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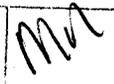
Arizona Corporation Commission

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*Via UPS Overnight Express Mail*

Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

DOCKETED BY 

RE: *In the Matter of Complaint of Eschelon Telecom of Arizona, Inc.  
against Qwest Corporation*  
Docket Nos. T-01051B-06-0257; T-03406A-06-0257

Dear Sir or Madam:

Enclosed are an original and 15 copies of Eschelon Telecom of Arizona, Inc.'s Motion to Strike and/or Supplement Record. I have also enclosed an Affidavit of Service.

Sincerely,

Kim K. Wagner  
Legal & Regulatory Administrator  
Eschelon Telecom, Inc., an Integra  
Telecom Company  
612.436.6225 (Direct)  
612.436.6816 (Dept. Fax)  
[kkwagner@integratelecom.com](mailto:kkwagner@integratelecom.com)

cc: See Attached Service List

BEFORE THE ARIZONA CORPORATION COMMISSION

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

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

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

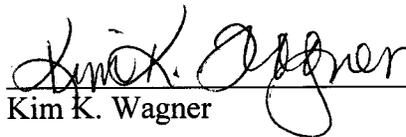
AFFIDAVIT OF SERVICE

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

Kim K. Wagner, being first duly sworn, deposes and says on oath that on the 20<sup>th</sup> day of November 2008, she served the attached **Eschelon Telecom of Arizona, Inc.'s Motion to Strike and/or Supplement Record** upon the following via UPS Overnight Express Mail.

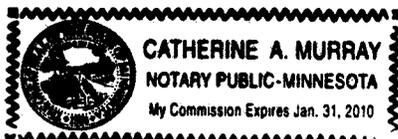
See attached Service List

Dated: November 20, 2008.

  
\_\_\_\_\_  
Kim K. Wagner

Subscribed and sworn to before me  
this 20<sup>th</sup> day of November, 2008.

  
\_\_\_\_\_  
Notary Public



***Via UPS***

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Arizona Corporation Commission  
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Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
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## I. INTRODUCTION

Eschelon Telecom of Arizona, Inc. (“Eschelon”) respectfully submits this Motion to Strike and/or Supplement the Record. On November 12, 2008, Qwest Corporation (“Qwest”) filed an Application for Rehearing of October 23, Order, Decision No. 70557 (“Application for Rehearing”). To its Application for Rehearing, Qwest attached as Exhibit A the Affidavit of Larry Christensen in Support of Qwest Corporation’s Application for Rehearing of Decision No. 70557 (“Christensen Affidavit”). Eschelon moves to strike the Christensen Affidavit, as well as all references to, and discussion of, the Christensen Affidavit and its contents within Qwest’s Application for Rehearing.<sup>1</sup> Particularly if the motion to strike is denied, Eschelon asks the Commission to grant Eschelon’s motion to supplement the record with the attached affidavit and exhibits. If Qwest is allowed to introduce an affidavit into the record after the close of the original hearing in this matter, then Eschelon’s responsive affidavit should be allowed in the record as well.

Qwest’s Application for Rehearing is, in all material respects, identical to Qwest’s Exceptions to the Administrative Law Judge’s Recommended Order (dated October 1, 2008) (“Qwest’s Exceptions”),<sup>2</sup> with the exception of the Christensen Affidavit and references to, and discussion of, the Christensen Affidavit within Qwest’s Application for Rehearing. The Commission has already considered and appropriately rejected Qwest’s

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<sup>1</sup> See Qwest’s Application for Rehearing, p. 2, lines 1-8; p. 4, lines 4-5; p. 6, line 25 – p. 7, line 18 and Exhibit A (Christensen Affidavit, including Affidavit Attachment A).

<sup>2</sup> The differences do not go to the substance of the dispute. The differences in the Application for Rehearing are Qwest’s citation to the regulations governing rehearing, Qwest’s reference to the Order instead of the Recommended Order, and minor wording changes. Qwest also deleted some of the arguments made in Qwest’s Exceptions, stating that it “for brevity incorporates that discussion by reference here.” Qwest’s Application for Rehearing, p. 2, lines 18-20. Large portions of the Application for Rehearing are taken word-for-word from Qwest’s Exceptions, which this Commission has already rejected.

arguments, including those made again in another form via the Christensen Affidavit.<sup>3</sup> Despite Qwest's reiteration of its claim that this case is narrower, this case is expressly a dispute resolution to reverse Qwest's non-mutual conduct toward CLECs in the Change Management Process ("CMP").<sup>4</sup> Therefore, it is entirely anticipated<sup>5</sup> and appropriate for the Commission to require Qwest to reverse CMP changes that it should not have made in CMP, particularly as the result of a dispute resolution brought to challenge a change erroneously made by Qwest in CMP.

## II. DISCUSSION

This discussion addresses three issues. First, the Christensen Affidavit should be stricken because it does not constitute newly discovered evidence. Second, the Christensen Affidavit provides no evidence to support Qwest's claim that the interconnection agreements ("ICAs") of other CLECs have been modified by the Commission's Order, whereas evidence already in the record confirms that ICAs of other CLECs are not modified by the Commission's Order. In addition, the information provided via the Affidavit of Mr. Douglas Denney (Exhibit A to this Motion) shows that the ICAs of other CLECs referenced in the Christensen Affidavit are not modified by the Commission's Order. The fact that Qwest's statements are inaccurate is further grounds to strike the Christensen Affidavit and related Qwest arguments and/or to grant Eschelon's motion to supplement the record to help ensure a complete and accurate record. Finally, contrary to Qwest's suggestion that the Christensen Affidavit raises

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<sup>3</sup> Eschelon has already responded to those arguments in the record, including during the hearing on October 15, 2008, and incorporates its testimony, briefing, and comments by reference here, rather than repeating them.

<sup>4</sup> See Exhibit 4 to Eschelon's Post-Hearing Brief ("Table – Staff Recommendations are Within Scope of Complaint, Despite Qwest's Claim the Case is Narrower") (and citations therein). See also Exhibit 5 to Eschelon's Post-Hearing Brief ("Table – Qwest's Current Themes: A Review in Light of the Evidence"), Row Nos. 5-6 & 36-37 (and citations therein).

<sup>5</sup> See the discussion below of the CMP Document and its dispute resolution and Regulatory Change Request provisions.

questions about the appropriateness of the Commission-ordered relief with respect to other CLECs, the ICAs of other CLECs show that the Commission-ordered relief is anticipated by the ICAs themselves, as well as by the document governing the operation of Qwest's CMP, known as the "CMP Document." The Commission appropriately found that Qwest should not have assessed charges without prior Commission approval that it had not in the past assessed. No CLEC is forced into involuntary terms by the Commission's Order which, once implemented, will allow CLECs to obtain expedites at no additional charge in emergency situations, consistent with past practice.

**A. QWEST PRESENTS NO NEW EVIDENCE.**

The Christensen Affidavit does not constitute newly discovered evidence which could not with reasonable diligence have been discovered and produced at the original hearing. Qwest did not produce Mr. Christensen as a witness in this proceeding, although he has been employed by Qwest in the same capacity during the entire course of this proceeding.<sup>6</sup> Mr. Christensen states in his affidavit that some of the agreements referenced in his affidavit "were made as long ago as 2004."<sup>7</sup> The Commission sets deadlines for the admission of evidence for a reason, and those deadlines should not be ignored. By providing Mr. Christensen's affidavit after the deadlines for submission of evidence have passed, Qwest avoided making Mr. Christensen available for cross examination and avoided giving Eschelon a proper opportunity to respond in testimony and at the hearing.

In addition to showing that Qwest's affidavit is untimely because these facts, to be considered, should have been introduced before or during the hearing in August of 2007,

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<sup>6</sup> The Complaint in this matter was filed on April 14, 2006. Mr. Christensen states in his Affidavit that he has served as the Director of Legal Issues – Wholesale Markets since 2001. Christensen Affidavit, p. 1, lines 20-26.

<sup>7</sup> Christensen Affidavit, p. 2, line 17.

the fact that some of the agreements “were made as long ago as 2004”<sup>8</sup> undercuts Qwest’s own arguments. The objectionable changes that Qwest made in CMP were made in 2005-2006.<sup>9</sup> In other words, at the time that those CLECs signed their agreements, they had a basis upon which to reasonably believe that expedites of orders for unbundled loops (which, per Qwest, are “designed”<sup>10</sup> products) would be available at no additional charge<sup>11</sup> when the emergency conditions were met (i.e., “emergency-based expedites” or “Expedites Requiring Approval”). For example, the record shows that Integra (which at that time was not affiliated with Eschelon) said in its November 2005 CMP comments:

Integra objects to Qwest proposed change to remove the existing approval required expedite process for designed products. When Integra signed the Qwest Expedite Amendment we were not advised that by signing the amendment it would change the current Expedites Requiring Approval process. **We signed the amendment believing that this would ADD to our options of having an order completed outside the standard interval. When Integra signed the amendment UBL DSO loops were not included as a product on the list of products in the Pre-Approved Expedites” list. When the UBL DSO was added to this list Integra did not comment as at that time we believed the Expedites Requiring Approval process was in place for our use.**<sup>12</sup>

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<sup>8</sup> Christensen Affidavit, p. 2, line 17.

<sup>9</sup> E.g., on October 19, 2005, Qwest announced a Qwest-initiated Level 3 change, via the CMP written notice process, regarding expedites to take effect on January 3, 2006 (Version 30 of Qwest’s Expedite PCAT). Hrg. Ex. E-1 (Johnson Dir.), p. 19, lines 10-11.

<sup>10</sup> Hrg. Ex. Q-1 (Albersheim Direct), p. 4, lines 6-7. For purposes of discussion only, Eschelon will refer to unbundled loops as design(ed) services.

<sup>11</sup> Although Qwest has erroneously referred to this as obtaining emergency-based expedites for free or “without charge” (see Application for Rehearing, p. 2, line 2), these expedites are not free. Eschelon pays the installation non-recurring charge (“NRC”). See Hrg. Ex. E-4 (Denney Reb.) p. 9, lines 1-2. Qwest has acknowledged that expediting service does not require any additional provisioning activities; it merely involves performing the same provisioning activities more quickly than would otherwise be the case. See Exhibit MS-6, MN ICA Arbitration Transcript, Vol. 2, p. 97, line 18-p, 98, line 22, cited in Hrg. Ex. E-4 (Denney Reb.), p. 60 at footnote 191; see also *id.* at p. 59, line 15 – p. 60, line 5.

<sup>12</sup> Attachment A-7 at pp. 000127-128 (11/3/05) (Qwest CMP Document containing Integra’s objection); Hrg. Ex. E-1 (Johnson Dir.), p. 23, lines 12-14.

The record shows that, when Qwest made its expedite changes in CMP, CLECs objected.<sup>13</sup> Qwest nonetheless *took away expedite capability* under the existing agreement for unbundled loops, *without modifying Eschelon's interconnection agreement*.<sup>14</sup> Qwest's witness testified that, at the time of its CMP changes, Qwest's legal department reviewed the CLECs' interconnection agreements.<sup>15</sup> Qwest does not explain in its Application for Rehearing why per Qwest no modification to CLECs' interconnection agreements was needed for Qwest to unilaterally take away this capability,<sup>16</sup> but suddenly modification to CLEC's interconnection agreements would be needed now to restore it.<sup>17</sup> The ICAs were not modified by the Order, as discussed below.

According to the dates in Attachment A to the Christensen Affidavit, two-thirds of the agreements listed in Attachment A were executed by Qwest before the hearing in August of 2007. In other words, the agreements were readily available to Qwest for filing in this case before then. If they had been helpful to Qwest's case and if they really showed that adoption of Eschelon's or the Staff's position would require modification of those agreements, Qwest surely would have filed the agreements in the record before the

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<sup>13</sup> Tr. Vol. II, p. 366, line 6- p. 369, line 13 (testimony of J. Martain); see also Hrg. Ex. E-1 (Johnson Dir.), p. 23, lines 12-14; Attachment A-7 at pp. 000124-000127; Hrg. Ex. S-1 (Staff Direct), p. 30, lines 13-17 (describing objections by CLECs to Version 27 and 30 PCAT changes).

<sup>14</sup> See Attachment DD-2 (Expedite Capability for Loops chart), p. 1, to Hrg. Ex. E-4 (Denney Rebuttal); see also Attachment A-7 at pp. 000127-128 (11/3/05) (Qwest CMP Document containing Integra's objection) (quoted in above text). Generally, see CMP Chronology, Attachment A & A-1 – A-9 to Hrg. Ex. E-1 (Johnson Direct).

<sup>15</sup> Hrg. Transcript (Martain), Vol. II, p. 340, line 15 – p. 341, line 5. See also Decision No. 70557, p. 26, line 20 – p. 27, line 1 (“In this case, Qwest claimed to have reviewed all of its interconnection agreements before amending the expedite process and states that it did not find any conflict. If this is the case, in future reviews Qwest would be well served to intensify its due diligence in the course of such reviews, or to expand its thinking of what constitutes a substantive right, because in this case, it is clear that Eschelon was receiving expedites in emergency situations for no additional charge pursuant to the ICA for many years. Qwest should have known this.”).

