebuttal, p. 179. When a jeopardy is classified as a CLEC-caused (CNR) jeopardy for unbundled loop orders, the CLEC is required to supplement its order by requesting a new due date that is at least *three days after* the date of the supplemental order. Exhibit MS-6, MN ICA Arbitration Transcript (testimony of Renee Albersheim, Vol. 1, p. 36, line 20 – p. 37, line 2).

⁵⁹⁸ Albersheim Rebuttal, p. 63, line 16.

1 A. Providing an FOC after a Qwest facility jeopardy has cleared is not a mere
2 formality; it is a contractual requirement (see Section 9.2.4.4.1). Ms. Albersheim
3 has admitted that sending an FOC in these situations serves the important
4 practical purpose of allowing a CLEC to be prepared to accept the circuit by, for
5 example, scheduling personnel and arranging access to the customer premises.⁵⁹⁹
6 In fact, Ms. Albersheim has testified that, if the CLEC does not have adequate
7 notice that the circuit is being delivered (with the agreed upon process for
8 adequate notice consisting of an FOC), then it is “*not appropriate*” for Qwest to
9 assign a CLEC-caused (CNR) jeopardy.⁶⁰⁰

10 **Q. DOES QWEST RECOGNIZE THE IMPORTANCE OF NOTICE AND**
11 **THE NEED FOR PREPARATION TIME FOR ITSELF?**

12 A. Yes. When discussing the three-day interval required by Qwest⁶⁰¹ to reschedule
13 the due date after Qwest has unexpectedly attempted to deliver a circuit but
14 despite best efforts cannot do so, Ms. Albersheim testifies that the interval gives
15 Qwest the notice that it needs to be prepared. Ms. Albersheim indicates that the

⁵⁹⁹ Exhibit MS-6, MN ICA Arbitration Transcript, Vol. 1, p. 37, line 20 – p. 38, line 6 (Ms. Albersheim) (Q So you agree with me that Qwest’s current practice is to provide the CLEC with an FOC after a Qwest facilities jeopardy has been cleared; is that right? A Yes. Q And the reason for that is you want to let the CLEC know that the CLEC should be expecting to receive the circuit, right? A Yes. Q And the CLEC needs to have personnel available and it needs to also perhaps make arrangements with the customer to have the premises available; right? A Yes.”).

⁶⁰⁰ Exhibit MS-6, MN ICA Arbitration Transcript, Vol. 1, p. 94, lines 4-11 (testimony of Renee Albersheim) (emphasis added; footnote added).

⁶⁰¹ While Qwest does not deny that the normal interval is three days, Ms. Albersheim quibbles with the description of this as a requirement and states that Qwest may attempt to deliver the circuit earlier than three days. See Albersheim p. 62, lines 5-9. There is no guarantee, however, that the timeframe will be shorter. Because three days is Qwest’s “standard” interval, Qwest may apply in each case. Certainly Eschelon must anticipate that likely possibility.

1 three-day interval “is necessary to ensure that Qwest *technicians can be made*
2 available to provision a designed circuit to the CLEC. Qwest must have
3 *flexibility to manage the technicians work assignments* in order to ensure that
4 other CLECs and other Qwest *customers are not negatively impacted* by the need
5 to send a technician back to the CLEC a second time because the CLEC was not
6 ready to receive the circuit on the original due date.”⁶⁰² Ms. Albersheim does not
7 explain why it is legitimate for Qwest to require a three-day interval so Qwest
8 may be prepared but it is allegedly unreasonable for Eschelon to ask for up to 24
9 hours so that Eschelon may likewise prepare. After all, Eschelon also has to make
10 technicians available, manage technicians work assignments, and coordinate with
11 customers (including obtaining customer premise access).⁶⁰³

12 Ms. Albersheim refers to sending a technician back a second time without
13 recognizing that most likely (and perhaps only) reason that a Qwest technician
14 would have to go back a second time is because the technician had no customer
15 premise access. Again, the purpose of the FOC is provide notice to Eschelon so
16 that Eschelon may, for example, *arrange customer premise access*. If, by not
17 providing an FOC or providing one on very short notice, Qwest causes a situation
18 that prevents Eschelon from having time to arrange customer premise access,
19 Qwest seeks to give itself the time to prepare that it denied Eschelon (which
20 caused the problem). Ms. Albersheim states that the “CLEC was not ready to

⁶⁰² Albersheim Rebuttal, p. 61, line 19 – 62, p. 5 (emphasis added).

⁶⁰³ See, e.g., Webber Direct (adopted), pp. 141-142.

1 receive the circuit”⁶⁰⁴ without recognizing that its failure to provide the
2 opportunity to prepare that it ensures itself caused the CLEC to be not ready.
3 Therefore, a “CNR” classification is inappropriate.

4 **Q. QWEST STATES THAT IT USES BEST EFFORTS TO MEET THE DUE**
5 **DATE WHILE ESCHELON PROPOSES TO FORCE EXTRA TIME INTO**
6 **THE PROCESS⁶⁰⁵ BY REQUIRING THE FORMALITY OF RECEIPT OF**
7 **THE NEW FOC BEFORE THE DUE DATE.⁶⁰⁶ MS. ALBERSHEIM ALSO**
8 **CLAIMS THAT ESCHELON’S PROPOSED PHRASE “THE DAY**
9 **BEFORE” ALTERS THE TIMING OF NOTICES.⁶⁰⁷ IS MS.**
10 **ALBERSHEIM’S TESTIMONY ON THESE POINTS MISLEADING?**

11 **A.** Absolutely. Eschelon is *not* proposing that, in any circumstance (with or without
12 an FOC), Qwest cannot attempt to deliver the circuit or that Qwest must wait to
13 deliver the FOC before attempting delivery. This is self-evident from the
14 language of Eschelon’s proposal (see below). Eschelon wants Qwest to use best
15 efforts to deliver the circuit on the due date, just as Eschelon uses best efforts to
16 accept the circuit on the due date,⁶⁰⁸ and Eschelon’s language therefore *requires*
17 best efforts. Given Qwest’s claims, the language of Eschelon’s proposed

⁶⁰⁴ Albersheim Rebuttal, p. 62, lines 4-5.

⁶⁰⁵ Albersheim Rebuttal, pp. 59-60.

⁶⁰⁶ Albersheim Rebuttal, p. 63, lines 12-16.

⁶⁰⁷ Albersheim Rebuttal, p. 58, line 9.

⁶⁰⁸ *See, e.g.,* Webber Direct (adopted), pp. 139-140 & Exhibit BJJ-19.

1 language for Issue 12-72 – showing Eschelon has committed to use best efforts –
2 bears repeating:

3 **Issue 12-72:**

4 12.2.7.2.4.4.1 There are several types of jeopardies. Two of these
5 types are: (1) CLEC or CLEC End User Customer is not ready or
6 service order is not accepted by the CLEC (when Qwest has tested
7 the service to meet all testing requirements.); and (2) End User
8 Customer access was not provided. For these two types of
9 jeopardies, Qwest will not characterize a jeopardy as CNR or send
10 a CNR jeopardy to CLEC if a Qwest jeopardy exists, *Qwest*
11 *attempts to deliver the service*, and Qwest has not sent an FOC
12 notice to CLEC after the Qwest jeopardy occurs but at least the day
13 before Qwest attempts to deliver the service. *CLEC will*
14 *nonetheless use its best efforts to accept the service*. If needed,
15 the Parties will attempt to set a new appointment time on the same
16 day and, if unable to do so, Qwest will issue a Qwest Jeopardy
17 notice and a FOC with a new Due Date.

18 Eschelon’s proposed language clearly states that, even when Qwest falls down
19 and does not provide an FOC or provides an untimely FOC, Eschelon “will
20 nonetheless use its best efforts to accept the service.”⁶⁰⁹ The proposal is fully
21 consistent with Qwest’s testimony that “if a jeopardy situation can be resolved on
22 the original due date, all parties should try to ensure that it is.”⁶¹⁰ The difference
23 is that Eschelon’s language ensures that when, despite best efforts the circuit
24 cannot be delivered, Qwest does not benefit by blaming Eschelon for its failure to
25 provide proper notice through an erroneous classification of the jeopardy. *More*
26 *importantly*, Eschelon’s language ensures that the end user customer will not
27 experience avoidable delay due to Qwest’s failure to provide proper notice,

⁶⁰⁹ Eschelon Proposed ICA Section 12.2.7.2.4.4.1.

