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

RE: In the Matter of the Petition of Eschelon Telecom of Arizona, Inc. for Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996  
Docket Nos. T-034706A-06-0572 & T-01051B-06-0572

Dear Sir/Madam:

Enclosed for filing is an original and 15 copies of the Responsive Testimony of Douglas Denney in the above-referenced matter.

Sincerely,

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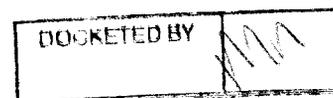
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Arizona Corporation Commission  
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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KRISTIN K. MAYES, Chairman  
GARY PIERCE  
SANDRA KENNEDY  
PAUL NEWMAN  
BOB STUMP

AZ CORP COMMISSION  
DOCKET CONTROL

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

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RESPONSIVE TESTIMONY

OF

DOUGLAS DENNEY

ON BEHALF OF

ESCHELON TELECOM OF ARIZONA, INC.

June 8, 2009

**TABLE OF CONTENTS**

I. INTRODUCTION..... 1

II. ISSUE 9-59: MAINTENANCE AND REPAIR OF COMMINGLED EELS ..... 14

    LANGUAGE DIFFERENCES ..... 14

*Language for 9.23.4.7*..... 14

*Summary of Differences* ..... 22

*Qwest Testimony Incorrectly Reflects the Decisions of the Arizona Commission, the FCC and Other State Commissions Regarding Commingled EELs* ..... 24

    POINT-TO-POINT COMMINGLED EELS ..... 29

*Multiplexed EEL versus Point-to-Point EEL* ..... 29

    REPAIR COMMITMENT ..... 34

*Summary of Issue* ..... 34

*Trouble Isolation* ..... 37

*PID/PAP*..... 41

*Cost Estimate*..... 45

III. CONCLUSION..... 57

1

2 **I. INTRODUCTION**

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Douglas Denney. I work at 6160 Golden Hills Drive in Golden  
5 Valley, Minnesota.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by Integra Telecom, Inc. as Director of Costs and Policy. Integra  
8 Telecom, Inc. ("Integra") completed its purchase of Eschelon Telecom, Inc.  
9 ("Eschelon") on August 31, 2007. My responsibilities include negotiating  
10 interconnection agreements ("ICAs"), monitoring, reviewing and analyzing the  
11 wholesale costs that Integra and its affiliates, including Eschelon Telecom of  
12 Arizona, Inc., pay to carriers such as Qwest, and representing Integra in  
13 regulatory proceedings.

14 The testimony in this docket is filed on behalf of Eschelon Telecom of Arizona,  
15 Inc.

16 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN THIS PROCEEDING?**

17 A. Yes. I filed written Direct Testimony in this proceeding on November 8, 2006,  
18 Rebuttal Testimony on February 9, 2007, and Surrebuttal Testimony on March 2,  
19 2007. I also testified orally in this docket on March 20, 2007. My testimony  
20 involved numerous issues, including the issue that is the subject of this testimony,  
21 the repair commitment for commingled EELs. In addition, I was involved in  
22 Eschelon's attempts to negotiate resolution of this issue, both prior to the filing

1 initial testimony as part of this arbitration and subsequent to the Commission's  
2 initial order<sup>1</sup> regarding these issues.

3 **Q. WHAT IS THE PURPOSE OF YOUR RESPONSIVE TESTIMONY?**

4 A. The purpose of my Responsive Testimony is to respond to the Direct Testimony  
5 of Qwest witnesses Karen Stewart and Timothy Gaines regarding issue 9-59  
6 (Maintenance and Repair – Commingled EELs), pertaining to section 9.23.4.7 of  
7 the Eschelon / Qwest Interconnection Agreement. The central dispute here is  
8 whether Qwest may, consistent with the FCC's order regarding commingling,  
9 erect operational barriers relating to maintenance and repair that make  
10 Commingled EELs difficult to use and not an effective competitive option. I  
11 address Eschelon's position that Qwest should not be allowed to erect such  
12 operational barriers.