<sup>16</sup> See Decision No. 70557, p. 26, line 20 – p. 27, line 1 (quoted in above footnote). Qwest's expedite ICA terms address adding expedites at Qwest's rate of \$200 per day (instead of the Commission-approved rate of ICB), as discussed below, but Qwest took away the then existing capability to obtain emergency-based expedites at no additional charge without obtaining a contract amendment to do so. See Attachment DD-2 to Hrg. Ex. E-4 & Attachment A-7 at pp. 000127-128 (11/3/05).

<sup>17</sup> Qwest's Application for Rehearing, p. 7, lines 1-3.

close of the hearing. That Qwest chose not to do so should preclude Qwest from belatedly introducing claims about them after the close of the original hearing.

For the other one-third of the agreements listed in Attachment A (which, per Qwest, were executed after the hearing in August of 2007), Mr. Christensen makes no claim (and Qwest has provided no other evidence) that the later agreements were different from the agreements executed prior to the original hearing in any respect material to this case. To the contrary, Qwest testified that it generally offers CLECs uniform “template” expedite contract terms.<sup>18</sup> This rebuts any unverified inference that the later agreements contained terms different from those Qwest could have introduced in a timely manner at the hearing.

Qwest admits that it previously provided a similar list<sup>19</sup> of agreements with its Exceptions<sup>20</sup> (i.e., also after the close of the evidentiary hearing). Therefore, the substance of the terms of the agreements and Qwest’s arguments related to them have already been considered and appropriately rejected by this Commission. Nothing in Qwest’s Application for Rehearing or the Christensen Affidavit provides grounds to change the Commission’s rulings. The Christensen Affidavit and associated statements in Qwest’s Application for Rehearing should be stricken as untimely and as not

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<sup>18</sup> See, e.g., Hrg. Ex. Q-3 (Martain Direct), p. 26, lines 8-12 & p. 29, lines 12-13.

<sup>19</sup> Qwest did not introduce the agreements themselves in the record, either before or during the evidentiary hearing or as part of the Christensen Affidavit. Instead, Qwest merely cites to the agreements and makes claims about their terms, without attaching them. In its Application for Rehearing, Qwest attempts to rely on its assertions about the CLEC agreements, while at the same time pointing out that the “contracts are not part of the record.” Qwest’s Application for Rehearing, p. 2, lines 5-6. Without any CLEC ICA needing modification in the record, however, Qwest can point to no record evidence to support its claim that they need modification or will be modified by the Commission’s Order.

<sup>20</sup> Qwest’s Application for Rehearing, p. 7, footnote 2. Qwest also claims that it provided a partial listing in its Post-Hearing Brief, but provides no cite to the Brief to support that claim. *Id.*, p. 7, line 22. The difference between the “partial listing,” *see id.*, and Attachment A to the Christensen Affidavit is apparently the listing of some more recent agreements. As discussed above, Qwest submitted no evidence to indicate that there is anything new or different in the additional listed agreements that would in any way change the Commission’s basis for rejecting Qwest’s argument for the same reasons as it rejected Qwest’s same arguments based on the earlier “partial” list.

constituting newly discovered evidence which could not with reasonable diligence have been discovered and produced at the original hearing.

**B. QWEST'S ASSERTION THAT OTHER CLECs' ICAS ARE MODIFIED OR NEED MODIFICATION IS UNSUPPORTED AND INACCURATE.**

Qwest did not introduce copies of the ICA terms of other CLECs in the record, either before or during the evidentiary hearing or as part of the Christensen Affidavit. An analysis of the Christensen Affidavit, evidence of other CLECs' terms in the record via Eschelon's timely filings, and a review of the actual agreements referenced in the Christensen Affidavit all show that Qwest's claims in its Application for Rehearing based on the Christensen Affidavit are unsupported and inaccurate.

**1. Qwest's Affidavit Does Not Support Claims in Rehearing Application.**

As indicated, the only portion of Qwest's Application for Rehearing that is not on its face redundant of its previous Exceptions is the portion relating to the Christensen Affidavit. Notably, however, the Christensen Affidavit does not contain the key proposition for which Qwest relies upon it in its Application. In its Application for Rehearing, Qwest asserts that the Commission Order "will modify" a number of other CLEC interconnection agreements.<sup>21</sup> The Christensen Affidavit, in contrast, makes no such claim. Mr. Christensen merely states that agreements contain terms that "are different from" those in the Commission's Order.<sup>22</sup> He does not identify a single difference, and he does not even claim that they are materially or substantially different. There is no basis in the record evidence to show that other CLECs' interconnection agreements will be modified by the Commission granting the Staff's recommendations. The Christensen Affidavit, even if not stricken from the record, does not change the

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<sup>21</sup> Qwest's Application for Rehearing, p. 2, line 3 & p. 7, lines 1-2

<sup>22</sup> Christensen Affidavit, p. 2, line 12.

absence of evidence showing modification of, or need to modify, CLECs' interconnection agreements as a result of the Order. The arguments made by Qwest counsel in its Application for Rehearing are wholly unsupported in the record.

**2. The Only Evidence of Other CLEC Expedite Terms in the Record Shows Qwest's Claim that Those ICAs are Modified is Inaccurate.**

Only Eschelon submitted evidence in the record showing the contents of Qwest's expedite contract terms after Qwest instituted its expedite changes in CMP over CLEC objection. Exhibit DD-5 to the Rebuttal Testimony of Mr. Denney (Hearing Exhibit E-4) contains Qwest's standard, or "template," expedite terms.<sup>23</sup> If CLECs did not sign the Qwest template terms to provide for its unapproved \$200 per day rate, Qwest refused to process expedite orders,<sup>24</sup> even when the CLEC's ICA contained expedite terms and the CLEC offered to pay Commission-approved rates.<sup>25</sup> Despite Qwest's claim that other CLEC amendments were "voluntarily negotiated,"<sup>26</sup> rejecting customer orders – of a type previously not rejected – as a means to enforce an unwanted change is "forcing"<sup>27</sup> that change on other carriers.

a. Qwest's own contract design allows the PCAT to change, without any corresponding ICA modification.

The Order requires that, under the current ICA, Eschelon pay \$200 per day for expedites ("Pre-Approved" expedites), unless the request meets one of the delineated emergency conditions (expedites "Requiring Approval") so that no additional charge

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<sup>23</sup> See also AT&T-Qwest expedite amendment (Att. B to Hrg. Ex. E-1 at Q000004-Q000007) & Qwest-Mountain Telecommunications Inc. ("MTI") expedite amendment (Att. B to Hrg. Ex. E-1 at Q000008-Q000013).

<sup>24</sup> Tr. Vol. I, p. 168, line 23 – p. 169, line 2 (Mr. Steese opening); see also Tr. Vol. I, p. 191, lines 16-17 (Ms. Albersheim).

<sup>25</sup> See Hrg. Ex. E-1 (Johnson Dir.), p. 26, lines 8-24; Hrg. Ex. E-1, A-7, at 000138; Hrg. Ex. E-4 (Denney Reb.), p. 30, line 14 – p. 34, line 13.

<sup>26</sup> Qwest's Application for Rehearing, p. 2, line 3.

<sup>27</sup> See Staff Testimony, p. 34, lines 10-11; *id.* p. 36, line 21 – p. 37, line 2. See also Hrg. Ex. E-4 (Denney Reb.), pp. 30-32 & p. 38, lines 3-18.

applies, and it provides that Qwest provide these terms to other CLECs prospectively.<sup>28</sup> Qwest claims that this aspect of the Commission's Order "simultaneously modifies" other CLECs' ICAs.<sup>29</sup> The Commission's Order does not modify other CLECs' ICAs, because Qwest specifically designed its templates to allow changes to Qwest's Product Catalog ("PCAT") without modifying ICA terms. Ms. Albersheim of Qwest testified:

Q. Okay. But -- so you're saying that since it's in the PCAT, that there is an interrelationship there with the Interconnection Agreement?

A. Yes. The PCAT, *per the design*, the processes that *the Interconnection Agreement envisions*, that is what the CMP manages.<sup>30</sup>

Ms. Martain of Qwest explained that Qwest's template contract terms are designed to contain only a "reference" to the Expedite and Escalations PCAT "for the process," while the contracts specifically included "a rate sheet for the \$200.00 per day expedite fee."<sup>31</sup> She said: "In order for a CLEC to participate in the option, they needed to sign an amendment, which included the \$200-per-rate and *a reference to the expedite PCAT* for the process *and products* that were included."<sup>32</sup> Qwest's own contract design allows the PCAT to change, without any corresponding ICA modification.

This design is clear in its template ICA terms, as shown by Exhibit DD-5 to Hearing Exhibit E-4 (a Qwest template expedite amendment). Exhibit DD-5 provides for a rate of \$200 per day in its Exhibit A.<sup>33</sup> Paragraph 1.2.1 of Exhibit DD-5 provides that, if the CLEC does nothing and Qwest determines that CLEC's request (ASR or LSR)

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<sup>28</sup> Decision No. 70557, p. 33, lines 15-23 & Finding of Fact No. 38 at p. 32, line 23 – p. 39, line 1; see also p. 27, lines 2-5.

<sup>29</sup> Qwest's Application for Rehearing, p. 7, lines 1-3.

<sup>30</sup> Hrg. Transcript, Vol. II (Ms. Albersheim), p. 250, lines 18-20 (emphasis added).

<sup>31</sup> Hrg. Ex. Q-3 (Martain Direct), p. 26, lines 10-12.

<sup>32</sup> Hrg. Transcript, Vol. II (Ms. Martain), p. 329, lines 13-16 (emphasis added).

<sup>33</sup> See also the AT&T-Qwest amendment (Att. B to Hrg. Ex. E-1 at Q000007) & Qwest- MTI amendment (Att. B to Hrg. Ex. E-1 at Q000013).

“meets the criteria for the Pre-Approved Expedite process,”<sup>34</sup> Qwest will process the request and charge the CLEC. The criteria for fee-added Pre-Approved Expedites are nowhere to be found in Exhibit DD-5 or Qwest’s other CLEC contracts. They appear in Qwest’s web-based Product Catalog (“PCAT”),<sup>35</sup> so no change to the contract language is made or needed if the criteria in the PCAT changes (one way or the other). Similarly, for emergency-based expedites, Paragraph 1.2.2 of Exhibit DD-5 provides that a CLEC’s request (ASR or LSR) will be processed “under the guidelines for Expedites Requiring Approval as described in the PCAT.”<sup>36</sup> Those guidelines in Qwest’s PCAT include the following statement: “Expedite charges are not applicable with the Expedites Requiring Approval process.”<sup>37</sup> Therefore, even though expedite charges may otherwise apply to expedite an order, they do not apply if the CLEC shows that an emergency condition exists.<sup>38</sup> The guidelines for emergency-based Expedites Requiring Approval are also nowhere to be found in Exhibit DD-5 or Qwest’s other CLEC contracts. They appear in Qwest’s PCAT,<sup>39</sup> so no change to the contract language is made or needed if the guidelines in the PCAT changes (one way or the other).

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<sup>34</sup> See also AT&T-Qwest amendment (Att. B to Hrg. Ex. E-1 at Q000006, ¶1.2.2) & Qwest- MTI amendment (Att. B to Hrg. Ex. E-1 at Q000010, §9.1.15.2).

<sup>35</sup> See, e.g., Paragraph 1.2.3 of Exhibit DD-5 (“The Pre-Approved expedite process is available in all states except WA for the products listed in the PCAT.”); AT&T-Qwest amendment (Att. B to Hrg. Ex. E-1 at Q000006, ¶1.2.3); see also Qwest- MTI amendment (Att. B to Hrg. Ex. E-1 at Q000010, §9.1.15.2 (“when the request meets *the criteria outlined in the Pre-Approved Expedite Process in Qwest’s Product Catalog for expedites at Qwest’s wholesale web site.*”) (emphasis added). See also Hrg. Ex. Q-3 (Martain Direct), p. 26, lines 10-12.

<sup>36</sup> See also AT&T-Qwest amendment (Att. B to Hrg. Ex. E-1 at Q000006, ¶1.2.2).

<sup>37</sup> Qwest expedite PCAT Version 41, p. 1 of 9. Qwest included its Expedite and Escalations PCAT, Version 41, as both RA-1 to Q-1 (Albersheim Direct) and JM-D5 to Q-3 (Martain Direct).

<sup>38</sup> See Affidavit of Douglas Denney (Exhibit A to this Motion), ¶11.

<sup>39</sup> Hrg. Ex. Q-1 (Albersheim Dir.), p. 8, lines 14-18 & p. 9, lines 3-5 (“Via the CMP, Qwest established a procedure through which Qwest would provide expedites to CLECs via one of two options *detailed in Qwest’s PCAT.*”) (emphasis added). See Qwest expedite PCAT Version 41, p. 1 of 9 at RA-1 to Q-1 (Albersheim Direct), p. 1 & JM-D5 to Q-3 (Martain Direct), p. 1.