⁶¹⁰ Albersheim Rebuttal, p. 59, lines 1-2.

1 because the language requires the companies to “attempt to set a new appointment
2 time *on the same day*.” As discussed above, if Qwest erroneously classifies the
3 jeopardy as Eschelon-caused (CNR), the appointment is necessarily *three days*
4 out for unbundled loop orders,⁶¹¹ instead of the same day.

5 To demonstrate Eschelon’s commitment on this point, Eschelon provided Exhibit
6 BJJ-19 comprising a list of more than one hundred examples when, despite the
7 lack of proper notice (i.e., no FOC after a Qwest facility jeopardy), Eschelon uses
8 best efforts to accept the circuit and is successful in doing so Qwest unexpectedly
9 attempts to deliver service. Eschelon’s devotion to ensuring the best interests of
10 the End User Customer is evident from these examples. Exhibit BJJ-19 is
11 discussed on pages 139-140 of Mr. Webber’s direct testimony, which I have
12 adopted. Regarding Exhibit BJJ-19, Ms. Albersheim responds that “if you
13 compare the data in the column labeled ‘Eschelon Requested Due Date’ to the
14 data in the column ‘Completion Date’, you will see that in the vast majority of
15 these examples, the service was delivered on Eschelon’s original due date.”⁶¹²

16 The exhibit appears to have served its purpose, because once again, the point is
17 that under Eschelon’s language, Eschelon would either accept delivery using best
18 efforts or have an opportunity to schedule a new appointment on the *same day*.

⁶¹¹ See Webber Direct (adopted), p. 130; Starkey Rebuttal, p. 179. When a jeopardy is classified as a CLEC-caused (CNR) jeopardy for unbundled loop orders, the CLEC is required to supplement its order by requesting a new due date that is at least *three days after* the date of the supplemental order. Exhibit MS-6, MN ICA Arbitration Transcript (testimony of Renee Albersheim, Vol. 1, p. 36, line 20 – p. 37, line 2.

⁶¹² Albersheim, p. 63, lines 9-12.

1 Under Qwest's approach (which is apparent from its Exhibit RA-R6, which I
2 discuss below), if despite best efforts the companies are not able to complete
3 delivery, Qwest will assign a CNR jeopardy, and the unbundled loop order will be
4 delayed *three days*.⁶¹³

5 Eschelon has committed in its proposed contractual language to continuing to use
6 best efforts in this manner. When, through no fault of its own, it cannot accept
7 the circuit due to Qwest's failure to provide the required advance notice, however,
8 Qwest should not be allowed to force an unnecessary three-day delay.

9 **Q. MS. ALBERSHEIM DISCUSSES THE PERFORMANCE INDICATOR**
10 **DEFINITIONS ("PIDS") ON PAGE 62 OF HER REBUTTAL**
11 **TESTIMONY. ARE THE PID RESULTS THE MOST IMPORTANT**
12 **CONSEQUENCE OF QWEST'S FAILURE TO SEND AN FOC AFTER A**
13 **QWEST FACILITY JEOPARDY HAS CLEARED?**

14 **A.** No. As I said above and in previous testimony, timely delivery of service to the
15 customer is of the utmost importance to Eschelon.⁶¹⁴ The most significant

⁶¹³ See Webber Direct (adopted), p. 130; Starkey Rebuttal, p. 179. When a jeopardy is classified as a CLEC-caused (CNR) jeopardy for unbundled loop orders, the CLEC is required to supplement its order by requesting a new due date that is at least *three days after* the date of the supplemental order. Exhibit MS-6, MN ICA Arbitration Transcript (testimony of Renee Albersheim, Vol. 1, p. 36, line 20 – p. 37, line 2).

⁶¹⁴ Starkey Rebuttal, pp. 177, 182 & 189. See also Webber Direct (adopted by Mr. Starkey), p. 130, lines 6-7 ("Perhaps the *most important consequence* of being assigned fault is the *effect on the due date* for providing service."); see also *id.* p. 140, lines 13-16 ("Eschelon will attempt to overcome these obstacles and arrange staffing to accept service *the same day*, as stated in Eschelon's proposal, *because delivery of service to its Customer is of the utmost importance to Eschelon.*") (emphasis added); see also *id.* pp. 132, 134 & 138-141.

1 consequence of a CNR jeopardy is that the CLEC must submit an order to
2 supplement the due date, which may have the effect of delaying the due date for at
3 least three days for loops, which means that the CLEC's customer will have to
4 wait for service.⁶¹⁵ *A jeopardy properly classified as caused by Qwest does not*
5 *require the CLEC to supplement the due date and does not build in this three day*
6 *delay.* For this reason, it is very important that jeopardies that are, in fact,
7 Qwest's fault not be incorrectly classified as Eschelon-caused (CNR) jeopardies.
8 In its proposed language, Eschelon reasonably proposes to accept fault when it
9 causes a jeopardy situation and asks Qwest to do the same. Eschelon's customers
10 should not be penalized because Qwest has made a mistake.

11 Qwest's proposal is that the ICA exclude any language on this issue, and instead
12 refer only to information posted on Qwest's website. Accordingly, Qwest's
13 language on this important customer-affecting issue states, in its entirety:
14 "Specific procedures are contained in Qwest's documentation, available on
15 Qwest's wholesale web site." This is despite the fact that, except for a single
16 phrase, Qwest does not dispute the statements made in Eschelon's proposed
17 language for Issues 12-71 through 12-73, which it admits reflect Qwest's current
18 practice.⁶¹⁶

⁶¹⁵ See MN Arbitration Transcript, Vol. I p. 36, line 20 – p. 37, line 2.

⁶¹⁶ Minnesota Transcript, Vol. 1, p. 37, lines 16-23 (Ms. Albersheim). Qwest claims that Eschelon's proposed phrase "at least the day before" is not part of Qwest's current process. See *id.* p. 37, lines 11-19. Other than that phrase, however, Qwest admits that the remainder of Eschelon's proposed language reflects Qwest's current process. See *id.* p. 37, lines 16-23.

1 In Minnesota, the ALJs said that Eschelon's goal appeared to be primarily one of
2 jeopardy classification for purposes of application of the PIDs.⁶¹⁷ Here it appears
3 that Qwest succeeded in muddying the issue with testimony that focused on the
4 PIDs.⁶¹⁸ While Eschelon therefore responded to that testimony, the PIDs are not
5 the main issue. In fact, this issue is, first and foremost, a customer service issue.
6 Eschelon's chief concern is not whether Qwest properly bears the financial
7 consequences under the PIDs for its errors, but rather, with customer service.
8 Qwest admits that, following a CNR jeopardy, Qwest requires that the CLEC
9 submit a supplemental order.⁶¹⁹ Because Qwest requires a CLEC to request a
10 minimum of three days from the date of the supplemental order to the new due
11 date per its normal interval,⁶²⁰ this means that the customer's order may be
12 delayed by at least three days. Therefore, Eschelon's language deals with the
13 impact on provisioning of circuits, and the resulting delays in provisioning, when
14 Qwest erroneously classifies jeopardies.

15 In Minnesota, the ALJs noted that "Qwest already agreed in the ICA to provide a
16 new FOC after the jeopardy notice, regardless of which party caused the jeopardy,
17 which is what Eschelon says it needs in order to ensure it has resources available

⁶¹⁷ Report at ¶¶237-38.

⁶¹⁸ See, e.g., Albersheim Direct, p. 75.

⁶¹⁹ See, e.g., Minnesota Transcript, Vol. 1 (Ms. Albersheim, p. 36, line 20 – p. 37, line 2).

⁶²⁰ See *id.*

1 to accept service after a jeopardy notice.”⁶²¹ This is only partially correct. ⁶²²
2 Eschelon needs to receive an FOC *in sufficient time in advance* of the new due
3 date so that it is prepared to accept delivery. Eschelon’s evidence includes
4 examples where Qwest provided an FOC *nine minutes before* attempting to
5 deliver the circuit, provided an FOC *after* attempting delivery, and attempted
6 delivery with *no FOC at all*.⁶²³ In none of these instances could Eschelon be
7 reasonably considered to have received adequate notice, yet each instance was
8 categorized by Qwest as an Eschelon-caused (CNR) jeopardy.

9 The examples provided by Eschelon show that Eschelon’s main goal is to avoid
10 the customer-affecting delays caused by Qwest’s erroneous classification of
11 Qwest-caused jeopardies as Eschelon-caused jeopardies. Although there is an
12 unfair result under the PIDs when Qwest erroneously classifies a Qwest-caused
13 jeopardy as an Eschelon-caused jeopardy,⁶²⁴ that is not the main issue, nor does it

⁶²¹ Report at ¶237.