13 **Q. PLEASE DESCRIBE HOW THE REMAINDER OF YOUR TESTIMONY**  
14 **IS ORGANIZED.**

15 A. After this Introduction (Section I), my testimony is organized into three parts.  
16 Section II defines terms and introduces and summarizes the testimony. Section  
17 III of the testimony summarizes the differences between Eschelon and Qwest in  
18 the language for the repair of point-to-point commingled EELs. This section

---

<sup>1</sup> In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration with Qwest Corporation Pursuant to 47 USC Section 252(b) of the Federal Telecommunications Act of 1996, Opinion and Order, Decision No. 70356, Docket Nos. T-03406A-06-0572 and T-01051B-06-0572, May 16, 2008.

1 further explains why multiplexed EELs have not been an issue with respect to  
2 Eschelon's proposal and how Qwest uses multiplexed EELs to distract from the  
3 real debate regarding repair commitment times. This section also responds to  
4 issues raised by Qwest regarding performance for point-to-point commingled  
5 EELs and shows why Qwest's cost estimates are erroneous and how Qwest has  
6 likely already recovered more than enough revenue from CLECs to implement  
7 changes to assure that commingled EELs are not treated as an inferior service.  
8 The final Section IV concludes the testimony.

9 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

10 A. Yes, my testimony has the following exhibits:

11 **Exhibit DD-28** A copy of the Minnesota Commission Order determining that the  
12 Commission has jurisdiction with regard to commingled EELs and  
13 conversions from UNEs to special access circuits.

14 **Exhibit DD-29** A copy of pages from the Service Interval Tables (Exhibit C to  
15 the Interconnection Agreement) and Qwest tariffs (FCC #1 and AZ Private  
16 Line Tariff) showing that Qwest has a 4 hour repair commitment for both  
17 UNE and special access/private line DS1 and DS3 facilities.

18 **Exhibit DD-30** A copy of the Washington Commission's decision in Qwest's  
19 AFOR where it determined that, as a condition of the AFOR, Qwest must  
20 include UNE substitutes (i.e. special access circuits) in its PIDs and PAP.

21 **Exhibit DD-31** A copy of relevant pages from the compliance filing Exhibit A  
22 and Qwest's special access tariff showing the rates for the various  
23 components of point-to-point commingled EELs.

24 **II. DEFINITIONS AND SUMMARY**

25

1 **Q. WHAT IS AN EEL AND HOW IS IT GENERALLY USED??**

2 A. An Enhanced Extended Link (“EEL”) (whether UNE, commingled, or special  
3 access as requested by CLEC) is a combination of loop and transport that  
4 connects an end user customer to a CLEC collocation cage. Section 9.23.4 of the  
5 ICA defines EELs, in language that is not in dispute, as follows:

6 EEL – EEL consists of a combination of an Unbundled Loop and  
7 unbundled Dedicated Transport (with or without multiplexing  
8 capabilities), together with any facilities, equipment, or functions  
9 necessary to combine those Unbundled Network Elements. Such  
10 an EEL is a UNE Combination.

11  
12 Commingled EEL – If CLEC obtains at UNE pricing part (but not  
13 all) of a loop-transport Combination, the arrangement is a  
14 Commingled EEL. (Regarding Commingling, see Section 24.)

15  
16 High Capacity EEL – “High Capacity EEL” is a loop-transport  
17 Combination (either EEL or Commingled EEL) when the Loop or  
18 transport is of DS1 or DS3 capacity. High Capacity EELs may  
19 also be referred to as “DS1 EEL” or “DS3 EEL,” depending on  
20 capacity level.