- b. Qwest should not be allowed to use flexibility as a sword, while using the need for contractual certainty as a shield.

Qwest has indicated that it prefers to place terms (which it described as process or procedures) in the PCAT specifically so that Qwest has the flexibility to change the terms without the need to amend any ICAs.<sup>40</sup> Both the CMP Document<sup>41</sup> and the Arizona Statement of Generally Available Terms (“SGAT”)<sup>42</sup> provide that, in the event of direct or indirect conflicts between the ICA and the PCAT, the ICA controls.<sup>43</sup> Therefore, Qwest has an incentive to argue that the ICAs should remain silent on terms and instead defer them to the PCAT,<sup>44</sup> so that Qwest may later make changes in the PCAT without amending ICAs, even though this deprives CLECs of contractual certainty. Qwest’s witness testified that Qwest wants its terms in the PCAT and not the ICA because, for example, with “a static list of products in the contract, if you want to change that, then the

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<sup>40</sup> See, e.g., Hrg. Transcript, Vol. II (Albersheim), p. 250, lines 1-22; see also, e.g., Hrg. Ex. Q-1 (Albersheim Dir.), Qwest-Eschelon AZ ICA arbitration, ACC Docket Nos. T-03406A-06-0572, T-01051B-06-0572, p. 38, line 1 (“flexibility”); p. 10, lines 4-7 (“Interconnection agreements should not contain such product, process and systems operational specifics that these items cannot be managed via the CMP as intended. Such provisions in an interconnection agreement make it impossible for the CMP participants to implement changes without first obtaining an amendment (and agreement from the parties) to that interconnection agreement.”) & p. 31, lines 4-7 (“Qwest’s service quality should not be hamstrung by the requirement to amend an ICA, or many ICAs, before lengthening or shortening a service interval.”). In the context of intervals in the arbitration, the Commission said: “In light of the importance of certainty surrounding interval lengths, we do not find Qwest’s arguments and prediction of the demise of the effectiveness of the CMP persuasive.” Decision No. 70356, p. 6, lines 19-20.

<sup>41</sup> “In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.” See Qwest CMP Document, §1.0 [AZ Complaint BJJ A-9 (000173)] and also Exhibit RA-2 to Hrg. Ex. Q-1. The SGAT, in both Sections 4.156 and 7.4.7, provides: “Qwest agrees that CLEC shall not be held to the requirements of the PCAT.” See Eschelon’s Complaint, p. 5 ¶B.

<sup>42</sup> AZ SGAT, §2.3 (“Unless otherwise specifically determined by the Commission, in cases of conflict between the SGAT and Qwest’s . . . PCAT . . . , then the rates, terms and conditions of this SGAT shall prevail. To the extent another document abridges or expands the rights or obligations of either Party under this Agreement, the rates, terms and conditions of this Agreement shall prevail.”), provided in Att. A-8 to Hrg. Ex. E-1 (Johnson Direct) at 000151.

<sup>43</sup> Eschelon Complaint, pp. 5-6.

<sup>44</sup> See, e.g., Hrg. Transcript, Vol. II (Albersheim), p. 250, lines 1-22.

contract must be amended.”<sup>45</sup> The reverse of this Qwest statement is that, if you do not put the term in the contract and the PCAT changes (such as by adding products to emergency-based expedites), then the contract need not be amended. Now that the shoe is on the other foot (and it turns out that the Commission, not Qwest, is prompting a change to the PCAT), however, Qwest has reversed course and, ironically, is arguing that a change to the PCAT means modification of the ICAs.<sup>46</sup>

For expedites, however, Qwest left key terms to the ever-changing PCAT, while placing a rate in its expedite amendments and its new ICA “templates.”<sup>47</sup> Therefore, its template expedite ICA terms reflect that Qwest preference.<sup>48</sup> Qwest’s claim in its Application for Rehearing that changing the PCAT modifies CLECs’ interconnection agreements<sup>49</sup> is contrary to this fundamental precept upon which Qwest built its template expedite ICA terms. The Qwest expedite ICA terms are specifically designed to allow changes in the PCAT (which apply to all CLECs) without modifying the ICAs (which apply to individual CLECs).<sup>50</sup>

**3. Evidence Not in the Record, Which is Part of Qwest’s Application for Rehearing, Also Shows that Qwest’s Claims are Inaccurate.**

The Affidavit of Mr. Douglas Denney is attached and marked as Exhibit A to this Motion. Unlike Mr. Christenson, Mr. Denney was a witness in this proceeding.

Mr. Denney timely filed Qwest’s standard expedite agreement terms as part of his testimony (Exhibit DD-5 to Hearing Exhibit E-4), and he was properly made available for

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<sup>45</sup> Hrg. Transcript, Vol. II (Albersheim), p. 250, lines 11-13.

<sup>46</sup> Qwest’s Application for Rehearing, p. 2, line 3 & p. 7, lines 1-2

<sup>47</sup> Hrg. Ex. Q-3 (Martain Direct), p. 26, lines 8-10 (“This analysis resulted in development of the expedite amendment, which is now included in Qwest’s new ICA templates.”).

<sup>48</sup> See, e.g., Qwest template expedite amendment (Exhibit DD-5 Hrg. Ex. E-4); Qwest template ICA (Att. B to Hrg. Ex. E-1 at Q000012); AT&T-Qwest amendment (Att. B to Hrg. Ex. E-1 at Q000007) & Qwest-MTI amendment (Att. B to Hrg. Ex. E-1 at Q000013).

<sup>49</sup> Qwest’s Application for Rehearing, p. 2, line 3 & p. 7, lines 1-2

<sup>50</sup> As discussed in the previous paragraph, Qwest accomplishes this by omitting terms from the ICAs and instead referring in the ICAs to its Product Catalog/PCAT for those terms, which then change when the PCAT changes.

cross-examination about those terms and all other aspects of his testimony.<sup>51</sup> Attached to Mr. Denney's affidavit as Attachment A is a matrix entitled "ICA Language From Agreements Listed by Qwest in Christensen Affidavit, Att. A" and as Attachment B is a discovery response provided by Mr. Christensen to Eschelon on June 13, 2006 (but not filed by Qwest in this proceeding). Unlike the attachment to the Christensen Affidavit which contains a mere list of ICAs, Attachment A to the affidavit of Mr. Denney contains actual language from the ICAs listed by Qwest to demonstrate that those ICAs are silent on terms that Qwest instead addresses in its PCAT, so the PCAT may be modified without modifying these ICAs. The information in Mr. Denney's affidavit and its attachments shows that Qwest's claims are untimely, unsupported, and inaccurate. If Qwest is allowed to introduce an affidavit with an attachment into the record after the close of the original hearing in this matter, then Eschelon's responsive affidavit and its attachments should be part of the record as well.

**C. THE COMMISSION-ORDERED RELIEF IS APPROPRIATE.**

**1. Regulatory changes to the PCAT are anticipated and appropriate.**

Although Qwest's preference may be that it unilaterally dictate the nature of any PCAT changes, the CMP Document (which controls the operation of CMP<sup>52</sup>) specifically provides that disputes may be brought to a state commission for resolution.<sup>53</sup> This proceeding is expressly a dispute resolution to reverse Qwest's non-mutual conduct

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<sup>51</sup> Similarly, Ms. Bonnie Johnson timely filed Qwest expedite agreement terms (including Qwest's ICA template terms and the terms of agreements with other CLECs) in this matter with her direct testimony (Hrg. Ex. E-1) and was made available for cross-examination. See Qwest template ICA (Att. B to Hrg. Ex. E-1 at Q000012); AT&T-Qwest amendment (Att. B to Hrg. Ex. E-1 at Q000007) & Qwest- MTI amendment (Att. B to Hrg. Ex. E-1 at Q000013).

<sup>52</sup> Hrg. Ex. Q-3 (Martain Direct), p. 7, lines 9-19.

<sup>53</sup> Section 15.0 ("Dispute Resolution Process") of the CMP Document, Exhibit RA-2 to Hrg. Ex. Q-1 (Albersheim Direct).

toward CLECs in CMP.<sup>54</sup> The CMP document also provides that regulators can require changes which will be made in CMP via a Regulatory Change Request (“CR”).<sup>55</sup>

Regulatory Changes are not voluntary but are made to comply with regulatory requirements, such as a state commission order.<sup>56</sup> Therefore, it is entirely anticipated and appropriate for the Commission to require Qwest to change its PCAT.<sup>57</sup>

## 2. Qwest Should Not Have Changed a Rate in CMP.

The true purpose of Qwest’s actions came out clearly at the hearing. Counsel for Qwest (referring to Qwest’s CMP changes to Versions 27 and 30 of the expedite PCAT) said:

But what did change management do with Versions 27 and 30? *Qwest told the CLEC community uniformly, if you don't agree to pay a certain fee, \$200 per day per expedite, we're going to reject the order.*<sup>58</sup>

Qwest’s witness said:

The change at issue here is the *imposition of the fee* to expedite orders for design services.<sup>59</sup>

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<sup>54</sup> Complaint, page 1, lines 16-21 & ¶¶9-21, including discussion of the PCAT Version 27 and 30 “notices to CLECs” in ¶¶14-15. See also Tr. Vol. 1, p. 38, lines 4-5 (Johnson); Hrg. Ex. E-1 at A-7, p. 000137 (April 3, 2006 Escalation and Dispute Resolution letter identifying, in addition to the ICA, both the joint McLeod/Eschelon escalation of PCAT Version 27 and Eschelon’s objections to PCAT Version 30 as subject of this dispute which, if not resolved, would be brought to the Commission in this case). Eschelon’s objections to Version 30 were not limited to Eschelon but also applied to other CLECs. See, e.g., *id.* at A-7, p. 000124 (“Qwest is now failing to keep the commitments it made to CLECs in CMP . . . by now changing its position on expedites and unilaterally imposing charges via a process change in CMP.”) & 000125 (“The change Qwest is proposing is discriminatory to CLECs and their customers.”) & 000126 (“Qwest’s further change, significantly impacts a CLEC’s business”).

<sup>55</sup> Sections 4.1 (“Regulatory Change”), 5.1.1 (“Regulatory Change Request”), 5.1.2 (“Implementation of Regulatory CRs”), 10.2 (“Regulatory Change Requests”), & 10.2.1 (“Regulatory Changes”) of the CMP Document, Exhibit RA-2 to Hrg. Ex. Q-1 (Albersheim Direct).

<sup>56</sup> Section 4.1 of the CMP Document states: “A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may originate the Change Request.” See Exhibit RA-2 to Hrg. Ex. Q-1 (Albersheim Direct).

<sup>57</sup> Decision No. 70557, p. 33, lines 21-23.

<sup>58</sup> Tr. Vol. 1, p. 168, line 23 – p. 169, line 2 (Mr. Steese opening) (emphasis added).

<sup>59</sup> Tr. Vol. 1, p. 191, lines 16-17 (Ms. Albersheim) (emphasis added).

Although it is sometimes difficult to discern in practice, Qwest states that it agrees rates are outside the scope of CMP.<sup>60</sup> As the above-quoted Qwest statements show, however, Qwest admits that its changes in CMP were designed for the “imposition” of “a certain fee, \$200 per day per expedite.” The problem is that Qwest used CMP as a vehicle to establish a fee for wholesale services. It then rejected orders in an attempt to extract an amendment, instead of seeking prior Commission approval. If Qwest wished to begin charging for expedites that it had previously provided without additional charge, the remedy provided for under the contract was to pursue dispute resolution<sup>61</sup> or to petition the Commission for arbitration,<sup>62</sup> not to withhold service that the contract requires Qwest to provide.<sup>63</sup>

Qwest knew Eschelon did not agree with it, but Qwest did not request dispute resolution under the ICA or request prior Commission approval before imposing its fee. This is true even though the current Qwest-Eschelon ICA provides this is what Qwest should do when the companies “are unable to agree on certain issues during the term of the Agreement,”<sup>64</sup> and the Commission requires it before imposing a fee. Specifically, the Commission has said: “To allow Qwest to simply put rates into effect, without the

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<sup>60</sup> Hrg. Ex. Q-3, Martain Dir., p. 29, line 1; *see also* Hrg. Ex. S-1, Staff, p. 29, lines 4-5. Ironically, Qwest rejected McLeod’s and Eschelon’s joint CMP escalation of Version 27 on the grounds that “discussion around rates associated with an Interconnection Agreement are outside the scope of the CMP process.” Hrg. Ex. E-1, A-7 at 000129.

<sup>61</sup> ICA, Attachment 1, Section 1.2; Tr. Vol. II, p. 242, line 9 – p. 243, line 1 (Albersheim).

<sup>62</sup> ICA, Part A, Section 27.1, Staff Direct (Hrg. Ex. S-1), p. 34, lines 14-19.