⁶²² See ICA Section 9.2.4.4.1 (quoted in footnote 4 to Exhibits BJJ-6 and BJJ-44).

⁶²³ Johnson Surrebuttal Testimony (Hearing Ex. 41), BJJ-32.

⁶²⁴ See Webber Direct (adopted), pp. 147-148. Although Ms. Albersheim focuses on the PO-5 PID (Albersheim Rebuttal, p. 62), a more important PID for this purpose is the installation commitments met PID (OP-3). OP-3 has an exclusion for “due dates missed for standard categories of customer and non-Qwest reasons” including “no access to customer premises” etc. See Exhibit 4(B) to Petition (ICA Exhibit B), p. 34 (OP-3); see also Webber Direct (adopted), p. 131, note 195. These are “Customer Not Ready” reasons. All of the twenty-two examples in Exhibit BJJ-44 are situations in which Qwest classified the jeopardy as CNR. In Exhibits RA-R6 and BJJ-44, for Row Numbers 2, 6, 20, and 21, Qwest admits in Qwest’s technician notes that Qwest missed the original due date for a Qwest reason, which resulted in a Qwest facility jeopardy. In the absence of a later CNR jeopardy, these examples should be included in OP-3 because Qwest did not meet the installation commitment. Because Qwest assigned a CNR jeopardy (which Eschelon maintains is erroneous), Qwest may argue that the exclusion quoted above in OP-3 allows Qwest to exclude these missed due dates for purposes of OP-3.

1 require a change in the PIDs to resolve. The ALJs' statement in Minnesota that
2 changes or refinements in the way jeopardies are classified under the PIDs may be
3 addressed "through a process outside of an individual ICAs,"⁶²⁵ however, seems
4 to suggest a misimpression that the PIDs themselves need to be changed. That is
5 not the case. Qwest admits that the existing PIDs "specifically differentiate
6 between Qwest caused and CLEC/Customer caused delays."⁶²⁶ Eschelon's
7 language deals with the impact on provisioning of the circuit, and the resulting
8 delays in provisioning, when Qwest erroneously differentiates them. Eschelon's
9 language is needed to appropriately define this situation as a Qwest-caused
10 jeopardy to avoid this customer-impacting result. In order to address the
11 Minnesota ALJs concern that Eschelon is attempting to address a "PIDs issue"
12 through the ICA, Eschelon has offered an alternative proposal (provided on page
13 184 of my rebuttal testimony) in all six states which adds a sentence to its
14 proposed language on this issue⁶²⁷ to demonstrate that Eschelon is not attempting
15 to modify the PIDs through its proposed language relating to jeopardies.

16 **Q. QWEST INDICATES THAT IT ANALYZED ESCHELON'S EXAMPLES**
17 **IN EXHIBIT BJJ-6 AND HAS PROVIDED QWEST'S REVIEW OF THAT**

⁶²⁵ Report at ¶238.

⁶²⁶ Albersheim Direct, p. 75.

⁶²⁷ The additional sentence provides: "Nothing in this Section 12.2.7.2.4.4 modifies the Performance Indicator Definitions (PIDs) set forth in Exhibit B and Appendices A and B to Exhibit K of this Agreement."

1 **DATA IN EXHIBIT RA-R6.⁶²⁸ HAS ESCHELON REVIEWED RA-R6**
2 **AND, IF SO, WHAT DOES IT SHOW?**

3 A. Yes. Ms. Johnson has analyzed Qwest's Exhibit RA-R6 to Ms. Albersheim's
4 testimony in this proceeding, as well as the corresponding Exhibit RA-30 in the
5 Minnesota proceeding, and added responsive data in Exhibit BJJ-44 to her
6 rebuttal testimony.⁶²⁹ She describes her review and its results in her surrebuttal
7 testimony.

8 Qwest's Exhibit RA-R6 confirms that, even in situations when Qwest sends *no*
9 *FOC* at all after a Qwest facility jeopardy was cleared but before delivery or
10 attempted delivery, Qwest will attribute fault by assigning an Eschelon-caused
11 (CNR) jeopardy -- even though Eschelon's sole reason for being unprepared was
12 Qwest's failure to provide the FOC.⁶³⁰ The data disproves Ms. Albersheim's
13 claim that "Qwest takes responsibility for Qwest-caused jeopardies and classifies
14 them accordingly."⁶³¹ Although Ms. Albersheim sometimes gives lip service to

⁶²⁸ Albersheim Rebuttal, p. 60.

⁶²⁹ See also Johnson Rebuttal, p.13.

⁶³⁰ See Exhibit BJJ-44, Category "A," and Ms. Johnson's discussion of this exhibit in her surrebuttal testimony.

⁶³¹ Albersheim Rebuttal, p. 58, lines 5-6. Ms. Albersheim also claims that Mr. Webber "admits as much on page 131 of his Direct Testimony." *Id.*, p. 58, lines 6-7. There is no statement on page 131 (or 141) that can reasonably be interpreted in that manner. Mr. Webber states that Qwest suffers consequences "when it is classified as at fault (a Qwest jeopardy)." Webber Direct (adopted), p. 131, lines 8-9. This sentence says nothing about when Qwest erroneously classifies Eschelon as being at fault (a CNR jeopardy). In the latter cases, Qwest assigns fault to the wrong company, and Mr. Webber goes on to discuss the consequence of that erroneous classification in the next pages.

1 the general principles represented in Eschelon's proposed language,⁶³² the facts in
2 her own exhibit show that the result is exactly as feared, and previously
3 experienced, by Eschelon.⁶³³ Qwest will classify a jeopardy as CNR when it
4 should not do so. Qwest Exhibit RA-R6 is proof of this. Qwest's analysis of this
5 data and willingness to attribute these jeopardies to Eschelon clearly demonstrates
6 the need for this contract language not only to clarify the working relationship
7 between the carriers, but to better protect the interests of Eschelon's end user
8 customers.

9 **Q. MS. ALBERSHEIM STATES THAT "THE RECORD SHOWS THAT**
10 **QWEST DID NOT PROVIDE AN FOC BECAUSE OTHER ORDER**
11 **ACTIVITY BY ESCHELON OR BY QWEST ELIMINATED THE NEED**
12 **FOR AN FOC."**⁶³⁴ **PLEASE RESPOND.**

13 **A.** The single piece of evidence in the record identified by Ms. Albersheim for this
14 claim is her Exhibit RA-R6.⁶³⁵ She does not identify the order activity, either in
15 her testimony or her Exhibit RA-R6. As discussed by Ms. Johnson in her
16 surrebuttal testimony, Exhibit RA-R6 does not support her claim. There is no

⁶³² See, e.g., Exhibit MS-6, MN ICA Arbitration Transcript, Vol., 1, p. 94, lines 511 (Ms. Albersheim) ("A We don't disagree with the notion that a CNR jeopardy should be assigned appropriately. Q And if the CLEC doesn't have adequate notice that the circuit being delivered, adequate notice consisting of an FOC, then you would agree that a CNR jeopardy is not appropriate; correct? A Yes.").

⁶³³ See Exhibit BJJ-44, Category "A" and "Category B" and Ms. Johnson's discussion of this exhibit in her surrebuttal testimony.

⁶³⁴ Albersheim Rebuttal, p. 60, lines 14-16.

⁶³⁵ Albersheim Rebuttal, p. 60, footnote 24.

1 order activity that eliminates the need for Qwest to meet the *requirement* (under
2 Qwest's template ICA, the SGAT, the proposed contract, and its own process)⁶³⁶
3 to send an FOC after a Qwest facility jeopardy has cleared. There is no exception
4 to that requirement for unspecified order activity.

5 Ms. Albersheim is either using the term "order activity" loosely (to refer to
6 informal communications), or she has changed her story. In the Minnesota
7 arbitration proceeding, Ms. Albersheim testified that, despite the absence of an
8 FOC, the CLEC may have some notice before circuit delivery due to the
9 possibility that informal technician communications may have taken place.⁶³⁷

10 Qwest has admitted, however, that such informal communication even if it occurs
11 is not the agreed upon process by which Qwest informs Eschelon of the due date
12 for circuit delivery.⁶³⁸ The agreed upon process is the FOC.⁶³⁹ Ms. Johnson
13 further discusses the problems with Qwest going outside of that agreed upon
14 process.