21  
22 A combination of loop and transport can also be made using special access or  
23 private line circuits,<sup>2</sup> as Qwest’s witness recognized.<sup>3</sup> A point-to-point special  
24 access or private line combination of loop and transport is typically referred to as  
25 a special access point-to-point circuit. For convenience, I will refer to special  
26 access or private line combinations of loop and transport as special access EELs.<sup>4</sup>

---

<sup>2</sup> See, e.g., TRO ¶620 (referring to “tariffed loop-transport combinations” which may be converted to “UNE rates”).

<sup>3</sup> Hearing Transcript, Vol. 2, p. 180, lines 1-2 (Ms. Stewart) (“There are definitely private line scenarios that include loop and transport, yes.”).

<sup>4</sup> A private line is purchased from Qwest out of its interstate or intrastate private line tariff. I will

1 Qwest witnesses now imply that private line and UNE circuits have “different  
2 designs and performance parameters,”<sup>5</sup> without supporting this suggestion.  
3 Qwest established no physical difference between a UNE and private line circuit.  
4 Nor did Qwest explain how Qwest could design them differently consistent with  
5 its nondiscrimination obligations.

6 A CLEC will typically purchase a UNE EEL or commingled EEL (collectively  
7 “EEL”) when it wants to serve an end user customer in a wire center where the  
8 CLEC is not collocated. When collocated, the CLEC can connect a customer  
9 loop directly to the CLEC’s collocation (so does not need an EEL for this  
10 purpose). Without a collocation, the loop needs to be extended, via interoffice  
11 transport, to a wire center where the CLEC is collocated. A UNE EEL or  
12 Commingled EEL allows a CLEC to extend the loop for this purpose. A special  
13 access EEL also allows a CLEC to extend the loop (referred to as channel  
14 termination in the special access / private line tariffs) in this manner, though at a  
15 price even higher than the commingled EEL.

16 **Q. HOW IS A COMMINGLED EEL DIFFERENT FROM A UNE EEL?**

---

use the term private line and special access interchangeably to refer to both private line circuits purchased from Qwest’s intrastate tariffs and special access circuits purchased from Qwest’s interstate tariffs.

<sup>5</sup> Gaines Issue 9-59 Direct, p. 5, lines 9-10. See also Stewart Issue 9-59 Direct, p. 4, line 6.

1 A. As both are combinations of loop and transport and both serve this same purpose,  
2 the difference between them is price,<sup>6</sup> as Qwest has acknowledged.<sup>7</sup> As indicated  
3 in the agreed upon ICA language quoted above,<sup>8</sup> a Commingled EEL is defined  
4 the same as a UNE EEL, except that the UNE EEL is entirely priced at UNE  
5 rates, whereas with a Commingled EEL, the CLEC obtains at UNE pricing part  
6 (but not all) of the combination.<sup>9</sup> The remainder is obtained at a higher, non-UNE  
7 price.<sup>10</sup> For an EEL, both the loop and transport portions of the circuit are  
8 available at TELRIC-based rates, while, for a Commingled EEL, the UNE portion  
9 of the circuit is still available at a TELRIC-based rate but the non-UNE portion is  
10 subject to a higher, tariffed rate. (For a special access EEL, both portions are  
11 subject to the higher tariffed rate, with no portion at a TELRIC-based rate.)

---

<sup>6</sup> Hearing Exhibit E-13 (Denney Dir.), pp. 156-157.

<sup>7</sup> See MN Transcript at Vol. 2, p. 181 (testimony of Karen Stewart of Qwest), at Hearing Exhibit E-7 (Starkey Reb.), MS-6:

Q. I want you to think of a hypothetical circuit that before the TRRO was a UNE EEL and after the TRRO is a commingled EEL.

A. Yes.

Q. The difference between those two things is the price; is that correct?

A. Typically, yes.

<sup>8</sup> This language appears in the Qwest Proposed Language column of the Joint Issues Matrix (p. 73).

<sup>9</sup> See TRO ¶593 (describing a Commingled EEL as “to obtain *at UNE pricing* part of a high-capacity loop-transport combination”) (emphasis added).