<sup>63</sup> Staff Direct (Hrg. Ex. S-1), p. 34, lines 19-21 (“As Commission staff observed regarding the Rehabilitation Center example: ‘Qwest should have expedited the request first and then followed up afterwards with the dispute resolution process. Clearly, [Named Customer] should have been thought of first; especially given the nature of the customer’s business.’”); *see also* Staff Direct (Hrg. Ex. S-1), p. 36, line 22 – p. 37, line 2 (“But since CLEC Interconnection Agreements are voluntarily negotiated or arbitrated, an alternative Qwest may have chosen, rather than trying to force Eschelon into signing an amendment, could have been to take the issue to arbitration under the terms of the Qwest-Eschelon Interconnection Agreement.”)

<sup>64</sup> ICA, Part A, ¶27.2 (Exhibit 1 to Eschelon’s Post-Hearing Brief, p. 3.)

agreement of the CLEC in a particular case through a negotiated interconnection agreement, could be a great impediment to competition.”<sup>65</sup>

The Commission made this statement in a case in which a number of CLECs (but not all CLECs) objected to a change that Qwest made in CMP, and they brought the dispute to the Commission to resolve.<sup>66</sup> In that case, Qwest had also revised the PCAT, via CMP, so that it could assess charges that it had not, in the past, assessed.<sup>67</sup> The Staff said that it “is extremely concerned that Qwest would implement such a significant change through its CMP process without prior Commission approval.”<sup>68</sup> The Commission adopted the Staff’s recommendation that “Qwest be ordered to immediately suspend its policy of assessing construction charges on CLECs for line conditioning and reconditioning and immediately provide refunds to any CLECs relating to these unauthorized charges.”<sup>69</sup> This Order applied to “any CLECs,” and not only those CLECs who brought the dispute to the Commission.<sup>70</sup> The Commission said: “If Qwest desires to implement this change, then it should notify the Commission in Phase III of the Cost Docket, but must obtain Commission approval *of such a change* prior to its implementation.”<sup>71</sup> As Eschelon indicated in its Complaint in this matter, Qwest was clearly on notice through this earlier Commission order that Qwest should seek prior Commission approval before assessing charges that it had not in the past assessed.<sup>72</sup>

It is undisputed that, before Qwest’s expedite changes in CMP, Qwest expedited orders in emergency situations at no additional charge for all CLECs for all products,

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<sup>65</sup> Decision No. 66242, Docket No. T-00000A-97-0238 (Sept. 16, 2003) (adopting recommendations of Staff) at ¶108, lines 19-21 (cited in Eschelon’s Complaint, p. 6 at footnote 1).

<sup>66</sup> Decision No. 66242, Docket No. T-00000A-97-0238 at ¶107.

<sup>67</sup> Decision No. 66242, Docket No. T-00000A-97-0238 at ¶¶107-109.

<sup>68</sup> Decision No. 66242, Docket No. T-00000A-97-0238 at ¶108, lines 23-24.

<sup>69</sup> Decision No. 66242, Docket No. T-00000A-97-0238 at ¶109.

<sup>70</sup> Decision No. 66242, Docket No. T-00000A-97-0238 at ¶109.

<sup>71</sup> Decision No. 66242, Docket No. T-00000A-97-0238 at ¶109 (emphasis added).

<sup>72</sup> Eschelon Complaint, p. 6, footnote 1, citing Decision No. 66242, Docket No. T-00000A-97-0238.

regardless of the terms in CLECs' ICAs.<sup>73</sup> Ms. Martain of Qwest testified that "all products were part of the emergency expedite process."<sup>74</sup> The Commission's Order simply reverses Qwest's non-mutual conduct toward CLECs in CMP, consistent with the relief requested in the Complaint.<sup>75</sup> And, as described above, it does so without modifying any CLECs' ICAs, because they reference the PCAT. The Commission astutely ordered use of the very mechanism for change prescribed by those ICAs and the CMP Document – changing Qwest's PCAT.<sup>76</sup>

The section of the PCAT relating to the charge for expedites (which Qwest refers to as "Pre-Approved" expedites) simply needs to make clear that the charge does not apply when the delineated emergency conditions are met (such as with a cross reference to the section of the PCAT which Qwest refers to as expedites "Requiring Approval," which would then include all products for emergency-based expedites). Qwest already identifies state-specific differences in the expedite PCAT,<sup>77</sup> so it has an established mechanism to note that the regulatory changes are state-specific.

### **3. No CLEC is Forced into Involuntary Terms.**

Qwest has referred to obtaining expedites at no additional charge in emergency situations as optional<sup>78</sup> (though it later took away that option, as described above). Qwest

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<sup>73</sup> See Hearing Transcript, Vol. II (Martain), p. 370, lines 19-25; see *id.* line 23 ("all products") and line 25 ("everybody"). See also *id.* p. 332, lines 13-15 ("They were obtaining expedites for all services in under-emergency conditions.").

<sup>74</sup> See Hearing Transcript, Vol. II (Martain), p. 370, lines 23-24; see also *id.* p. 361, line 18 – p. 362, line 3.

<sup>75</sup> See **Exhibit 4** to Eschelon's Post-Hearing Brief ("Table – Staff Recommendations are Within Scope of Complaint, Despite Qwest's Claim the Case is Narrower") (and citations therein). See also **Exhibit 5** to Eschelon's Post-Hearing Brief ("Table – Qwest's Current Themes: A Review in Light of the Evidence"), Row Nos. 5-6 & 36-37 (and citations therein).

<sup>76</sup> Decision No. 70557, p. 33, lines 21-23.

<sup>77</sup> See Qwest expedite PCAT Version 41, p. 3 (Washington state-specific difference) at RA-1 to Q-1 (Albersheim Direct) and JM-D5 to Q-3 (Martain Direct).

<sup>78</sup> See, e.g., Hrg. Ex. Q-1 (Albersheim Dir.), p. 8, lines 14-18 & p. 9, lines 3-5 ("Via the CMP, Qwest established a procedure through which Qwest would provide expedites to CLECs via one of two *options* detailed in Qwest's PCAT.") (emphasis added); see also Hrg. Transcript, Vol. II (Ms. Martain), p. 329, lines 13-16 ("option").

also claims that other CLECs' ICAs were "voluntarily negotiated"<sup>79</sup> (though Qwest rejected orders to ensure it would obtain them, as described above). Once the Commission's Order to revise the PCAT is implemented, obtaining expedites at no additional charge in emergency situations will actually be a voluntary option available to CLECs.

Despite any suggestion to the contrary in Qwest's Application for Rehearing, no CLEC will be forced to obtain expedites at no additional charge in emergency situations contrary to some negotiated ICA term, if the CLEC truly and voluntarily wants to pay more. As discussed above and as shown in Attachment A to Exhibit A to this Motion, the other CLECs' ICAs universally refer to the PCAT. The PCAT states that, when one of the delineated emergency conditions exists, expedited requests "can be made" either prior to, or after, submitting a service request and that a CLEC "may be asked" to provide verification of the expedited reason or situation for any of the expedite reasons.<sup>80</sup> If the CLEC chooses to seek Qwest's concurrence that an emergency condition is met, a CLEC "can either" make the request on its service request or by calling Qwest.<sup>81</sup> If a CLEC desires to forgo the opportunity to establish that an emergency condition exists so that "expedite charges are not applicable,"<sup>82</sup> the CLEC simply does not indicate on its request (or in a call to Qwest) that one of the emergency conditions exists.

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<sup>79</sup> Qwest's Application for Rehearing, p. 2, line 3.

<sup>80</sup> Qwest expedite PCAT Version 41, pp 1-2 at RA-1 to Q-1 (Albersheim Direct) and JM-D5 to Q-3 (Martain Direct).

<sup>81</sup> Qwest expedite PCAT Version 41, pp. 1-2 at RA-1 to Q-1 and JM-D5 to Q-3. Note that Qwest's PCAT currently denies this "option" for unbundled loops or "designed services" (see *id.* p. 1), but once the product restriction that was added via Qwest's erroneous CMP changes is reversed, this option will once again be available for unbundled loops, as it was previously. See Attachment DD-2 (Expedite Capability for Loops chart), p. 1, to Hrg. Ex. E-4 (Denney Rebuttal).

<sup>82</sup> Qwest expedite PCAT Version 41, p. 1 at RA-1 to Q-1 and JM-D5 to Q-3.

Instead, for any order (including when an emergency exists), a CLEC may simply submit its request for an expedite and pay the expedite charge.<sup>83</sup> Although the Commission put Qwest “on notice that *in the future*, the Commission could fine Qwest for using the CMP to change Commission-approved rates,”<sup>84</sup> the Commission allows Qwest to charge other CLECs a rate of \$200 per day per expedite,<sup>85</sup> instead of the “Commission-approved ICB rate for expedites.”<sup>86</sup> Therefore, the \$200 per day rate in other CLECs’ ICAs, when it applies per the PCAT (which does not include certain emergency situations<sup>87</sup>), is not modified by the Commission’s Order and will apply for the “duration”<sup>88</sup> of their current agreements, until amended or replaced (by entering into a new agreement or opting into another CLEC’s agreement per Section 252(i) of the Act).

### **III. CONCLUSION**

The Commission should strike the Christensen Affidavit, as well as all references to, and discussion of, the Christensen Affidavit and its contents within Qwest’s Application for Rehearing.<sup>89</sup> Particularly if this Motion to Strike is denied, the Commission should grant Eschelon’s Motion to Supplement the Record. For the reasons

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<sup>83</sup> Qwest expedite PCAT Version 41, p. 3 at RA-1 to Q-1 and JM-D5 to Q-3.

<sup>84</sup> Decision No. 70557, p. 27, lines 2-5 (emphasis added); see also *id.* p. 32, line 26 – p. 33, line 1 (“we caution Qwest to review its procedures so that CMP is not utilized to change Commission-approved rates”).

<sup>85</sup> Decision No. 70557, p. 31, ¶29 & p. 33, lines 18-23. This per day rate applies to Eschelon “for the duration of the current ICA.” *Id.* p. 31, ¶29 & p. 33, line 19 (“per day”).

<sup>86</sup> Decision No. 70557, p. 31, ¶29 & p. 33, lines 18-23. See Exhibit DD-4 to Hrg. Ex. E-4 (Denney Reb.).

<sup>87</sup> Qwest expedite PCAT Version 41, p. 1 at RA-1 to Q-1 and JM-D5 to Q-3 (when CLEC requests an emergency expedite and the conditions are met, “expedite charges are not applicable”). Per Decision No. 70557, p. 33, lines 151-23, the PCAT will be modified to include all types of services for the delineated emergency circumstances.

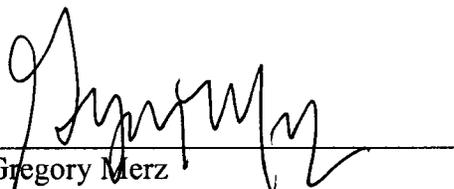
<sup>88</sup> Decision No. 70557, p. 31, ¶29, line 24 (“duration of the current ICA”).

<sup>89</sup> See Qwest’s Application for Rehearing, p. 2, lines 1-8; p. 4, lines 4-5; p. 6, line 25 – p. 7, line 18 and Exhibit A (Christensen Affidavit, including Affidavit Attachment A).

stated in Eschelon's testimony and briefing and in this Motion, Qwest's Application for Rehearing should be denied (either by taking no action so that it is deemed denied or by issuing an order to deny it).

Dated: November 20, 2008

GRAY, PLANT, MOOTY, MOOTY  
& BENNETT, P.A.

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**EXHIBIT A TO ESCHELON'S  
MOTION TO STRIKE AND OR SUPPLEMENT THE RECORD:**

**AFFIDAVIT OF DOUGLAS DENNEY**

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3 **MIKE GLEASON**

4 **Chairman**

5 **WILLIAM MUNDELL**

6 **Commissioner**

7 **JEFF HATCH-MILLER**

8 **Commissioner**

9 **KRISTIN MAYES**

10 **Commissioner**

11 **GARY PIERCE**

12 **Commissioner**

13  
14  
15 **IN THE MATTER OF THE COMPLAINT OF )**  
16 **ESCHELON TELECOM OF ARIZONA, INC. )**  
17 **AGAINST QWEST CORPORATION )**

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

**AFFIDAVIT OF DOUGLAS**  
**DENNEY**

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26 )  
27 **My name is Douglas Denney, and by my signature below, I attest that the**  
28 **following are true facts:**

29 1. My name is Douglas Denney and I work at 730 2<sup>nd</sup> Avenue South, Suite  
30 900, Minneapolis, Minnesota 55402. My education and background are described in my  
31 rebuttal testimony in this matter.<sup>1</sup> At that time, my employer was Eschelon Telecom, Inc.  
32 On August 31, 2007, Integra completed its purchase of Eschelon Telecom, Inc.<sup>2</sup> My  
33 responsibilities continue to include negotiating interconnection agreements, monitoring,

<sup>1</sup> Hrg. Ex. E-4 (Denney Rebuttal) (Feb. 13, 2007), pp. 1-3.