15 **Q. DOES THE PHRASE "AT LEAST THE DAY BEFORE" AS CONTAINED**
16 **WITHIN ESCHELON'S PROPOSAL⁶⁴⁰ ALTER WHETHER**

⁶³⁶ Webber Direct (adopted), p. 139, footnote 214 & Qwest Exhibit RA-10.

⁶³⁷ Ms. Albersheim speculated that it is possible that "communication was happening between Qwest and the CLEC technicians." MN Tr. Vol. I, p. 94, lines 19-20 (Ms. Albersheim).

⁶³⁸ *Id.* p. 38, lines 13-19.

⁶³⁹ Exhibit MS-6, MN ICA Arbitration Transcript, Vol. 1, p. 38, lines 17-19 (Ms. Albersheim); *see also id.* p. 37, line 20 – p. 38, line 6.

⁶⁴⁰ Eschelon will accept either "at least a day before" or "at least the day before."

1 **ESCHELON'S PROPOSAL REFLECTS QWEST'S CURRENT**
2 **PROCESS?**

3 A. No. I discuss this in my earlier testimony regarding the "Jeopardies Example"
4 with respect to the CMP and the need for contractual certainty, and the facts are
5 described in Exhibit BJJ-5 to the direct testimony of Ms. Johnson. Qwest
6 confirmed this process in CMP in written materials on February 26, 2004 and
7 during a March 4, 2004 CMP call, as follows:

8 Action #1: As you can see receiving the FOC releasing the order
9 on the day the order is due does not provide sufficient time for
10 Eschelon to accept the circuit. Is this a compliance issue,
11 *shouldn't we have received the releasing FOC the day before the*
12 *order is due?* In this example, should we have received the
13 releasing FOC on 1-27-04?
14 Response #1 *This example is non-compliance to a documented*
15 *process. Yes an FOC should have been sent prior to the Due*
16 *Date.*"⁶⁴¹

17 "Bonnie confirmed that the CLEC should always receive the FOC
18 before the due date. *Phyllis agreed, and confirmed that Qwest*
19 *cannot expect the CLEC to be ready for the service if we haven't*
20 *notified you.*"⁶⁴²

21 Qwest now denies that its process is to provide the FOC at least the day before the
22 due date.⁶⁴³ Qwest has committed to no timeframe whatsoever for sending an
23 FOC to provide advance notice. In fact, Qwest defends its attempted circuit

⁶⁴¹ Exhibit BJJ-5, p. 37 (February 26, 2004 CMP materials).

⁶⁴² Exhibit BJJ-5, p. 21 (March 4, 2004 CMP ad hoc call minutes).

⁶⁴³ Exhibit MS-6, MN ICA Arbitration Transcript, Vol. 1, p. 37, lines 16-23 (testimony of Renee Albersheim). Qwest claims that Eschelon's proposed phrase "at least the day before" is not part of Qwest's current process. *See id.* p. 37, lines 11-19. Other than that phrase, however, Qwest admits that the remainder of Eschelon's proposed language reflects Qwest's current process. *See id.* p. 37, lines 16-23.

1 delivery (when customer premise access was required) with *only nine minutes*⁶⁴⁴
2 advance notice as adequate. Therefore, language is needed in the interconnection
3 agreement to address this issue. Eschelon's language reasonably relies upon the
4 above-quoted Qwest commitment for its proposed time period ("the day before").
5 Once again, even if Qwest fails to send an FOC within this time period or at all,
6 Qwest may still – under Eschelon's proposed language – deliver the circuit, and
7 Eschelon will use best efforts to accept it.

8 **XIV. SUBJECT MATTER NO. ISSUE 43. CONTROLLED PRODUCTION**

9 *Issue No. 12-87: ICA Section 12.6.9.4*

10 **Q. MS. ALBERSHEIM'S REBUTTAL TESTIMONY SEEMS PREDICATED**
11 **ON THE NOTION THAT ESCHELON HAS PROPOSED THAT IT BE**
12 **ALLEVIATED FROM ANY CONTROLLED PRODUCTION TESTING –**
13 **EVEN WHERE NEW RELEASES ARE CONCERNED. IS THAT**
14 **ACCURATE?**

15 **A.** No, it is not. Under both of Eschelon's proposals,⁶⁴⁵ Eschelon would indeed
16 participate in controlled production testing with new releases such as IMA
17 Release 20.0 (i.e., "new implementations").⁶⁴⁶ Because this is evident from the

⁶⁴⁴ Exhibit BJJ-44, Row Number 11.

⁶⁴⁵ Webber Direct (adopted), p. 171.

⁶⁴⁶ See Albersheim Rebuttal, p. 65. Ms. Albersheim has admitted that Release 20.0 is a "new implementation" (i.e., the term used in Eschelon's proposed language). See Qwest-Eschelon ICA MN Arbitration, Albersheim MN Surrebuttal, p. 43, lines 13-15 ("The underlying architecture of

1 plain language of Eschelon's proposals, I will repeat the pertinent proposed
2 language here:

3 **Eschelon Proposal #1**

4 12.6.9.4 Controlled Production – Qwest and CLEC will perform
5 controlled production. . . . Controlled production is not required
6 for recertification, unless the Parties agree otherwise.
7 Recertification does not include new implementations such as new
8 products and/or activity types.

9 **Eschelon Proposal #2**

10 12.6.9.4 Controlled Production – Qwest and CLEC will perform
11 controlled production for new implementations, such as new
12 products, and as otherwise mutually agreed by the Parties. . . .

13 Note that, contrary to suggestions in Qwest's testimony, Eschelon's proposals do
14 not relieve Eschelon from either recertification testing⁶⁴⁷ or controlled production
15 testing.⁶⁴⁸ Under Eschelon's proposal, along with other closed language in the
16 ICA, testing will be conducted for both new implementations (controlled
17 production)⁶⁴⁹ and recertifications (recertification testing).⁶⁵⁰ Eschelon's proposal
18 simply reflects Qwest's current practice.⁶⁵¹ Although Ms. Albersheim testifies

IMA Release 20 .0 is changing from EDI to XML. This is such a significant change that Qwest is treating this as a new implementation").

⁶⁴⁷ Webber Direct (adopted), pp. 169-171 (citing closed ICA language requiring recertification testing).

⁶⁴⁸ Closed portion of 12.6.9.4 ("Qwest and CLEC will perform controlled production.") (quoted above).

⁶⁴⁹ Closed portion of 12.6.9.4 ("Qwest and CLEC will perform controlled production.") (quoted above).

⁶⁵⁰ See, e.g., Sections 12.6.4, 12.6.9.8, and 12.6.9.9 of the proposed ICA (closed language).

⁶⁵¹ Qwest's *EDI Implementation Guidelines – for Interconnect Mediated Access*, Version 19.2, pp. 48 and 50, quoted in Eschelon Direct regarding Issue 12-87, pp. 172-173. The IMA Release 20.0 (to which Eschelon may move in approximately February of 2007) contains similar provisions on pp. 41-42

(http://www.qwest.com/wholesale/downloads/2006/061030/IMA_XML_Implementation_Guidelines_20_0_10_30_06.pdf).

1 that, in support of its testimony that this is Qwest's current practice, Eschelon
2 "cites the EDI Implementation Guidelines for Release 19.2, which *only applied to*
3 Release 19.2 of IMA,"⁶⁵² Eschelon also quotes a similar provision for Release
4 20.0 in Eschelon's Direct Testimony.⁶⁵³ Eschelon discussed why, if this is
5 Qwest's current practice, it needs to be addressed in the ICA in Eschelon's
6 previous testimony on this issue.⁶⁵⁴

7 **Q. MS. ALBERSHEIM TESTIFIES THAT ESCHELON'S PROPOSED**
8 **LANGUAGE DOES NOT REFLECT QWEST'S CURRENT PRACTICE.**⁶⁵⁵
9 **HAS MS. ALBERSHEIM PROVIDED SWORN TESTIMONY TO THE**
10 **CONTRARY?**

11 **A.** Yes. In this proceeding, in her direct testimony, Ms. Albersheim testified as
12 follows:

13 Q. ADDRESSING THE SECOND ISSUE, IS ESCHELON'S
14 LANGUAGE ACCURATE WITH REGARD TO
15 RECERTIFICATION?

16 A. Yes.

17 Q. IF ESCHELON'S LANGUAGE IS ACCURATE, WHY DOES
18 QWEST OBJECT TO THE ADDITION OF THIS LANGUAGE IN
19 THE CONTRACT?

20 A. While the language may be accurate today, it may not be accurate
21 tomorrow.⁶⁵⁶

⁶⁵² Albersheim Rebuttal, p. 66, lines 1-3 (emphasis in original).