<sup>10</sup> Hearing Exhibit E-13 (Denney Dir.), p. 155. See also TRO ¶593 (describing a Commingled EEL as “to obtain at UNE pricing part of a high-capacity loop-transport combination”).

1 **Q. ALTHOUGH QWEST SUGGESTS THERE ARE TWO CIRCUITS IN A**  
2 **COMMINGLED EEL AS OPPOSED TO ONE CIRCUIT WITH A UNE**  
3 **EEL,<sup>11</sup> IS A COMMINGLED EEL DIFFERENT FROM A UNE EEL IN**  
4 **THIS RESPECT?**

5 A. No. Although a commingled EEL has a higher price than a UNE EEL for  
6 regulatory reasons, the physical facilities are identical. Contrast Qwest's use in its  
7 language of "two different circuits"<sup>12</sup> with the FCC's description of "the UNE  
8 loop *portion of a commingled circuit*" (singular).<sup>13</sup> The physical facility is the  
9 same for all three loop-transport combinations (UNE, commingled, special  
10 access).<sup>14</sup> Qwest's witness testified:

11 Q. A commingled EEL is an EEL where either the loop or the transport is  
12 not a UNE; is that right?

13 A. Yes.

---

<sup>11</sup> See Qwest's 9/25/08 proposal related to the compliance filing for Section 9.23.4.7.4.1 ("Because Commingled EELs are comprised of two different circuits") (shown in strikeout below). See also Stewart Issue 9-59 Direct, p. 4, lines 3-4 ("circuit-by-circuit basis"); Gaines Issue 9-59 Direct, p. 4, lines 20-21.

<sup>12</sup> E.g., Qwest September 22, 2008 Updated Proposal (§9.23.4.7.10).

<sup>13</sup> See TRO ¶594. The Commission did not state in its Resolution of Issues 9-58 and 9-59 on pages 66-68 that there are two different circuits (as opposed to a "portion of a commingled circuit" per TRO ¶594). Rather, the Commission allowed Qwest to use two circuit identifiers ("IDs") for the Commingled EEL (the "commingled circuit," *id.*). The Commission said that it was adopting Qwest's repair proposal "given existing operation systems." Order No. 70356, p. 67, lines 25-26. Although the Commission allowed Qwest to use two circuit IDs, Qwest is not *required* to do so as a physical or legal matter. If Qwest chooses to use two circuit IDs, it is making an inefficient decision and is the causer of any resulting costs, as discussed below.

<sup>14</sup> See diagram from Qwest PCAT at E-13 (Denney Direct), p. 153; see also *id.* p. 153, line 10 – p. 154, line 2 ("The picture for a Point-To-Point Commingled EEL, would be identical to the picture above, except that the label, not the facilities, for 'EEL Transport' or 'EEL Loop' would be replaced with non-UNE label, such as 'Private Line Transport' or 'Channel Termination.').

1 Q. Would you agree with me that a UNE EEL and a commingled EEL are  
2 *functionally the same thing*?

3 A. They could be doing the same thing, *yes*.<sup>15</sup>

4  
5 When an end user customer switches carriers, while retaining the same services,  
6 the end user customer may continue to use the same physical facilities before and  
7 after the conversion (*e.g.*, to avoid potential outages that may occur if the facilities  
8 are changed when switching carriers) to the extent those facilities are technically  
9 compatible.<sup>16</sup> This is known as “reuse” of facilities.<sup>17</sup>

10 Facilities may be reused when an end user customer served by a carrier via a UNE  
11 EEL or special access/private line either switches to another carrier or stays with  
12 the same carrier (via a conversion) which serves the customer via a commingled  
13 EEL, and vice versa.<sup>18</sup> A facility may be reused, regardless of the type of loop-  
14 transport combination, because the physical facility (whether described as “two

---

<sup>15</sup> Hearing Transcript, Vol. 2, p. 180, lines 11-17 (Ms. Stewart) (emphasis added).