<sup>2</sup> [http://www.integratelecom.com/about/news/news\\_releases/2007/2007-08-31\\_news\\_release.asp](http://www.integratelecom.com/about/news/news_releases/2007/2007-08-31_news_release.asp)

1 reviewing and analyzing the wholesale costs Integra and its affiliates pay to carriers such  
2 as Qwest, and representing Integra and its affiliates on regulatory issues.

3         2. I previously testified in this matter as follows: I adopted the Direct  
4 Testimony of Mr. Webber,<sup>3</sup> dated July 13, 2006, which is marked as Hearing Exhibit E-3.  
5 My Rebuttal Testimony and accompanying Exhibits DD-1 through DD-9 were filed in  
6 this matter on February 13, 2007. They are marked as Hearing Exhibit E-4. I also  
7 appeared at the hearing in this matter for cross-examination in August of 2007.<sup>4</sup>

8         3. I also testified as a witness in the interconnection agreement (“ICA”)  
9 arbitration proceedings regarding a new ICA between Qwest Corporation (“Qwest”) and  
10 Eschelon in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington.<sup>5</sup> Ms. Bonnie  
11 Johnson, a witness in this matter, also testified as a witness on behalf of Eschelon in those  
12 arbitration proceedings. For Qwest, Ms. Renee Albersheim and Ms. Teresa Million also  
13 testified in both this matter and those arbitration proceedings.

14         4. By this affidavit, I verify that the factual assertions, which are contained in  
15 the Motion to Strike and/or Supplement the Record filed today in this proceeding on  
16 behalf of Eschelon, are true and correct statements to the best of my knowledge.

17         5. On November 12, 2008, Qwest filed an Application for Rehearing of  
18 October 23, Order, Decision No. 70557 (“Application for Rehearing”) in this matter. To

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<sup>3</sup> Hrg. Ex. E-4 (Denney Rebuttal) (Feb. 13, 2007), p. 3, lines 5-7.

<sup>4</sup> Hrg. Transcript, Vol. I, pp. 120-165 (Aug. 28, 2007).

<sup>5</sup> The Qwest-Eschelon ICA arbitration docket numbers are as follows: Arizona (T-03406A-06-0572, T-01051B-06-0572), Colorado (06B-497T), Minnesota (P-5340, 421/IC-06-768), Oregon (ARB 775), Utah (07-2263-03), and Washington (UT-063061). The subject of expedite language for the new ICA (to replace the ICA currently in effect) was an issue in those proceedings and was identified as Issue Number 12-67. See, e.g., Decision No. 70557 in this matter, p. 5, footnote 1. Regarding the resolution of Issue 12-67 in Arizona, see *id.* p. 27, footnote 68.

1 its Application for Rehearing, Qwest attached, as Exhibit A, the Affidavit of Larry  
2 Christensen in Support of Qwest Corporation's Application for Rehearing of Decision  
3 No. 70557 ("Christensen Affidavit"). Attachment A to the Christensen Affidavit is a list  
4 of Arizona ICAs and ICA amendments by company and date executed by Qwest. None  
5 of the ICAs or amendments are attached to the Christensen Affidavit, and none were  
6 submitted by Qwest in evidence in this matter before or during the evidentiary hearing in  
7 August of 2007. Mr. Christensen was not previously a witness in this proceeding.

8           6. Attached to this affidavit as **Attachment A** is a matrix entitled "ICA  
9 Language From Agreements Listed by Qwest in Christensen Affidavit, Att. A" and as  
10 **Attachment B** is a discovery response provided by Mr. Christensen to Eschelon on June  
11 13, 2006 (but not filed by Qwest in this proceeding).

12           7. In Qwest's Application for Rehearing, Qwest states that "Qwest has  
13 completed its *preliminary analysis* of the CLEC interconnection agreements" and cites  
14 the Christensen Affidavit.<sup>6</sup> In fact, Mr. Christensen conducted an earlier analysis of  
15 interconnection agreements vis-à-vis Eschelon's request for relief in this case and  
16 provided it in discovery on June 13, 2006. That was before Qwest filed its direct  
17 testimony in this matter on August 28, 2006 and long before the hearing in August of  
18 2007. The portions of the discovery response not filed in this proceeding comprise  
19 Attachment B.<sup>7</sup> Attached to Mr. Christensen's discovery response was certain ICA

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<sup>6</sup> Qwest's Application for Rehearing, p. 7, lines 7-8 (emphasis added).

<sup>7</sup> Written response to Eschelon Request No. P002 by Mr. Christensen and pages Q00001-Q00003 (Qwest matrix), Q000014-Q000015 (Excerpt from 2003 Qwest SGAT), Q000016 (1996-1997 AT&T language), Q000017- Q000018 (2002 ICG language).

1 language offered to or executed by other CLECs. Although Qwest chose not to submit  
2 that ICA language in this proceeding, Eschelon filed it in this matter and did so in a  
3 timely manner.<sup>8</sup>

4 8. In Mr. Christensen's 2006 written discovery response, he admits that  
5 Qwest has various "sets" of "generic" language for expedite terms.<sup>9</sup> He also admits that  
6 the purpose of Qwest's expedite amendments is to "initiat[e] the \$200/day charge" and he  
7 points out that Qwest's multi-state ICA "template" also "includes that charge."<sup>10</sup> He then  
8 describes the other ICAs, including the current Eschelon ICA,<sup>11</sup> as "pre-CMP *charge*  
9 *initiation* that allowed expedites and charges but did not identify the charges."<sup>12</sup>

10 9. In the Christensen Affidavit, Mr. Christensen states: "Qwest has entered  
11 into binding, voluntary agreements with forty-two (42) CLECs that provide terms for  
12 handling expedites that *are different from* the terms that the Commission requires in the  
13 Order. I have attached to this affidavit a list of those agreements, marked as Larry  
14 Christensen Affidavit Attachment A. The expedite provisions in the agreements listed on  
15 Attachment A were either incorporated into an existing agreement by amendment, or  
16 were part of the originally negotiated or adopted agreements."<sup>13</sup> Mr. Christensen does  
17 *not* state that the terms are modified by the Order. I have reviewed all but 5 of those 42

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<sup>8</sup> Q000004-Q000007 (Qwest-AT&T expedite amendment, Att. B to Hrg. Ex. E-1); Q000008-Q000013 [Qwest-Mountain Telecommunications Inc. ("MTI") expedite amendment, Att. B to Hrg. Ex. E-1]. Regarding Q000016 (1996-1997 AT&T language), the expedite terms from Section 3.2 are the same as those filed in Exhibit 1 to Eschelon's Complaint, as Eschelon opted in to the AT&T ICA. The AT&T and ICG ICA language in Q000016-Q000018 preceded the expedite changes made by Qwest in CMP in 2005-2006.

<sup>9</sup> Attachment B to this affidavit, p. 1 (Qwest Response to Request No. P002).

<sup>10</sup> Attachment B to this affidavit, p. 1 (Qwest Response to Request No. P002).

<sup>11</sup> Attachment B to this affidavit, p. Q000001.

<sup>12</sup> Attachment B to this affidavit, p. 1 (Qwest Response to Request No. P002) (emphasis added).

<sup>13</sup> Christensen Affidavit, p. 2, lines 10-17 (emphasis added).

1 agreements (as 5 were not found on the Commission's website<sup>14</sup>), and I have also  
2 compared those 37 agreements to the Commission's Decision No. 70557. I found no  
3 material or substantial differences. In fact, because the agreements follow Qwest's  
4 generic or template language which refers to the Qwest web-based Product Catalog  
5 ("PCAT"), the Commission's remedy of ordering Qwest to modify the PCAT<sup>15</sup> is  
6 particularly appropriate.

7 10. Mr. Christensen provided a list of ICAs, but none of their language.  
8 Attachment A to this Affidavit contains excerpts from the unbundled network element  
9 ("UNE") language of those agreements as an example of their terms. It illustrates that  
10 these ICAs are silent on terms that Qwest instead addresses in its PCAT, so the PCAT  
11 may be modified without modifying these ICAs. The language is grouped within four  
12 categories by CLEC, showing the various but similar ways in which Qwest accomplishes  
13 the same result of deferring to its PCAT.<sup>16</sup> At no time since the bringing of Eschelon's  
14 Complaint has Qwest indicated that it has changed its position that, if another CLEC does  
15 not sign Qwest's template terms with a \$200 per day rate, Qwest is going to "reject the  
16 order."<sup>17</sup>

17 11. In the rate sheets (usually marked as Exhibit A) to the agreements in  
18 Qwest's list, there is a rate of \$200 per day expedited (or a reference to a document  
19 containing that rate). I have had extensive involvement with Qwest's Exhibit As. The

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<sup>14</sup> Mr. Christensen did not indicate that the agreements vary from each other in any material respect.

<sup>15</sup> Decision No. 70557, p. 33, lines 21-23.

<sup>16</sup> The fifth row (Category E) identifies that five CLEC ICAs that Eschelon could not find on the Commission's website.

<sup>17</sup> Tr. Vol. I, p. 168, line 23 – p. 169, line 2 (Mr. Steese).

1 fact that a rate is listed in Exhibit A does not mean that the rate applies in every instance.  
2 For example, the Arizona Statement of Generally Available Terms (“SGAT”) shows a  
3 specific dollar amount for Maintenance of Services charges<sup>18</sup> which, like expedite  
4 charges,<sup>19</sup> are classified as Miscellaneous Charges.<sup>20</sup> Although there is a rate for  
5 Maintenance of Service in Exhibit A, it does not apply in certain circumstances. For  
6 example, Section 12.3.4.3 of the SGAT states (with emphasis added): “When trouble is  
7 found on Qwest’s side of the Demarcation Point, or Point of Interface during the  
8 investigation of the initial or repeat trouble report for the same line or circuit within thirty  
9 (30) Days, Maintenance of Service charges *shall not apply*.” Although Eschelon’s  
10 position is that such terms belong in the ICA,<sup>21</sup> Qwest in its template expedite agreements  
11 has deferred to its PCAT. Qwest’s PCAT specifically states that, when CLEC requests  
12 an emergency expedite and the conditions delineated in the PCAT are met, “expedite  
13 charges are not applicable.”<sup>22</sup> When pursuant to the Commission’s Order the PCAT is  
14 modified to include all types of services for the delineated emergency circumstances,<sup>23</sup>  
15 the established framework will apply. There will be a rate in Exhibit A of the ICAs, but  
16 it will not apply in certain (e.g., emergency) circumstances.

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<sup>18</sup> AZ SGAT (2/10/05), Ex. A, §9.20.5; see also Att. B at Q000015, SGAT (4/14/03), Ex. A, §9.19.11.

<sup>19</sup> AZ SGAT (2/10/05), Ex. A, §9.20.14; see also Att. B at Q000015, SGAT (4/14/03), Ex. A, §9.19.36.

<sup>20</sup> AZ SGAT (2/10/05), Ex., A, §9.20; see also Att. B at Q000015, SGAT (4/14/03), Ex. A, §9.19.

<sup>21</sup> See, e.g., Qwest-Eschelon AZ ICA arbitration, ACC Docket Nos. T-03406A-06-0572, T-01051B-06-0572, ICA Compliance Filing (6/16/08), §12.4.1.6 (“When trouble is found on Qwest’s side of the Demarcation Point, or Point of Interface during the investigation of the initial or repeat trouble report for the same line or circuit within thirty (30) Days, Maintenance of Service Charges *shall not apply*.”) (emphasis added).

<sup>22</sup> Qwest expedite PCAT Version 41, p. 1 at RA-1 to Q-1 and JM-D5 to Q-3.

<sup>23</sup> Decision No. 70557, p. 33, lines 151-23.

1           12.     Mr. Christensen included Mountain Telecommunications, Inc. (“MTI”), in  
2 Attachment A to the Christensen Affidavit. On November 1, 2006, Eschelon completed  
3 its acquisition of MTI, a CLEC based in Tempe, Arizona.<sup>24</sup> Since then, as noted above,  
4 Integra acquired Eschelon and its affiliates. MTI’s expedite amendment with Qwest,  
5 which Ms. Johnson submitted in this matter as part of Attachment B to her Direct  
6 Testimony,<sup>25</sup> is not modified by the Commission’s Order. Once the PCAT is changed in  
7 compliance with the Order, MTI will be able to request expedites for all products at no  
8 additional charge when the emergency conditions are met, just as CLECs could do prior  
9 to Qwest’s objectionable CMP changes.<sup>26</sup> MTI agrees with Eschelon’s position in this  
10 matter.

11           13.     In its Application for Rehearing, Qwest argues that the Order requires  
12 “Qwest to amend its PCAT to provide expedites on the terms ordered in this complaint  
13 proceeding, instead of according to the terms provided by the interconnection  
14 agreements.”<sup>27</sup> As Attachment A to this Affidavit illustrates, however, those  
15 interconnection agreements do not contain any such terms but rather specifically defer to  
16 the PCAT. Moreover, Qwest has agreed on a process for making those changes. The  
17 document governing Qwest’s Change Management Process (“CMP”), known as the  
18 “CMP Document,” provides that regulators can require changes which will be made in

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<sup>24</sup> See [http://www.eschelon.com/about\\_us/section\\_detail.aspx?itemID=8200&catID=3085](http://www.eschelon.com/about_us/section_detail.aspx?itemID=8200&catID=3085).