⁶⁵³ Webber Direct (adopted), pp. 173-174.

⁶⁵⁴ Webber Direct (adopted), pp. 174-177.

⁶⁵⁵ Albersheim Rebuttal, p. 65, lines 10-13.

⁶⁵⁶ Albersheim Direct, p. 99, line 24 – p. 100, line 4.

1 Ms. Albersheim provided almost identical testimony in the Minnesota
2 arbitration.⁶⁵⁷ In Minnesota, the ALJs found that “Qwest agrees that Eschelon’s
3 language accurately depicts its current practice, which does not require CLECs to
4 recertify if they have successfully completed testing of a previous release; in
5 addition, Qwest admits that Qwest can control whether a CLEC can access its
6 OSS.”⁶⁵⁸ I address the Minnesota ALJs’ ruling on page 202 of my rebuttal
7 testimony.

8 **Q. MS. ALBERSHEIM CLAIMS THAT THERE WAS NO STATEMENT IN**
9 **CMP REDESIGN THAT THE IMPLEMENTATION GUIDELINES**
10 **WOULD BE SUBJECT TO CMP.⁶⁵⁹ IS THAT THE CASE?**

11 **A.** No. Eschelon addressed the CMP Redesign meeting minutes in its direct⁶⁶⁰ and
12 rebuttal testimony,⁶⁶¹ and Eschelon provided excerpts from the meeting minutes
13 in Exhibit BJJ-23. Qwest provided no documentation to support its claims.
14 Qwest admits that Eschelon was an active participant in the CMP Redesign
15 team.⁶⁶² Attachment 5 (the action item log) to the March 5 through March 7,
16 2002 CMP Redesign meeting minutes shows that Action Item Number 143 (“Is

⁶⁵⁷ Qwest-Eschelon ICA MN Arbitration, Albersheim MN Direct, p. 99, line 24 – p. 100, line 4.

⁶⁵⁸ MN Arbitrators’ Report, ¶255.

⁶⁵⁹ Albersheim Rebuttal, p. 70, lines 14-15.

⁶⁶⁰ Webber Direct (adopted), pp. 175-176.

⁶⁶¹ Starkey Rebuttal, pp. 205-206.

⁶⁶² Albersheim Direct, p. 25, lines 10-12 (“According to the records of the CMP redesign, Eschelon was an active and vocal participant in the CMP redesign process, meaning that Eschelon had a hand in the design of the CMP as it exists today.”).

1 the EDI Implementation Guideline under *the scope of CMP?*"; "Does Scope
2 include documentation?") was closed in the affirmative in "Master Redline
3 Section 1.0."⁶⁶³ Specifically, the team closed with the resolution: "The EDI
4 Implementation Guideline will follow the CMP guidelines and timeframes."⁶⁶⁴
5 Therefore, the Implementation Guideline is supposed to be within the scope of
6 CMP.⁶⁶⁵ In the face of this explicit language stating that the guideline is within
7 the scope of CMP, Ms. Albersheim continues⁶⁶⁶ to maintain it is not, but provides
8 no evidence to support her statement. She attempts to re-characterize the
9 statements in the minutes, claiming that they "reflect that such changes will be
10 documented in all relevant systems documentation, including the EDI
11 Implementation Guidelines."⁶⁶⁷ The minutes, however, specifically state – not
12 simply that the changes will be documented – but that they will be *within the*

⁶⁶³ See Exhibit BJJ-23 to Johnson Direct containing Excerpts from Final Meeting Minutes of CLEC-Qwest Change Management Process Re-design meeting dated March 5-March 7, 2002 (Att. 5, Action Item 143) (emphasis added).

⁶⁶⁴ *Id.* (final column for Action Item 143).

⁶⁶⁵ As shown in the above quote from the CMP Document, the Scope includes all "Implementation" documentation. The fact that Qwest is moving from EDI to XML does not change that the Implementation Guideline for the application-to-application interface, whatever it is called, is within the Scope of CMP and changes to those guidelines should be submitted to CMP.

⁶⁶⁶ In the Minnesota Arbitration of the same contract language, Ms. Albersheim testified that the IMA Implementation Guideline documents are not and should not be under the CMP control. See Qwest-Eschelon ICA MN Arbitration, Albersheim MN Surrebuttal, p. 44 lines 4-10.

⁶⁶⁷ Albersheim Rebuttal, p. 70, lines 12-15.

1 *scope of CMP*. Qwest has admitted it is not handling them within the scope of
2 CMP at this time.⁶⁶⁸

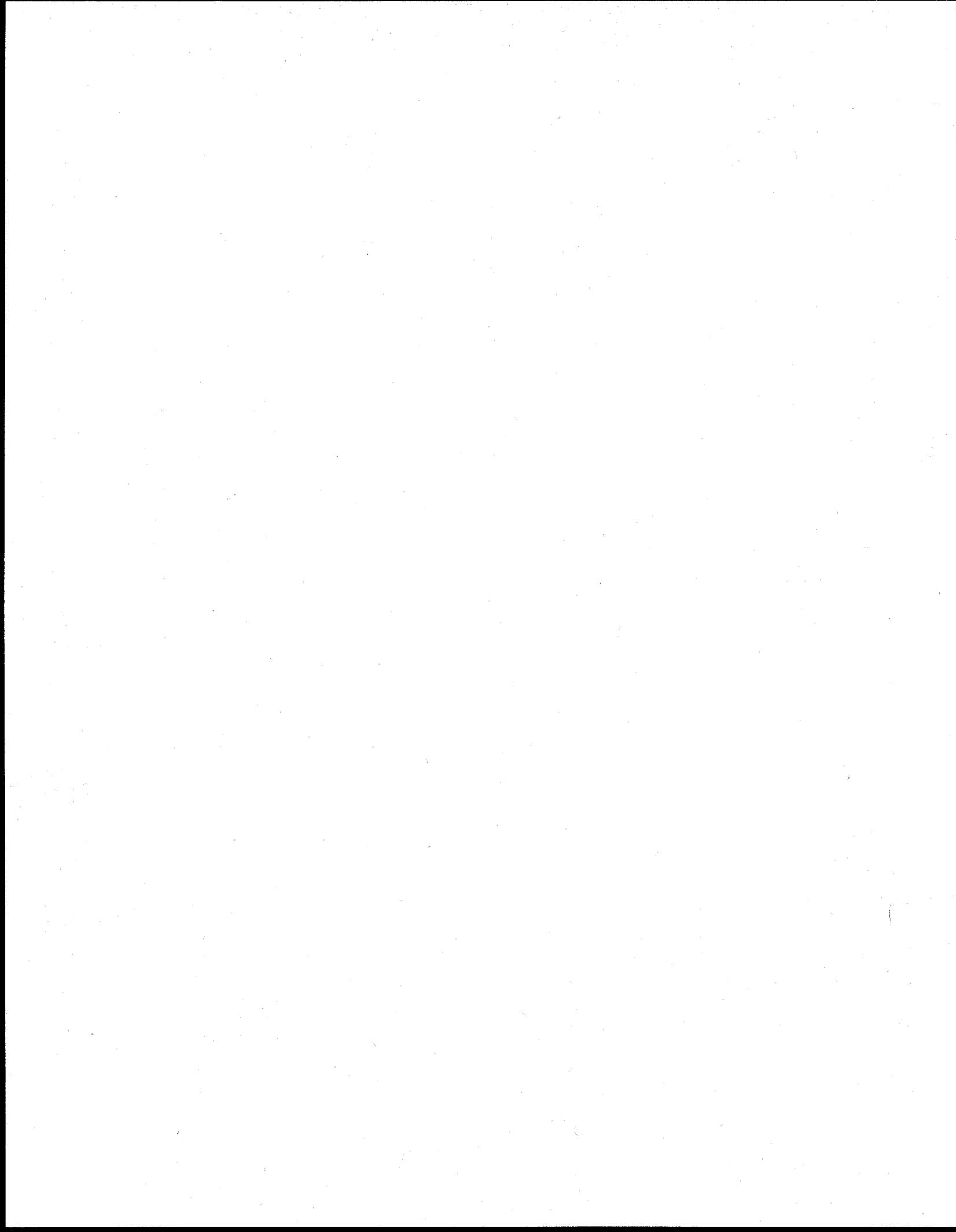
3 **Q. DOES QWEST RAISE ANY OTHER NEW ISSUES REGARDING ISSUE**
4 **12-87 IN ITS REBUTTAL TESTIMONY?**

5 A. No. Given that Ms. Albersheim's rebuttal does not appear to raise any other new
6 issues and is predicated on the notion that Eschelon has proposed to be relieved of
7 all obligations pertaining to controlled production testing – even for new releases
8 – which is incorrect, I will not repeat that discussion here.