<sup>16</sup> See agreed upon language in ICA Section 12.3.5.1, stating: “For migration/conversion activity, Qwest will reuse facilities to the extent those facilities are technically compatible with the service to be provided for the migration/conversion activity (*i.e.*, not ‘new’ activity). Regarding Loop facilities, see also Section 9.2.2.15.”

<sup>17</sup> See, *e.g.*, agreed upon language in ICA Sections 9.2.2.15 & 12.3.5. For example, the Network Interface Device (“NID”) portion of the ICA provides: “If CLEC orders Unbundled Loops on a *reuse* basis, the existing drop and Qwest’s NID, as well as any on premises wiring that Qwest owns or controls, *will remain in place and continue to carry the signal* over the Customer’s on-premises wiring to the End User’s equipment.” ICA Section 9.5.1 (agreed upon language) (emphasis added).

<sup>18</sup> See, *e.g.*, TRO, p. 13 & ¶583; see <http://www.qwest.com/wholesale/pcat/troeel.html#order>

1 different circuits,”<sup>19</sup> having two circuit identifiers or “IDs,” *etc.*<sup>20</sup>) is the same. In  
2 other words, the ability to “reuse” facilities when converting among these loop-  
3 transport combinations demonstrates that the facility is the same, regardless of the  
4 type of loop-transport combination; otherwise, the carrier would have to order  
5 new, different facilities in every case without the option to reuse the existing  
6 facilities. When there is no physical change in the underlying facility, a  
7 conversion is a billing only conversion (i.e., a record change only).<sup>21</sup> For  
8 example, when converting from a UNE EEL to a special access circuit, per  
9 Qwest’s documented process, Qwest requires the CLEC to add to its service  
10 request the following remark: “TRRO Transition from UNE to PLT. **Records**  
11 **change only. No physical work.** Reuse facilities. UNE Billing Number.”<sup>22</sup> The  
12 same is true in the reverse situation (when a CLEC converts from a special access  
13 circuit to a UNE EEL). For the latter type of request, Qwest’s Product Catalog  
14 (“PCAT”) documentation states:

---

<sup>19</sup> E.g., Qwest September 22, 2008 Updated Proposal (§9.23.4.7.10).

<sup>20</sup> As Qwest’s ICA language could be viewed as a matter of semantics (because, regardless of the terminology used, there is only one circuit) and because of the language adopted by the Commission (but see above footnote), Eschelon used Qwest’s two circuit terminology in the compliance filing proposal. Qwest’s language, however, is confusing and creates an impression that there are two circuits rather than two portions of a commingled circuit (as indicated by the FCC, TRO ¶594). Therefore, now that the Commission is revisiting the language, Eschelon has clarified the language in this respect in its current language proposal (see below).

<sup>21</sup> TRO ¶ 588 (concluding conversion of a circuit from a UNE to a non-UNE is primarily a billing change).

<sup>22</sup> See Qwest PCAT at <http://www.qwest.com/wholesale/clecs/trrocompliance/transition.html> (emphasis added).

1                   “A conversion nonrecurring charge is assessed when converting an  
2 existing Private Line/Special Access circuit to EEL. *This is a*  
3 *billing change only and referred to as Conversion As Is. No*  
4 *Physical work or redesign of the circuit is involved.* . . .

5  
6                   “Eligible circuits that are converted from Private Line/Special  
7 Access Service to EEL *will retain all optional features and*  
8 *functions that were associated with the existing service as*  
9 *requested from the tariff(s).*”<sup>23</sup>

10  
11                   Therefore, contrary to Qwest’s erroneous suggestion that a commingled EEL has  
12 more circuits than a UNE EEL, the physical configuration of the commingled  
13 EEL does not justify any additional repair commitment time over and above the  
14 repair commitment time for the other loop-transport combinations,<sup>24</sup> as discussed  
15 below. As shown by the above Qwest PCAT quotation, no redesign of the circuit  
16 is involved because the physical facility is identical.