<sup>25</sup> Qwest- MTI expedite amendment (Att. B to Hrg. Ex. E-1 at Q000008-Q000013).

<sup>26</sup> See Hearing Transcript, Vol. II (Martain), p. 370, lines 23-24; see also *id.* p. 361, line 18 – p. 362, line 3.

<sup>27</sup> Qwest Application for Rehearing, p. 7, lines 3-5.

1 the CMP via a Regulatory Change Request ("CR").<sup>28</sup> Regulatory Changes are not  
2 voluntary but are made to comply with regulatory requirements, such as a state  
3 commission order.<sup>29</sup> The CMP Document states that, for Regulatory Changes, "either the  
4 CLEC or Qwest may originate the Change Request."<sup>30</sup> If Qwest's Application for  
5 Rehearing is denied and the order in this matter is final, Eschelon will submit a  
6 Regulatory Change Request (if Qwest has not) to initiate implementation of the order  
7 pursuant to established CMP procedures.

8

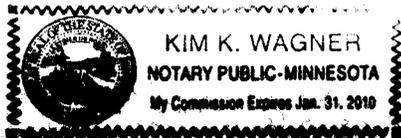
9 Dated: November 20, 2008

10   
11 \_\_\_\_\_  
12 Douglas Denney

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17  
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19

Subscribed and sworn to me this  
20<sup>th</sup> day of November, 2008.

  
\_\_\_\_\_  
Notary Public



<sup>28</sup> Sections 4.1 ("Regulatory Change"), 5.1.1 ("Regulatory Change Request"), 5.1.2 ("Implementation of Regulatory CRs"), 10.2 ("Regulatory Change Requests"), & 10.2.1 ("Regulatory Changes") of the CMP Document, Exhibit RA-2 to Hrg. Ex. Q-1 (Albersheim Direct).

<sup>29</sup> Section 4.1 of the CMP Document states: "A Regulatory Change is mandated by regulatory or legal entities, such as the Federal Communications Commission (FCC), a state commission/authority, or state and federal courts. Regulatory changes are not voluntary but are requisite to comply with newly passed legislation, regulatory requirements, or court rulings. Either the CLEC or Qwest may originate the Change Request." See Exhibit RA-2 to Hrg. Ex. Q-1 (Albersheim Direct).

<sup>30</sup> See Exhibit RA-2 to Hrg. Ex. Q-1 (Albersheim Direct) at Section 4.1 (quoted in above footnote).

**ATTACHMENT A TO ESHELON EXHIBIT A (DENNEY AFFIDAVIT):  
ICA LANGUAGE FROM AGREEMENTS LISTED BY QWEST IN CHRISTENSEN AFFIDAVIT, ATT. A**

Category	CLEC	Excerpts From Interconnection Agreement Language
A	<p>Access Point, Inc. (04/02/08)</p> <p>Bandwidth.com CLEC, LLC (03/04/08)</p> <p>BullsEye Telecom, Inc. (06/09/08)</p> <p>Cbeyond Communications, LLC (12/07/06)</p> <p>Clertech.com, Incorporated (07/18/08)</p> <p>Comcast Phone of Arizona, LLC d/b/a Comcast Digital Phone (01/09/07)</p> <p>Ernest Communications, Inc. (04/21/08)</p> <p>Gila Local Exchange Carrier, Inc. (Adoption of Comcast Phone of Arizona ICA) (01/31/08)</p> <p>Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. (01/29/08)</p> <p>Globetel, Inc. (10/27/06)</p> <p>Quantumshift Communications, Inc. d/b/a VCOM Solutions (10/16/08)</p> <p>Syniverse Technologies, Inc. (12/05/07)</p> <p>Wholesale Carrier Services, Inc. (01/07/08)</p>	<p>9.1.12 Miscellaneous Charges apply for miscellaneous services listed below in this Section, if such miscellaneous services are available with Unbundled Network Elements as provided under "Rate Elements" subsections of this Section 9. Miscellaneous services are provided at CLEC's request or are provided based on CLEC's actions that result in miscellaneous services being nonrecurring charges that apply under this Agreement. When more than one miscellaneous service is requested for the same Unbundled Network Element(s), Miscellaneous Charges for each miscellaneous service apply. Basic rates apply for miscellaneous services provided during Qwest's regular business hours, 8 a.m. to 5 p.m., local time, Monday through Friday, excluding holidays; overtime Miscellaneous Charges apply for such services provided between 5 p.m. and 8 a.m., local time, Monday through Friday, or any time Saturday, excluding holidays; and premium Miscellaneous Charges apply for such services provided any time on Sundays or holidays.</p> <p>i) Expedite - a Due Date that reflects a shorter service interval than is available in Qwest's Service Interval Guide; or that is a request for an earlier Due Date than has been established on a pending order; or that is required to meet a Due Date on a pending order due to design or other changes submitted by CLEC. Qwest will accommodate CLECs request for an expedited installation if it can do so without delaying Due Dates or orders of other CLECs or End User Customers. Charges for expedited installations are in addition to nonrecurring charges for the service ordered. Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change.</p> <p>9.1.15 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest's Service Interval Guide (SIG) or Individual Case Basis (ICB)</p>

**ATTACHMENT A TO ESCHELON EXHIBIT A (DENNEY AFFIDAVIT):  
 ICA LANGUAGE FROM AGREEMENTS LISTED BY QWEST IN CHRISTENSEN AFFIDAVIT, ATT. A**

**CLEC  
 Excerpts From Interconnection Agreement Language**

Category	Company Name and Agreement Dates	Due Dates
	XO Communications Services, Inc. (07/09/07) YMax Communications Corp. (07/09/07)	9.1.15.1 CLEC will request an expedite for designed Unbundled Network Elements, including an expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate.  9.1.15.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedites at Qwest's wholesale web site.
B	Broadband Dynamics, Inc. (04/13/06) CommPartners, LLC (02/09/06) Navigator Telecommunications, LLC (01/26/06) NextG Networks of California, Inc. d/b/a NetG Networks West (04/27/06)	9.1.12 Miscellaneous Charges are defined in the Definitions Section set forth in Exhibit A. Miscellaneous Charges apply to nonrecurring and recurring charges Qwest perform, activities CLEC authorizes, or charges that are a result of CLECs actions, such as cancellation charges or expedite charges. Rates for Miscellaneous Charges are contained in Exhibit A. Expedites are requests identified in Exhibit A or Individual Case Basis (ICB) Due Dates. Rates for shorted, based on the interval defined in Qwest's Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates. Expedite charges will apply.  9.1.15 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest's Service Interval Guide (SIG) or Individual Case Basis (ICB) Due Dates.

9.1.15.1 CLEC will request an expedite for designed Unbundled

**ATTACHMENT A TO ESHELON EXHIBIT A (DENNEY AFFIDAVIT):  
ICA LANGUAGE FROM AGREEMENTS LISTED BY QWEST IN CHRISTENSEN AFFIDAVIT, ATT. A**

Category	CLEC	Excerpts From Interconnection Agreement Language
		<p>Network Elements, including an expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate.</p> <p>9.1.15.2 The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedites at Qwest's wholesale web site.</p>
C	<p>360networks (USA) Inc. (01/05/06)                      American Fiber Network, Inc. (Adoption of 360networks ICA) (06/14/07)                      AZX Connect, LLC (07/07/05)                      Level 3 Communications, LLC (12/14/06)                      Looking Glass Networks Inc. (Adoption of Level 3 ICA) (01/02/07)                      Mountain Telecommunications, Inc.<sup>1</sup> (04/13/06)                      Pac-West Telecomm, Inc. (Adoption of Level 3 ICA) (2/18/08)                      Trans National Communications International, Inc. (Adoption of 360networks ICA) (12/13/06)</p>	<p>9.1.12 Miscellaneous Charges are defined in the Definitions Section. Miscellaneous Charges are in addition to nonrecurring and recurring charges set forth in Exhibit A. Miscellaneous Charges apply to activities CLEC requests Qwest perform, activities CLEC authorizes, or charges that are a result of CLECs actions, such as cancellation charges or expedite charges. Unless otherwise provided for in this Agreement, no additional charges will apply. Rates for Miscellaneous Charges are contained in Exhibit A.</p> <p>9.1.15 Expedite requests for designed Unbundled Network Elements are allowed. Expedites are requests for intervals that are shorter than the interval defined in Qwest's Service Interval Guide (SIG) or Individual Case Basis (ICB) due date.</p> <p>9.1.15.1 CLEC will request an expedite for designed Unbundled Network Elements, including an expedited Due Date, on the Local Service Request (LSR) or the Access Service Request (ASR), as appropriate.</p> <p>9.1.15.2 The request for an expedite will be allowed only when the</p>

<sup>1</sup> MTI's contract is an amendment containing only Sections 7.3.5.2; 7.3.5.2.1; 7.3.5.2.2; 9.1.15; 9.1.15.1 and 9.1.15.2. The language of these paragraphs is the same as the language shown in Category C.

**ATTACHMENT A TO ESHELON EXHIBIT A (DENNEY AFFIDAVIT):  
ICA LANGUAGE FROM AGREEMENTS LISTED BY QWEST IN CHRISTENSEN AFFIDAVIT, ATT. A**

Category	CLEC	Excerpts From Interconnection Agreement Language
	ValuTel Communications, Inc. (08/16/05)	request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product Catalog for expedites at Qwest's wholesale web site.
D	<p>AT&amp;T Communications of the Mountain States, Inc. (05/20/05)</p> <p>Cox Arizona Telecom, LLC (11/11/04)</p> <p>DIECA Communications, Inc. d/b/a Covad Communications Company (06/01/06)</p> <p>Granite Telecommunications, LLC (10/07/05)</p> <p>MCIMetro Access Transmission Services LLC (02/15/05)</p> <p>McLeodUSA Telecommunications Services, Inc. (2/28/05)</p> <p>National Brands, Inc. (8/12/05)</p> <p>New Edge Network, Inc. (10/21/04)</p> <p>TCG Phoenix (05/20/05)</p>	<p><i>Expedites for Design Services Amendment</i> – NOTE: This amendment was filed by Eschelon as Exhibit DD-5 to the Rebuttal Testimony of Mr. Denney (Hearing Exhibit E-4):</p> <p><b>1.0 Expedites for Design Services</b></p> <p><b>1.1 Description</b></p> <p>1.1.1 Expedites are requests for an improved standard interval that is shorter than the interval defined in Qwest's Service Interval Guide (SIG) or CLEC's Interconnection Agreement (ICA), Individual Case Basis (ICB) or committed to ICB (Ready for Service (RFS) + Interval) date.</p> <p><b>1.2 Terms and Conditions</b></p> <p>1.2.1 When Qwest receives an ASR or LSR with the EXP populated and the DDD is less than the standard interval, Qwest will determine if the request is eligible for an expedite without a call from you. If the request meets the criteria for the Pre-Approved Expedite process, Qwest will process the request and return a FOC acknowledging the expedited due date. The appropriate expedite charge will be added to your service order.</p> <p>1.2.2 If the request does not meet the criteria for the Pre-Approved</p>

**ATTACHMENT A TO ESHELON EXHIBIT A (DENNEY AFFIDAVIT):  
ICA LANGUAGE FROM AGREEMENTS LISTED BY QWEST IN CHRISTENSEN AFFIDAVIT, ATT. A**

Category	CLEC	Excerpts From Interconnection Agreement Language
		<p>Expedite process, the ASR or LSR will be processed under the guidelines for Expedites Requiring Approval as described in the PCAT.</p> <p>1.2.3 The Pre-Approved expedite process is available in all states except WA for the products listed in the PCAT. It is not necessary to call Qwest to have the expedite approved.</p> <p><b>1.3 Rate Elements</b></p> <p>1.3.1 The expedite charge Identified in Exhibit A applies per order for every day that the due date interval is shortened, based on the standard interval in the SIG, ICA, or ICB criteria.</p> <p><b>1.4 Ordering Process</b></p> <p>1.4.1 CLEC will request an expedite on a Local Service Request (LSR) or Access Service Request (ASR).</p> <p>1.4.2 All requests must include an expedited Due Date, and Qwest will return an FOC acknowledging the expedited Due Date.</p>
<b>E</b>	<p><b>Cordia Communications Corp</b></p> <p><b>EMC Telecom Corporation</b></p> <p><b>Time Warner Telecom of Arizona LLC</b></p> <p><b>Vilaire Communications Inc.</b></p> <p><b>Ygnition Networks, Inc.</b></p>	<p>Not found on the Arizona Corporation Commission Website.</p>

**ATTACHMENT B TO ESCHELON EXHIBIT A (DENNEY AFFIDAVIT):**

**EXCERPT FROM JUNE 13, 2006 DISCOVERY RESPONSE  
OF MR. LARRY CHRISTENSEN OF QWEST**

This Exhibit contains Qwest's written discovery response to Eschelon Request No. P002 by Mr. Christensen and pages Q00001-Q00003 (Qwest matrix), Q000014-Q000015 (Excerpt from 2003 Qwest SGAT), Q000016 (1996-1997 AT&T language), Q000017- Q000018 (2002 ICG language).