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 A. Yes.

⁶⁶⁸ Ms. Albersheim testified that the IMA Implementation Guideline documents *are not* and should not be under the CMP control. *See* Qwest-Eschelon ICA MN Arbitration, Albersheim MN Surrebuttal, p. 44 lines 4-10.



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE PETITION OF)	
ESCHELON TELECOM OF ARIZONA, INC.)	
FOR ARBITRATION WITH QWEST CORP.,)	DOCKET NO. T-03406A-06-0572
PURSUANT TO 47 U.S.C. SECTION 252 OF)	DOCKET NO. T-01051B-06-0572
THE FEDERAL TELECOMMUNICATIONS)	
ACT OF 1996)	

EXHIBIT MS-7

TO

SURREBUTTAL TESTIMONY

OF

MICHAEL STARKEY

ON BEHALF OF

ESCHELON TELECOM OF ARIZONA, INC.

March 2, 2007

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Eschelon
Telecom for an Investigation Regarding
Customer Conversion by Qwest and Regulatory
Procedures

ISSUE DATE: November 12, 2003

DOCKET NO. P-421/C-03-616

ORDER FINDING COMPLIANCE FILING
INADEQUATE AND REQUIRING
FURTHER FILINGS

PROCEDURAL HISTORY

I. The Original Order

On July 30, 2003 the Commission issued an Order in this case finding that Qwest had failed to provide adequate service at several key points in the process of transferring a customer to Eschelon Telecom, Inc. and that these service inadequacies reflected systemic failures that must be addressed. The Commission identified four key failures:

- (1) Qwest failed to adopt operational procedures to ensure the seamless transfer of customers to competitive carriers.
- (2) Qwest failed to adopt operational procedures to prevent its retail division from interfering with Eschelon's ability to serve its customer and to prevent its retail division from providing misleading characterizations of Eschelon's conduct.
- (3) Qwest failed to adopt operational procedures to prevent its retail service representatives from canceling or otherwise modifying wholesale orders.
- (4) Qwest failed to adopt operational procedures to promptly acknowledge and take responsibility for mistakes in processing wholesale orders.

The Order required Qwest to make a compliance filing detailing its proposal for remedying these service inadequacies. The proposal was to include at least the following items:

- (1) Procedures for ensuring that retail service representatives are properly separated from the Company's wholesale operations, including a report on the feasibility of installing computer software to alert retail service representatives when they are dealing with wholesale orders or accounts and computer software to disable retail service representatives' ability to make changes in wholesale orders or accounts.
- (2) Procedures for promptly acknowledging and taking responsibility for mistakes in processing wholesale orders.
- (3) Procedures for reducing errors in processing wholesale orders, including a report on the feasibility of maximizing reliance on electronic processing, with an explanation of the necessity for each manual operation required for wholesale order processing.

II. The Compliance Filing; Parties' Comments

On August 29, 2003, Qwest made the compliance filing required under the July 30 Order.

On September 12, 2003, Eschelon filed comments claiming that Qwest's filing was not in full compliance with the Order, alleging the following deficiencies:

- (1) The procedures proposed for alerting retail service representatives that certain orders were wholesale orders that should not be changed or cancelled were limited to "porting" orders, excluding many if not most of the wholesale orders processed by Qwest.
- (2) The proposal to install computer software to block retail service representatives' ability to make changes in wholesale orders did not include all retail service representatives, did not clearly identify which retail service representatives were included and which were excluded, and did not explain Qwest's rationale for deciding which retail service representatives to include and which to exclude.
- (3) The proposals for reducing errors in processing wholesale orders did not address errors in orders that were manually processed.
- (4) The proposal for complying with the Order's directive to develop "procedures for promptly acknowledging and taking responsibility for mistakes in processing wholesale orders" was limited to addressing typographical errors.
- (5) The filing provided insufficient detail on how Qwest monitors contacts between its wholesale and retail employees, how often it detects improper contacts, and how it deals with those contacts.

On September 25 and October 9 Eschelon filed supplemental comments alleging another incident of inappropriate contact between Qwest's wholesale and retail divisions and questioning the propriety of a Qwest advertising campaign highlighting alleged disparities between Qwest's quality of service and that of its competitors.

On September 15, 2003, the Minnesota Department of Commerce (the Department) filed comments stating that Qwest's compliance filing was not in full compliance with the July 30 Order, alleging the following deficiencies:

- (1) The proposals for reducing errors in processing wholesale orders did not address errors in orders that were manually processed.
- (2) It was not clear that the procedures proposed for alerting retail service representatives that certain orders were wholesale orders that should not be changed or cancelled would apply to all wholesale orders.
- (3) It was not clear that Qwest's proposal to block selected retail service representatives' ability to make changes in wholesale orders would apply to all types of wholesale orders.

III. Commission Proceedings

On October 30, 2003, the compliance filing came before the Commission. The following persons appeared: Qwest, Eschelon, the Department, and McLeod USA Telecommunications, Inc. and U S Link, Inc., appearing jointly in support of Eschelon.

FINDINGS AND CONCLUSIONS

The Commission has examined the compliance filing and concurs with Eschelon and the Department that it does not fully comply with the terms of the July 30 Order.

The filing fails to propose procedures for reducing errors in processing wholesale orders that must be manually processed. It fails to propose procedures for acknowledging any mistakes in processing wholesale orders other than typographical errors. It fails to propose effective procedures to alert retail service representatives when they are dealing with wholesale orders, except for a subset of wholesale orders representing approximately 50% of the total. It fails to provide adequate detail about the scope, rationale, and timing of its plan to block selected retail service representatives' ability to make changes in wholesale orders. It fails to provide adequate detail about how the Company monitors contacts between its wholesale and retail divisions, how it handles inappropriate contacts, and how frequently it finds that inappropriate contacts have occurred.

The Commission will require additional filings to remedy these deficiencies.

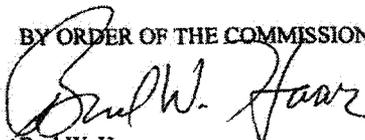
ORDER

1. Within 30 days of the date of this Order, Qwest shall make a compliance filing further detailing processes and procedures for remedying the service inadequacies identified in the Commission's July 30 Order. This filing shall include at least the following items:

- (a) Procedures for extending to all wholesale orders notice procedures alerting retail service representatives when they are dealing with wholesale orders, eliminating references to "porting" orders and "LNP [Local Number Portability] orders in the original compliance filing.
- (b) Modification of the content of the notice alerting retail service representatives when they are dealing with wholesale orders to advise them to refer the customer to the new carrier and take no further action.
- (c) A detailed explanation of which retail service representatives will be blocked from making changes in wholesale orders, which retail service representatives will not be blocked from making changes in wholesale orders, and the reasons for distinguishing between these two groups of retail service representatives.
- (d) A feasibility report justifying any decision that it is not feasible to block all retail service representatives from making changes in wholesale orders.
- (e) Procedures for ensuring that Qwest acknowledges mistakes in processing wholesale orders using the following language: "Qwest acknowledges its mistake in processing this wholesale order. The error was not made by the new service provider."
- (f) Procedures for extending the error acknowledgment procedures set forth in part (e) to all Qwest errors in processing wholesale orders.
- (g) Procedures for communicating to line staff that time is of the essence both for identifying errors in processing wholesale orders and for providing the acknowledgment set forth in part (e) and procedures for requiring the acknowledgment as soon as practicable after the cause of the error has been identified.
- (h) Procedures for ensuring that acknowledgments appear on Qwest letterhead or other indicia to show that it is Qwest making the acknowledgment.
- (i) Procedures for providing the acknowledgment to the competitive local exchange carrier, who in turn may provide it to the end use customer, to prevent improper contacts with the other carrier's customer.
- (j) Procedures for preventing use of a confidentiality designation in acknowledgments, to ensure that the competitive local exchange carrier can provide the acknowledgment to its end user customer.
- (k) Procedures for making the acknowledgment process readily accessible to competitive local exchange carriers, including procedures for identifying clearly the person(s) to whom requests for acknowledgments should be directed.