17   **Q.   PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

18   A.   The remaining issue for resolution as a result of the Commission’s recent order is  
19 fundamentally about the end user customer experience. CLECs have a right to  
20 serve its customers via commingled EELs, but Qwest seeks to effectively vitiate  
21 that right by making commingled EELs an unusable alternative, compared to their

---

<sup>23</sup> See Qwest PCATs at <http://www.qwest.com/wholesale/pcat/eel.html> and <http://www.qwest.com/wholesale/pcat/trroeel.html> (emphasis added).

<sup>24</sup> See Exhibit 5 to Eschelon’s Petition (Exhibit to the ICA) at Exhibit B (PIDs), at MR-5 (All Troubles Cleared within 4 hours), p. 65 (UNE DS1 Capable Loop and UNE DS1 level UDIT are both “parity with retail” – indicating retail and wholesale both have repair commitment times of 4 hours). See also Exhibit DD-29.

1 UNE or special access equivalent, by unnecessarily allowing itself a longer repair  
2 commitment, up to 8 hours, for commingled EELs, compared with a 4 hour repair  
3 commitment for UNE and special access EELs. CLECs using commingled EELs  
4 can not compete effectively with Qwest if they must give their customers an  
5 anticipated repair time that may be twice what a Qwest retail customer would  
6 receive when served over the identical physical facility.

7 The Commission ordered this proceeding “to develop a record on the costs and  
8 benefits of Eschelon’s proposed single interval proposal, including whether Qwest  
9 has a right to recover the costs of implementing a single repair interval for  
10 Commingled EELs.”<sup>25</sup>

11 The benefit to end user customers is clear. While commingled EELs are higher  
12 priced than their UNE equivalent, they are cheaper than a special access EEL.  
13 Customers benefit from a CLEC’s ability to mitigate cost increases as a result of  
14 the loss of UNE availability.

15 Qwest fails to develop a proper record on cost by failing to demonstrate that the  
16 cost estimate provided as part of Qwest’s proposed solution is, in fact, the least  
17 cost, most efficient method for implementing a single repair commitment time.  
18 Far from showing that it considered costs of all feasible alternatives, Qwest did

---

<sup>25</sup> Arizona Commission Decision No. 70740, p. 14, lines 23-25. Because “intervals” generally relate to installations, I will use the repair terminology of “commitment time” in my testimony.

1 not even show that it analyzed the costs associated with the alternatives presented  
2 in this case by Eschelon. Qwest should have at least compared its cost estimate  
3 with a cost estimate of the existing electronic process supplemented with remarks  
4 contained in Eschelon's compliance language proposal<sup>26</sup> and a cost estimate for  
5 the use of a single circuit ID (*e.g.*, in association with Universal Service Ordering  
6 Codes, or "USOCs," to allow adders on the bill, as Qwest has done with QPP) as  
7 originally proposed by Eschelon in this docket.<sup>27</sup> By failing to consider the cost  
8 of other options, Qwest fails to "develop the record"<sup>28</sup> as required by the  
9 Commission.

10 Further, Qwest's testimony fails to justify why Qwest should be relieved of its  
11 performance obligations with respect to commingled EELs. Qwest failed to  
12 demonstrate that it should be allowed to consider a customer as being without  
13 trouble in situations when a trouble continues to exist on Qwest's network,  
14 causing Eschelon's customer to be out of service.

15 **Q. WHY DOESN'T ESCHELON PURCHASE UNE EELS INSTEAD OF**  
16 **COMMINGLED EELS TO AVOID QWEST'S INFERIOR**  
17 **COMMINGLED EELS OFFERING?**

---

<sup>26</sup> See Section 9.23.4.7.2.1.2.1 (quoted below).

<sup>27</sup> *E.g.*, Hearing Exhibit E-6 (Starkey Dir.), pp. 145-168.