Regarding the remaining pages of the written discovery response, Eschelon submitted them as exhibits to its testimony in this matter. See Q000004-Q000007 (Qwest-AT&T expedite amendment, Att. B to Hrg. Ex. E-1); Q000008-Q000013 [Qwest-Mountain Telecommunications Inc. ("MTI") expedite amendment, Att. B to Hrg. Ex. E-1].

Arizona  
T-03406A-06-0257/T-01051B-06-0257  
ESCH 01-P002

INTERVENOR: Eschelon Telecom of Arizona, Inc. ("Eschelon")

REQUEST NO: P002

On page 2 of Qwest's Answer in this matter, Qwest alleges that "hundreds of CLECs have opted into the 'expedite process'...." :For each of these "hundreds" of Competitive Local Exchange Carriers (CLECs) and any other CLEC that has signed an expedite amendment, opted into the expedite process, or otherwise receive(s) expedites from Qwest, produce all ICA expedite amendments with Qwest or other agreements with Qwest by which such CLEC(s) have opted into the expedite process or otherwise receive(s) expedites from Qwest.

RESPONSE:

Qwest provides five sets of generic language associated with expedited orders. Language sets 1 and 2 are Expedite Amendments initiating the \$200/day charge and language set 3 is from the current Multi-state Interconnection Agreement Template that includes the charge. Language sets 4 and 5 are pre-CMP charge initiation that allowed expedites and charges but did not identify the specific charge. See Attachment A (BATES Q000001 - Q000003), Attachment B (BATES Q000004 - Q000007), Attachment C (BATES Q000008 - Q000011), Attachment D (BATES Q000012 - Q000013), Attachment E (BATES Q000014 - Q000015), Attachment F (BATES Q000016), and Attachment G (BATES Q000017 - Q000018).

Respondent: Larry Christensen

Arizona Wireline Agreements  
and Expedite Language Type

ARIZONA  
T-03406A-06-0257/  
T-01051B-06-0257  
ESCH 01 9002A  
ATTACHMENT: 7A

State	Company	Contract Number	Status	Executed By Qwest	Commission Approved	Type of Expedite Language *
Arizona	1-800-Reconex Inc. dba USTel	CDS-040420-0001	Approved	05/25/2004	10/18/2004	4
Arizona	360networks (USA) inc.	CDS-051220-0018	Approved	01/05/2006	04/09/2006	3
Arizona	AboveNet Communications Inc. (fka Metromedia Fiber Network Services Inc.)	CDS-991028-0159	Approved	11/10/1999	02/02/2000	6
Arizona	ACN Communication Services Inc.	CDS-030313-0003	Approved	03/24/2003	07/20/2003	4
Arizona	American Fiber Network Inc.	CDS-000517-0134	Approved	05/25/2000	10/03/2000	6
Arizona	American Fiber Systems Inc.	CDS-010103-0045	Approved	01/17/2001	06/06/2001	4
Arizona	Arizona Dial Tone	CDS-010607-0035	Approved	06/27/2001	11/08/2001	4
Arizona	AT&T Communications of the Mountain States, Inc.	CDS-040129-0004	Approved	05/04/2004	06/05/2004	1
Arizona	Avix Technologies Inc (fka USA Digital, Inc.)	CDS-001101-0002	Approved	11/09/2000	03/30/2001	4
Arizona	AZX Connect LLC	CDS-050609-0003	Approved	07/07/2005	10/08/2005	3
Arizona	BAK Communications LLC	CDS-030710-0001	Approved	05/27/2004	10/27/2004	4
Arizona	BridgeBand Communications Inc.	CDS-020529-0006	Approved	06/07/2002	11/05/2002	4
Arizona	Bridgeband Dynamics LLC	CDS-060321-0016	Pending	04/13/2006		3
Arizona	Brooks Fiber Communications of Tucson Inc.	MIN-970131-0602	Approved	01/20/1997	02/06/1997	4
Arizona	Budget Phone Inc.	CDS-020403-0072	Approved	04/09/2002	10/28/2002	4
Arizona	Bulls-eye Telecom Inc.	CDS-040920-0004	Approved	10/22/2004	02/02/2005	4
Arizona	Cable Plus Company, L.P.	DEN-971215-3205	Approved	02/13/1998	04/30/1998	5
Arizona	CapRock Telecommunications Corp.	CDS-991013-0131	Approved	11/29/1999	03/06/2000	5
Arizona	CAT Communications International Inc.	CDS-030204-0007	Approved	02/24/2003	07/20/2003	4
Arizona	CCG Communications LLC	CDS-051202-0005	Approved	12/06/2005	03/07/2006	4
Arizona	Ciera Network Systems Inc.	CDS-010522-0017	Approved	06/22/2001	06/06/2001	4
Arizona	Citynet Arizona LLC	CDS-030902-0001	Approved	10/16/2003	01/26/2004	4
Arizona	CommPartners LLC	CDS-060202-0002	Pending	02/09/2006		3
Arizona	Cordia Communications Corp.	CDS-051228-0012	Approved	01/06/2006	04/10/2006	3
Arizona	Covista Inc.	CDS-040406-0017	Approved	06/17/2004	09/17/2004	4
Arizona	Cox Arizona Telcom LLC	SEA-970529-1801	Approved	06/18/1997	07/02/1997	1
Arizona	Cypress Communications Operating Company Inc.	CDS-030603-0007	Approved	06/27/2003	10/20/2003	4
Arizona	DIECA Communications Inc. dba Covad Communications Company	CDS-981229-0115	Approved	01/15/1999	04/21/1999	1
Arizona	DMJ Communications Inc. dba PalomaNet	CDS-020131-0044	Approved	03/08/2002	09/10/2002	4
Arizona	DSLnet Communications LLC	CDS-990713-0219	Approved	07/30/1999	10/08/1999	4
Arizona	Electric Lightwave, Inc.	CDS-000612-0152	Approved	06/28/2000	09/18/2000	6
Arizona	Ernest Communications Inc.	CDS-981106-0218	Approved	11/20/1998	01/29/1999	5
Arizona	Eschelon Telecom of Arizona Inc. (formerly Advanced Telecommunications Inc.)	CDS-000106-0212	Approved	01/20/2000	04/28/2000	5
Arizona	Excel Telecommunications Inc.	CDS-020528-0009	Approved	06/25/2002	11/05/2002	4
Arizona	Global Connection Inc. of America	CDS-051111-0002	Pending	11/18/2005		4
Arizona	Global Crossing Local Services Inc. (formerly known as Frontier Local Services Inc.)	SEA-971014-2202	Approved	11/25/1997	02/27/1998	

**Arizona Wireline Agreements  
and Expedite Language Type**

State	Company	Contract Number	Status	Executed By Qwest	Commission Approved	Type of Expedite Language *
Arizona	Granite Telecommunications LLC	CDS-040127-0026	Approved	02/04/2004	05/03/2004	1
Arizona	ICG Telecom Group Inc.	CDS-020115-0100	Approved	01/25/2002	08/11/2002	5
Arizona	IDT America Corp.	CDS-030926-0002	Approved	10/07/2003	01/26/2004	4
Arizona	Integra Telecom of Arizona Inc.	CDS-000215-0055	Approved	03/06/2000	06/30/2000	4
Arizona	Interaltel LLC	CDS-020108-0065	Approved	03/22/2002	01/08/2003	4
Arizona	Intermedia Communications Inc.	CDS-981111-0057	Approved	11/20/1998	01/29/1999	5
Arizona	Ionex Communications North Inc. (Ika Advanced Communications Group and Firstel Inc.)	CDS-000408-0001	Approved	04/28/2000	08/24/2000	5
Arizona	J. Richard Company LLC dba Live Wire Phone Company (The)	CDS-041021-0008	Approved	11/19/2004	01/13/2005	4
Arizona	KMC Telecom V Inc.	CDS-010403-0056	Approved	08/01/2001	11/29/2001	6
Arizona	Level 3 Communications LLC	CDS-010509-0050	Approved	05/10/2001	01/31/2002	4
Arizona	Lightyear Network Solutions LLC	CDS-040615-0001	Approved	07/12/2004	10/24/2004	4
Arizona	Looking Glass Networks Inc.	CDS-011203-0009	Approved	01/08/2002	03/07/2002	4
Arizona	McImetro Access Transmission Services LLC	DEN-970910-4601	Approved	07/18/1997	07/31/1997	1
Arizona	McLeodUSA Telecommunications Services Inc.	CDS-000714-0097	Approved	07/31/2000	12/14/2000	1
Arizona	Metropolitan Telecommunications of Arizona Inc.	CDS-041213-0015	Approved	02/17/2005	05/21/2005	4
Arizona	Mountain Telecommunications, Inc.	CDS-990125-0047	Approved	06/09/1999	08/27/1999	2
Arizona	National Brands Inc. (aka Sharenet Communications Company)	CDS-050721-0001	Approved	08/05/2005	11/09/2005	3
Arizona	Navigator Telecommunications LLC	CDS-051208-0001	Pending	01/26/2006		3
Arizona	Neutral Tandem Inc.	CDS-041115-0003	Approved	12/02/2004	03/03/2005	4
Arizona	New Access Communications LLC	CDS-010420-0021	Approved	05/23/2001	08/10/2001	4
Arizona	New Edge Network Inc. dba New Edge Networks	CDS-020731-0006	Approved	08/14/2002	12/25/2002	1
Arizona	New Rochelle Telephone Corp.	CDS-050126-0032	Approved	01/28/2005	05/11/2005	4
Arizona	Next Networks of California Inc. dba Next Networks West	CDS-060418-0004	Pending	04/27/2006		3
Arizona	North County Communications	SEA-970606-1601	Approved	06/25/1997		
Arizona	NorthStar Telecom Inc. a wholly owned subsidiary of Midwest Marketing Group Inc.	CDS-040930-0001	Approved	10/21/2004	01/22/2005	4
Arizona	NOS Communications Inc.	CDS-010409-0075	Approved	07/13/2001	02/15/2002	5
Arizona	NOW Communications Inc.	CDS-020523-0036	Approved	06/05/2002	10/31/2002	4
Arizona	On-Fiber Carrier Services Inc.	CDS-041110-0005	Approved	11/17/2004	02/18/2005	4
Arizona	OrbitCom Inc.	CDS-050816-0002	Pending	09/30/2005		4
Arizona	Pacific Centrex Services Inc. - PCS1	CDS-060221-0027	Pending	04/28/2006		4
Arizona	Pac-West Telecomm Inc.	CDS-990507-0126	Approved	09/02/1999	12/14/1999	2
Arizona	Phone Company Management Group (The)	CDS-020110-0061	Approved	02/20/2002	08/11/2002	4
Arizona	Pilgrim Telephone Inc.	CDS-000505-0067	Approved	07/31/2000	12/14/2000	4
Arizona	Pipetal Communications LLC	CDS-050128-0008	Approved	02/21/2005	05/25/2005	4
Arizona	POP Telecom Inc.	CDS-000731-0030	Approved	01/19/2001	08/06/2001	4
Arizona	Preferred Carrier Services Inc.	CDS-010416-0113	Approved	05/01/2001	08/13/2001	5