- (l) Procedures for ensuring that persons designated to provide acknowledgments have been appropriately trained and have the authority to provide acknowledgments.
 - (m) A proposal for including performance measures for Centrex 21 and linesharing services in performance measure PO-2 in the Long Term PID process, including submission of a proposal for such performance measures to the Long Term PID Administration Forum by the next filing deadline of November 6, 2003.
 - (n) A proposal for reducing errors in processing manual wholesale orders, such as additional proof reading.
2. The compliance filing required in paragraph 1 shall include time lines for implementing each item.
 3. Qwest shall file quarterly reports with the Department of Commerce on how many disciplinary actions and training sessions have occurred as a result of improper contacts or activities between the Company's wholesale and retail divisions.
 4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Eschelon
Telecom for an Investigation Regarding
Customer Conversion by Qwest and Regulatory
Procedures

ISSUE DATE: July 30, 2003

DOCKET NO. P-421/C-03-616

ORDER FINDING SERVICE INADEQUATE
AND REQUIRING COMPLIANCE FILING

PROCEDURAL HISTORY

On April 21, 2003, Eschelon Telecom, Inc. filed a petition that did the following things:

- (a) asked the Commission to investigate the reasonableness and adequacy of Qwest Corporation's procedures for processing wholesale orders, stating that Eschelon had recently lost a major customer when Qwest's wholesale division erroneously disconnected the customer while processing the order that would have transferred the customer from Qwest to Eschelon;
- (b) asked the Commission to investigate the nature and appropriateness of the separation between Qwest's wholesale and retail divisions, stating that Qwest's retail division used the wholesale division's erroneous disconnection to win back the customer and used computer capabilities that should have been off-limits to retail personnel to cancel Eschelon's wholesale order;
- (c) asked the Commission to establish an informal intervention or mediation process by which telecommunications carriers could get regulatory assistance in resolving inter-carrier, time-critical issues affecting customers.

On April 25, 2003, the Commission issued a notice requesting comments on Eschelon's petition.

Covad Communications Company and MCI filed comments supporting the request to establish an informal regulatory intervention-mediation process. AT&T Communications of the Midwest, Inc. filed comments supporting the request for an investigation into the operational relationship between Qwest's retail and wholesale divisions.

The Department of Commerce filed comments recommending that the Commission order Qwest to reconfigure its wholesale service ordering system to give competitive local exchange carriers as much control over the processing of their wholesale orders as Qwest's retail service representatives have.

Qwest filed comments in which it (a) supported an informal regulatory intervention-mediation process; (b) expressed regret for the errors that led to Eschelon's loss of the customer; (c) contended that the incident was a one-time occurrence adequately addressed internally and requiring no regulatory response; and (d) argued that the issue of information-sharing between Qwest's retail and wholesale divisions was hotly contested and would be thoroughly addressed in the ongoing interconnection arbitration between Qwest and AT&T, making further examination here unnecessary and inefficient.¹

On July 17, 2003, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Factual Background

The basic facts of this case are not disputed. One of Qwest's large business customers, a financial services firm with hundreds of telephone lines and combined local and long distance billings of approximately \$463,655 per year, decided to transfer its service from Qwest to Eschelon. Eschelon followed Qwest's procedures to complete the service transfer, electronically submitting a wholesale order form on March 27. That form listed April 9 as the date on which service should be transferred to Eschelon.

Qwest's procedures for processing wholesale orders are not totally automated, and the date of the service transfer had to be manually entered into Qwest's system in five separate work orders, since the service transfer involved multiple lines and specialized services. The Qwest employee who entered the data inadvertently entered that day's date, March 27, on two of these five work orders. That error resulted in Qwest taking approximately 80 of the customer's lines out of service that night, two weeks before Eschelon was prepared to serve them, with no notice to Eschelon or the customer.

When the customer found the lines disconnected the next morning, the customer called Qwest's retail division, which, instead of referring the call to Qwest's wholesale division or to Eschelon, tried to resolve the problem itself. Here the undisputed facts become sketchier, and the parties

¹ *In the Matter of the Petition of AT&T Communications of the Midwest, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b)*, Docket No. P-442, 421/IC-03-759.

disagree on what the uncontested facts mean. Eschelon claims that Qwest used the disconnection as an opportunity to win back the customer, nurturing, if not creating, the impression that the disconnection was the result of Eschelon's negligence. Qwest claims that its retail service representative misread the situation, thought she was dealing with retail orders, and appropriately ended her contact with the customer once she knew she was dealing with a service transfer situation.

Interpretations aside, the following facts are not disputed. Service to the customer was not restored until the afternoon of March 28. By that time the customer had reversed its decision to transfer service to Eschelon, and Qwest retains the customer to this day.

When the customer told Eschelon it no longer wished to transfer its service to Eschelon, Eschelon tried to cancel the service transfer, submitting an electronic cancellation order in compliance with Qwest's procedures. Qwest rejected the cancellation order, however, because its system is programmed to reject such orders once any of the work orders effecting a service transfer have been implemented. Here, of course, two of the five work orders had been erroneously implemented. Eschelon was therefore unable to honor its customer's request and contacted Qwest's wholesale division for help in canceling the service transfer.

When Eschelon reached the appropriate wholesale service representative, however, Eschelon learned that the three remaining work orders had been canceled by the Qwest retail service representative working with the customer, at the customer's request. This was a serious breach of Qwest's company policies, which require strict separation between Qwest's retail and wholesale divisions. Supervisory staff informed the retail service representative that she was not supposed to "touch" wholesale orders and that the remaining work orders would be reinstated and implemented unless Eschelon canceled them.

The retail service representative then sent the following e-mail to the customer:

Hi [Customer Name Redacted],

Just to let you know, I was contacted by our wholesale group and they advised that due to the fact that they have an ASR that has not been cancelled by Eschelon that they have to reissue those Orders due on 4-09. Eschelon HAS to cancel the ASR with our wholesale group or these orders will process.

If you could get the information to [Customer Name Redacted] I'd really appreciate it because I know it's a big issue if the lines go down.

Thanks!
[Qwest Name Redacted]

Eschelon argues that this e-mail unfairly damaged its relationship with its customer in the following ways:

- (a) It did nothing to correct and in fact reinforced the customer's impression that Eschelon was to blame for the service outage.
- (b) It implied that Eschelon was failing to comply with the customer's request to stop the service transfer, when in fact Eschelon was powerless to stop the transfer and was working with Qwest's wholesale division to get them to stop the transfer.
- (c) It alarmed the customer by suggesting that there was a serious possibility that Eschelon would fail to cooperate with Qwest in canceling the service transfer and that another disconnection would result.

Qwest argues that the e-mail merely informed the customer that the transaction at issue was a wholesale transaction, that the retail service representative's cancellation of the remaining service orders had been or would be rescinded, and that the customer must deal with Eschelon if it wished to reverse its earlier decision to transfer service to Eschelon.

Eschelon did work with Qwest's wholesale division to cancel the remaining service orders and ensure that the customer's lines did not go down again. The work orders remained canceled; the lines did not go down; and the customer continues to receive service from Qwest to this day.

Eschelon states that it had difficulty convincing the customer that Eschelon bore no responsibility for the service outage, that the customer requested a written statement from Qwest explaining the cause of the outage, and that Qwest delayed and obfuscated in response to this request. The record does show that Qwest's first explanation, a "root cause" analysis of the outage, was written in technical jargon and that a written explanation in lay terms was not provided until April 16, 2003, nearly three weeks after the outage.

II. The Legal Standard

Eschelon is seeking an investigation to determine how Qwest's procedures for processing wholesale orders could be changed to prevent a recurrence of the kinds of events that led to the loss of this major customer. Eschelon emphasizes that it could have brought this case as a complaint under Minn. Stat. § 237.462, the competitive enforcement statute, but that it chose a less formal route in the hope of a speedier resolution.

Eschelon's filing obviously raises issues that could be developed and examined in a full-blown competitive enforcement proceeding. Eschelon has instead chosen a problem-solving approach, asking the Commission to undertake whatever investigation is necessary to improve Qwest's procedures for processing wholesale orders from competitive carriers. The Commission will therefore examine Eschelon's claims and request for relief under the statute giving it general investigatory and remedial powers, Minn. Stat. § 237.081, reserving judgment on whether Qwest's conduct was discriminatory or anti-competitive under the competitive enforcement statute.