<sup>28</sup> Arizona Commission Decision No. 70740, p. 14, line 23.

1 A. UNEs are priced lower than their special access equivalents and therefore it  
2 makes business sense to purchase UNEs when they are available. However, there  
3 are certain circumstances, outlined in the *Triennial Review Remand Order*<sup>29</sup> when  
4 Qwest is no longer obligated to provide circuits at UNE rates. Qwest is still  
5 obligated to provide these circuits, but can do so under a different pricing  
6 standard. Qwest has chosen to use special access private line circuits, and their  
7 corresponding higher rates, to meet its obligation. Over ILEC objections, the  
8 FCC gave CLECs the right to combine (*i.e.*, commingle) UNE and non-UNE  
9 elements purchased from ILECs. ILECs would like CLECs to buy private lines  
10 rather than UNEs, because the prices for private lines are higher. One method  
11 Qwest has chosen to achieve this objective is to provide commingled services in  
12 such a way that make them difficult to use and in a manner that reduces a CLEC's  
13 ability to compete.

---

<sup>29</sup> Order on Remand, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 FCC Red. 2533 (2005), *aff'd*, Covad Communications Co. v. FCC, 450 F.3d 528 (D.C. Cir. 2006) ("Triennial Review Remand Order"), ¶ 5. *See also* 47CFR § 51.319 (a)(4)

1 **III. ISSUE 9-59: MAINTENANCE AND REPAIR OF COMMINGLED EELS**

2 **LANGUAGE DIFFERENCES**

3 **Language for 9.23.4.7**

4 **Q. BEFORE RESPONDING TO ISSUES RAISED BY QWEST RELATED TO**  
5 **THE COST AND BENEFITS OF A SINGLE REPAIR COMMITMENT**  
6 **TIME, PLEASE DESCRIBE ESCHELON'S PROPOSAL.**

7 A. I will first describe the latest ICA language exchange between Eschelon and  
8 Qwest for compliance filing purposes and then I will present Eschelon's current  
9 language proposal, followed by an explanation of the two differences between  
10 these proposals.

11 **Q. PLEASE SHOW THE DISPUTED LANGUAGE DIFFERENCES FOR THE**  
12 **COMPLIANCE FILING FOR SECTION 9.23.4.7.**

13 A. Below is the latest ICA language exchange between Eschelon and Qwest, which  
14 is also contained in the Commission's Decision No. 70740.<sup>30</sup> Underlined  
15 language represents Eschelon's proposal, for which Qwest does not agree.  
16 Strikeout language represents Qwest's proposal with which Eschelon does not  
17 agree. In other words, if all of the redlined changes were accepted, the remaining  
18 language is Eschelon's last proposal for compliance filing purposes. Language

---

<sup>30</sup> Commission Decision No. 70740, pp. 4-6; see also Eschelon's 9/26/08 Reply Comments at Attachment 5 (Eschelon's 9/25/08 Reply to Qwest's 9/25/08 Proposal).

1 that contains neither underline nor strikeout was not in dispute for compliance  
2 filing purposes.

3 9.23.4.7 Maintenance and Repair for UNE Component of ~~for Point-to-Point~~  
4 ~~Commingled EELs (Point A-Point B, with no mux)~~

5  
6 9.23.4.7.1 For trouble screening, isolation, and testing, ~~for both~~  
7 ~~circuits identified by CLEC in a Point-to-Point Commingled EEL, see~~  
8 Section 12.4.1.

9  
10 9.23.4.7.2 For trouble reporting, for both circuits identified by CLEC  
11 in a Point-to-Point Commingled EEL, see Section 12.4.2.2

12  
13 9.23.4.7.2.1 When CLEC reports a trouble through any of the  
14 means described in Section 12.4.2.2, CLEC may provide both  
15 circuit IDs associated with the Commingled EEL in a single  
16 trouble report.