**Arizona Wireline Agreements  
and Expedite Language Type**

State	Company	Contract Number	Status	Executed By Quest	Commission Approved	Type of Expedite Language *
Arizona	Preferred Long Distance Inc.	CDS-050106-0005	Approved	01/14/2005	04/28/2005	4
Arizona	Prime Time Ventures LLC	CDS-050302-0009	Approved	03/10/2005	06/21/2005	4
Arizona	Qwest Communications Corporation	CDS-040716-0001	Approved	08/18/2004	12/26/2004	4
Arizona	Rural Network Services Inc.	CDS-050104-0003	Approved	01/14/2005	04/24/2005	4
Arizona	RuralWest - Western Rural Broadband Inc.	CDS-010820-0028	Approved	09/04/2001	12/28/2001	4
Arizona	SBC Long Distance LLC dba SBC Long Distance	CDS-020108-0044	Approved	02/12/2002	05/31/2002	4
Arizona	Sprint Communications Company L.P.	CDS-031020-0012	Approved	12/15/2003	04/15/2004	4
Arizona	Talk America Inc.	CDS-040528-0004	Approved	06/04/2004	09/15/2004	4
Arizona	TCG Phoenix	CDS-040129-0005	Approved	05/04/2004	06/05/2004	1
Arizona	Tel West Communications LLC	CDS-010905-0022	Approved	09/20/2001	01/15/2002	4
Arizona	Telephone Company of Central Florida Inc.	CDS-010208-0034	Approved	03/06/2001	06/06/2001	4
Arizona	Tellogic dba Quality Telephone Inc.	CDS-040727-0004	Approved	08/04/2004	11/08/2004	4
Arizona	Teloscope Communications Inc.	CDS-031203-0001	Approved	12/31/2003	04/21/2004	4
Arizona	Time Warner Telecom of Arizona LLC	CDS-040622-0001	Approved	07/14/2004	10/18/2004	4
Arizona	Trans National Communications International Inc.	CDS-050518-0001	Approved	06/09/2005	09/11/2005	4
Arizona	TransWorld Network Corp.	CDS-040521-0002	Approved	06/04/2004	09/15/2004	4
Arizona	Trinsic Communications Inc. (fka Z-Tel Communications Inc.)	CDS-001114-0073	Approved	11/28/2000	03/30/2001	5
Arizona	Valley Connections L.L.C.	CDS-040811-0002	Approved	11/05/2004	01/12/2005	4
Arizona	ValueTel Communications Inc.	CDS-050809-0001	Pending	08/16/2005		3
Arizona	Varfac Telecom Inc.	CDS-011107-0018	Approved	12/13/2001	03/07/2002	4
Arizona	Ventzon Avenue (fka OnePoint Communications LLC)	CDS-990730-0171	Approved	08/10/1999	10/08/1999	5
Arizona	Vlaire Communications Inc.	CDS-060209-0001	Pending	02/16/2006		3
Arizona	Vycera Communications Inc.	CDS-050126-0047	Approved	02/11/2005	05/23/2005	4
Arizona	WITel Local Network LLC	CDS-030318-0008	Approved	10/09/2003	01/26/2004	4
Arizona	Winstar Communications of Arizona LLC	CDS-020131-0047	Approved	03/05/2002		5
Arizona	XO Communications Services Inc. (fka XO Arizona Inc.)	CDS-980916-0183	Approved	09/24/1998	11/25/1998	1
Arizona	Xspedius Communications (fka Xspedius Management Co. Switched Services LLC and Xspedius Management Co of Pima County LLC	CDS-030806-0026	Approved	08/22/2003	12/23/2003	4
* See Exhibits for Language						

at DS1, DS3, OC3, OC12.

c) Nonrecurring Remote Port. One-time charges for installation of Remote Port card at DS1, DS3, OC3, OC12.

#### 9.6.4 Ordering Process

9.6.4.1 Ordering processes and installation intervals are as follows:

9.6.4.1.1 UDIT is ordered via the ASR process. Ordering processes are contained in the Support Functions Section of this Agreement.

9.6.4.1.2 Reserved for Future Use.

9.6.4.1.3 The interval will start when Qwest receives a complete and accurate Access Service Request (ASR). This date is considered the start of the installation interval if the order is received prior to 3:00 p.m. The installation interval will begin on the next business day for service requests received after 3:00 p.m. The installation intervals have been established and are set forth in Exhibit C, Section 2.0 of this Agreement.

9.6.4.1.4 Subsequent changes to the quantity of services on an existing order will require a revised order. Also, additional charges apply for the following modifications to existing orders unless the need for such change is caused by Qwest:

- a) Service date changes;
- b) Partial cancellation;
- c) Design change; and
- d) Expedited order.

9.6.4.1.5 An order may be canceled any time up to and including the service date. Cancellation charges will apply except when:

- a) The original Due Date or CLEC-initiated subsequent Due Date was, or CLEC has been notified by Qwest that such Due Date will be, delayed ten (10) business days or longer; or
- b) The original Due Date has been scheduled later than the expiration of the standard interval set forth in Exhibit C and CLEC cancels its order no later than ten (10) Days before such original Due Date.

9.6.4.1.6 Definitions of the most common critical dates that occur during the ordering and installation process are included in the Definitions Section of this Agreement.

Q000014

Exhibit A  
Arizona

9.19	Miscellaneous Charges * Per 1/2 hour or fraction thereof		
9.19.1	Additional Engineering - Basic		\$31.28
9.19.2	Additional Engineering - Overtime		\$38.68
9.19.3	Additional Labor Installation - Overtime		\$8.89
9.19.4	Additional Labor Installation - Premium		\$17.78
9.19.5	Additional Labor Other - (Optional Testing) Basic		\$27.26
9.19.6	Additional Labor Other - (Optional Testing) Overtime		\$36.41
9.19.7	Additional Labor Other - (Optional Testing) Premium		\$45.57
9.19.8	Testing and Maintenance - Basic		\$28.96
9.19.9	Testing and Maintenance - Overtime		\$38.68
9.19.10	Testing and Maintenance - Premium		\$48.40
9.19.11	Maintenance of Service - Basic		\$27.26
9.19.12	Maintenance of Service - Overtime		\$36.41
9.19.13	Maintenance of Service - Premium		\$45.57
9.19.14	Additional COOP Acceptance Testing - Basic		\$28.96
9.19.15	Additional COOP Acceptance Testing - Overtime		\$38.68
9.19.16	Additional COOP Acceptance Testing - Premium		\$48.40
9.19.17	NonScheduled COOP Testing - Basic		\$28.96
9.19.18	NonScheduled COOP Testing - Overtime		\$38.68
9.19.19	NonScheduled COOP Testing - Premium		\$48.40
9.19.20	NonScheduled Manual Testing - Basic		\$28.96
9.19.21	NonScheduled Manual Testing - Overtime		\$38.68
9.19.22	NonScheduled Manual Testing - Premium		\$48.40
9.19.23	Cooperative Scheduled Testing - Loss		\$ .08
9.19.24	Cooperative Scheduled Testing - C Message Noise		\$ .08
9.19.25	Cooperative Scheduled Testing - Balance		\$ .33
9.19.26	Cooperative Scheduled Testing - Gain Slope		\$ .08
9.19.27	Cooperative Scheduled Testing - C Notched Noise		\$ .08
9.19.28	Manual Scheduled Testing - Loss		\$ .16
9.19.29	Manual Scheduled Testing -C- Message Noise		\$ .16
9.19.30	Manual Scheduled Testing - Balance		\$ .65
9.19.31	Manual Scheduled Testing - Gain Slope		\$ .16
9.19.32	Manual Scheduled Testing - C Notched Noise		\$ .16
9.19.33	Additional Dispatch		\$83.10
9.19.34	Date Change		\$10.22
9.19.35	Design Change		\$72.79
9.19.36	Expedite Charge		ICB
9.19.37	Cancellation Charge		ICB

Q000015

### 1.1.2 Expedite, Escalation and Disaster Procedures

- 1.1.2.1 No later than sixty (60) days after the Effective Date of this Agreement, U S WEST and CO-PROVIDER shall develop mutually acceptable escalation and expedite procedures which may be invoked at any point in the Service Ordering, Provisioning, Maintenance and Subscriber Usage Data transfer processes to facilitate rapid and timely resolution of disputes. Within the said sixty (60) day period, U S WEST and CO-PROVIDER will establish intercompany contact lists for purposes of handling subscriber and other matters which require attention/resolution outside of normal business procedures. To the extent possible, U S WEST shall notify CO-PROVIDER of any changes to its escalation contact list at least one (1) week before such changes are effective.
- 1.1.2.2 No later than sixty (60) days after the Effective Date of this Agreement, U S WEST and CO-PROVIDER shall jointly establish contingency and disaster recovery plans for those cases in which normal service ordering, provisioning, maintenance, billing and other procedures for U S WEST's unbundled Network Elements, features, functions and Resale Services are inoperable.

## 3.2 Service Order Process Requirements

- 3.2.2.12 Expedite Process: U S WEST and CO-PROVIDER shall mutually develop expedite procedures to be followed when CO-PROVIDER determines an expedite is required to meet subscriber service needs.
- 3.2.2.13 Expedites: U S WEST shall provide CO-PROVIDER the capability to expedite a service order. Within two (2) business hours after a request from CO-PROVIDER for an expedited order, U S WEST shall notify CO-PROVIDER of U S WEST's confirmation to complete, or not complete, the order within the expedited interval.
- 3.2.4.2 For those services and circumstances that U S WEST and CO-PROVIDER agree shall be handled by the standard interval process, U S WEST shall supply CO-PROVIDER with standard due date intervals on a nondiscriminatory basis to be used by CO-PROVIDER personnel to determine service installation dates. Under those circumstances U S WEST shall complete the provisioning within the standard interval.
- 3.2.4.2.1 If CO-PROVIDER requests a due date earlier than the standard due date interval, then expedite charges may apply.
- 3.2.4.4 Subsequent to an initial order submission, CO-PROVIDER may request a new/revised due date that is earlier than the committed due date. If U S WEST agrees to meet that new/revised due date, then that new/revised due date becomes the committed due date and expedite charges may apply.

ARIZONA  
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T-01051B-06-0257  
ESCH 01-0002  
ATTACHMENT:

order volumes and load control considerations. Refer to Qilwest's Interconnect & Resale Resource Guide when ordering multiple Loops (up to 25) at the same location. If more than twenty-five orders are issued at the same address, the request will be handled on an individual case basis. Related orders with related orders will be physically worked within the same calendar day.

- (E)3.6.1.8 When ordering Unbundled Loops, ICG is responsible for obtaining or providing facilities and equipment that are compatible with the service.
- (E)3.6.1.9 When applicable, ICG will be responsible for providing battery and dial tone to its connection point two business days prior to the due date on the service order.
- (E)3.6.1.10 LSRs are processed through the Interconnect Service Center. Refer to Qwest's Interconnect & Resale Resource Guide for the appropriate cut-off times for order receipt.
- (E)3.6.1.11 Firm Order Confirmation (FOC) will be sent on all Unbundled Loop firm order requests. Refer to Qwest's Interconnect & Resale Resource Guide for the FOC interval.
- (E)3.6.1.12 Qwest will provide Design Layout Records (DLR) when requested on terms and conditions consistent with Qwest end users.
- (E)3.6.1.13 Qwest will provide jeopardy notification that is similar to that provided to Qwest end users.
- (E)3.6.1.14 Qwest will provide completion notification that is similar to that provided to Qwest end users.
- (E)3.6.1.15 Miscellaneous Charges may include Due Date Change Charges, Design Change Charges, Cancellation Charges, Additional Dispatch Charge, Expedite Order Charge, Additional Engineering, Installation Out of Hours, Maintenance of Service, Premises Work Charges, Additional Cooperative Testing, Non-Scheduled Testing, Automatic Scheduled Testing, Cooperative Scheduled Testing, Manual Testing, Manual Scheduled Testing. Rates are contained in the applicable state Tariff.

#### (E)3.6.2 Maintenance and Repair

- (E)3.6.2.1 When ICG orders a specified Local Loop, Qwest shall meet and maintain the required physical loop characteristics as originally delivered. If for any reason conditioning or modifications are

**ARIZONA**  
**US WEST Rate Sheet for ICG**

(E) 3.6.1.15	Miscellaneous Charges (as applicable)	Rate Source	Recurring Charge (\$)	Non-Recurring Charge (\$)
(E) 3.6.1.15	Due Date Change Charge	TELRIC	N/A	12.70
(E) 3.6.1.15	Design Change Charge	TELRIC	N/A	58.67
(E) 3.6.1.15	Cancellation Charges	TELRIC	N/A	ICB
(E) 3.6.1.15	Additional Dispatch Charge	TELRIC	N/A	82.17
(E) 3.6.1.15	Expedited Order Charge	TELRIC	N/A	ICB
(E) 3.6.1.15	Additional Engineering			
	-Basic	TELRIC	N/A	29.76
	-Overtime	TELRIC	N/A	38.41
(E) 3.6.1.15	Installation - Out of Hours			
	-Overtime	TELRIC	N/A	8.46
	-Premium	TELRIC	N/A	16.93
(E) 3.6.1.15	Maintenance of Service (Premises Work Charges)			
	-Basic	TELRIC	N/A	25.97
	-Overtime	TELRIC	N/A	34.76
	-Premium	TELRIC	N/A	43.55
(E) 3.6.1.15	Additional Cooperative Acceptance Testing			
	-Basic	TELRIC	N/A	27.58
	-Overtime	TELRIC	N/A	36.90
	-Premium	TELRIC	N/A	46.23
(E) 3.6.1.15	Non-Scheduled Cooperative Testing			
	-Basic	TELRIC	N/A	27.58
	-Overtime	TELRIC	N/A	36.90
	-Premium	TELRIC	N/A	46.23
(E) 3.6.1.15	Automatic Scheduled Testing	ICG Agreement	N/A	
(E) 3.6.1.15	Testing and Maintenance (Cooperative Scheduled Testing)			
	-Basic	TELRIC	N/A	27.58
	-Overtime	TELRIC	N/A	36.90
	-Premium	TELRIC	N/A	46.23
(E) 3.6.1.15	Non-Scheduled Manual Testing			
	-Basic	TELRIC	N/A	27.58
	-Overtime	TELRIC	N/A	36.90
	-Premium	TELRIC	N/A	46.23
(E) 3.6.1.15	Scheduled Manual			
			N/A	N/A