The Commission's general authority to require telephone companies to provide adequate service on just reasonable and reasonable terms is codified at Minn. Stat. § 237.081. That statute authorizes the Commission to conduct an investigation whenever it believes, or whenever any provider of telephone service alleges, that any "practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of telephone service or any service in connection with telephone service is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained."

Subdivision 2 of that statute authorizes the Commission to conduct any necessary investigation, including contested case proceedings if the Commission finds that a significant factual issue has not been resolved to its satisfaction. Subdivision 4 authorizes relief at the end of the investigation:

At the end of its investigation if the Commission finds that "(1) a service that can be reasonably demanded cannot be obtained, (2) that any rate, toll, tariff, charge, or schedule, or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of telephone service or any service in connection with telephone service, is in any respect unreasonable, insufficient, or unjustly discriminatory, or (3) that any service is inadequate, the commission shall make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable and, if applicable, shall establish just and reasonable rates and prices.

The Commission finds that there are no significant factual issues that have not been resolved to its satisfaction for purposes of determining the adequacy of Qwest's procedures for processing wholesale orders.

III. Commission Action

A. Inadequate Service Found

The Commission finds that the uncontested facts in this case demonstrate that Qwest failed to provide adequate service at several key points in the customer transfer process and that these inadequacies reflect systemic failures that must be addressed.

The key points at which Qwest provided inadequate service are set forth below.

1. Qwest failed to adopt operational procedures to ensure the seamless transfer of customers to competitive carriers.

Qwest made data entry errors when it processed Eschelon's properly submitted wholesale customer transfer order. These errors caused Eschelon's new customer to lose service to some 80 phone lines for much of a business day, which in turn caused the customer to reverse its decision to transfer its service to Eschelon.

The customer's decision was foreseeable. Telecommunications services are essential services, and customers are unlikely to transfer their service to competitive carriers if they perceive a significant risk that the transfer will disrupt their service. Seamless service transfers are therefore a critical part of providing adequate wholesale service.

Qwest failed to establish and maintain effective procedures to ensure the seamless transfer of customers between telecommunications carriers. The company did not have adequate proofreading procedures in place, nor did it have the electronic processing capability required to protect migrating customers from wrongful disconnection. This lack of effective procedures constitutes inadequate service, and the Commission will require the Company to file a plan to remedy the inadequacy.

The Company should examine with special care the possibility of relying more heavily on automated procedures, which would both reduce the opportunities for data entry errors and give competitive carriers greater access to and control over their wholesale orders.

2. Qwest failed to adopt operational procedures to prevent its retail division from interfering with Eschelon's ability to serve its customer and to prevent its retail division from providing misleading characterizations of Eschelon's conduct.

Qwest's retail division interfered with Eschelon's ability to serve its customer by failing to refer the customer to Eschelon when it called to report the service outage. Instead, Qwest's retail service representative dealt with the customer, who decided in the course of those dealings to reverse its decision to transfer its service to Eschelon.

The only reasonable inference from these facts is that the service outage, coupled with the customer's dealings with Qwest's retail service representative, convinced the customer that it would be in better hands with Qwest than with Eschelon. The customer would have been less likely to reach this conclusion if Qwest had referred the customer to Eschelon from the start.

If Eschelon had been allowed to handle the situation from the start, the customer probably would have understood much earlier that the service outage was entirely due to Qwest's error. Eschelon had every incentive to make this clear. Qwest, on the other hand, had every incentive to obfuscate and to divert the customer's attention from the cause of the outage to other issues. Similarly, if Eschelon had been allowed to handle the situation from the start, the customer would have witnessed Eschelon's efforts to restore service instead of Qwest's. This might have prevented the loss of confidence that led the customer to reverse its decision to transfer its service to Eschelon.

Finally, if Qwest had referred the customer to Eschelon from the start, the customer would not have received the misleading e-mail from Qwest's retail service representative discussed in section I. That e-mail, which warned the customer that it would lose service again unless Eschelon took specific action to cancel its service transfer order, was misleading in at least two ways. First,

Eschelon could not take the specific action mentioned in the e-mail because the configuration of Qwest's automated system made it impossible. Second, there was no reasonable basis for fear that the service would go down again due to Eschelon, since Eschelon was already doing everything within its power to cancel the service transfer order.

As a provider of monopoly and bottleneck wholesale services, as well as the best-known provider of retail services, Qwest has unparalleled opportunities to manipulate the wholesale service transfer process to its benefit. For this reason, ensuring that calls from other carriers' customers are immediately referred to them and preventing misleading characterizations of other carriers' conduct are critical to providing adequate wholesale service.

Qwest failed to establish and maintain effective operating procedures to prevent inappropriate contacts with Eschelon's customer and to prevent misleading communications in the course of those contacts. This failure constitutes inadequate service, and the Commission will require the Company to file a plan to remedy the inadequacy.

3. Qwest failed to adopt operational procedures to prevent its retail service representatives from canceling or otherwise modifying wholesale orders.

Qwest granted its retail service representative (and apparently grants all its retail service representatives) access to the computer software that implements wholesale service transfer orders. She used that access to deactivate the work orders that would have finished transferring the customer to Eschelon, without authorization from Eschelon.

This was a serious breach of Qwest's company policies, and the retail service representative was informed by supervisory staff that she was not supposed to "touch" wholesale orders. It was also a serious breach of industry standards for ensuring that wholesale service transfers are not derailed at the point of implementation by collusion or other improper contact between Qwest's wholesale and retail divisions. It was also inadequate wholesale service.

While Qwest recognized the seriousness of this conduct after the fact, it did not have effective operating procedures or structural safeguards in place to prevent it. The absence of such procedures and safeguards constitutes inadequate service. Both Eschelon and the Department of Commerce have recommended that Qwest reconfigure its computer system to deny retail personnel access to wholesale orders and to provide an unmistakable systems message, such as a "pop-up" message, telling retail personnel when they are dealing with a wholesale account.

The Commission will require the Company to file a plan to remedy this service inadequacy, giving special consideration of the possibility of using the "pop-up" message discussed above.

4. Qwest failed to adopt operational procedures to promptly acknowledge and take responsibility for mistakes in processing wholesale orders.

Eschelon reports that the disconnected customer asked Eschelon to document its claim that Qwest's errors had caused the service outage; the company also reports that Qwest was dilatory and uncooperative in helping to provide this documentation. Eschelon submitted into the record its April 3 e-mail to Qwest urgently seeking a written statement explaining that Qwest's errors had caused the service outage. Qwest did not provide a comprehensible statement taking responsibility until April 16, in an e-mail to Eschelon. This is inadequate service.

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

The Commission will require the Company to file a plan to remedy this service inadequacy and to promptly acknowledge and take responsibility for mistakes in processing wholesale orders.

B. Compliance Filing Required

At hearing Qwest did not concede service inadequacy, but it did express openness to seeking cost-effective ways to improve its wholesale order processing procedures. Qwest, too, is clearly concerned that there be no repetition of the kinds of events that led to this filing. It seems clear, then, that the most promising way to proceed is to require Qwest to develop and submit proposals for remedying the service inadequacies identified in this case and to permit the parties to comment on those proposals.

The Commission will so order.

C. Intervention-Mediation Process Issue Not Reached

In its comments the Department of Commerce stated that it is always available to respond to inquiries from competitive carriers or from Qwest and that it is willing to work with the parties to establish a more defined mediation process if necessary. The parties stated that this adequately addresses their concerns, and the Commission concurs that no formal action is necessary at this time.

ORDER

1. Within 30 days of the date of this Order, Qwest shall make a compliance filing detailing its proposal for remedying the service inadequacies identified in this Order. This proposal shall include
 - (a) procedures for ensuring that retail service representatives are properly separated from the Company's wholesale operations, including a report on the feasibility of installing computer software to alert retail service representatives when they are dealing with wholesale orders or accounts and computer software to disable retail service representatives' ability to make changes in wholesale orders or accounts;
 - (b) procedures for promptly acknowledging and taking responsibility for mistakes in processing wholesale orders;
 - (c) procedures for reducing errors in processing wholesale orders, including a report on the feasibility of maximizing reliance on electronic processing, with an explanation of the necessity for each manual operation required for wholesale order processing.
2. Comments on the compliance filing shall be filed with 15 days of the date the compliance filing is made.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(SEAL)

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