17  
18 9.23.4.7.2.1.1 Qwest recognizes CLEC does not always  
19 have the ability to isolate trouble to the specific circuit  
20 when Commingling two circuits of the same bandwidth.

21  
22 9.23.4.7.2.1.2 If CLEC believes it has the ability to isolate  
23 trouble to a specific circuit, CLEC will identify that circuit  
24 as the one it believes has the trouble, and will also provide  
25 the other circuit ID. ~~If CLEC does not provide the circuit~~  
26 ~~ID of the second circuit, Qwest will be unable to open a~~  
27 ~~second trouble report and therefore will not do so.~~

28  
29 9.23.4.7.2.1.2.1 If CLEC is using CEMR to submit  
30 the trouble report, for example, CLEC will include  
31 the other circuit ID in the remarks section.

32  
33 9.23.4.7.2.2 If trouble is found in the Qwest network on the first  
34 circuit identified by CLEC in its trouble report, Qwest will repair  
35 the trouble. A second trouble report will not be required if the  
36 trouble is found on the first circuit identified by CLEC in its  
37 trouble report.  
38

1 9.23.4.7.2.3 If no trouble is found on the first circuit and CLEC  
2 has provided a second circuit ID in its trouble report, Qwest will  
3 test the second circuit. ~~Qwest will open a manual trouble report in~~  
4 ~~that instance.~~

5  
6 9.23.4.7.2.4 If the trouble is isolated to the Qwest network ~~on the~~  
7 ~~second Commingled circuit~~, Qwest will repair the trouble. Qwest  
8 will contact CLEC with the trouble ticket number.

9  
10 9.23.4.7.2.5 Qwest will assign and provide disposition codes as  
11 described in Section 12.4.4.

12  
13 9.23.4.7.3 If Qwest dispatches and no trouble is found on either circuit  
14 associated with the Commingled EEL, Qwest may charge only one  
15 Maintenance of Service or Trouble Isolation Charge for the Commingled  
16 EEL.

17  
18 9.23.4.7.3.1 No Maintenance of Service or Trouble Isolation  
19 Charge will apply if the trouble is in the Qwest network.

20  
21 9.23.4.7.4 Although there may be two trouble reports, no time delay will  
22 result because Qwest will use the testing information from the first report  
23 to begin the repair process for the second report. Qwest will open the  
24 second trouble report without delay.

25  
26 9.23.4.7.4.1 ~~Because Commingled EELs are comprised of two~~  
27 ~~different circuits, the time for quality service measurement will~~  
28 ~~start and end with the opening and closing of the ticket associated~~  
29 ~~with the specific circuit.~~

30 The time for quality service measurement will start and end with  
31 the opening and closing of the trouble ticket associated with the  
32 specific circuit. In no event, however, shall the total repair  
33 commitment time be increased as a result. The total repair  
34 commitment time for a Commingled EEL shall not exceed the  
35 repair commitment time for the greater of either a UNE EEL or a  
36 special access/private line EEL for the same bandwidth.

37  
38 9.23.4.7.4.1.1 For example, if the repair commitment time  
39 for a UNE EEL is 4 hours and the repair commitment time  
40 for a special access/private line is 4 hours, the repair  
41 commitment time for a Commingled EEL will also be 4  
42 hours.

1  
2 9.23.4.7.5 The Parties will work together to address repair issues and to  
3 prevent adverse impacts to End User Customer(s).  
4

5 **Q. PLEASE SHOW ESCHELON'S CURRENT ICA LANGUAGE PROPOSAL**  
6 **FOR SECTION 9.23.4.7.**

7 A. Below is Eschelon's current proposal. The underlying and strikeout (with no gray  
8 shading) has the same meaning as above. The *gray shaded language* indicates  
9 Eschelon's changes for Eschelon's current proposal.

10 9.23.4.7 Maintenance and Repair for UNE Component ~~of for Point-to-Point~~  
11 ~~Commingled EELs (Point A Point B, with no mux)~~

12  
13 9.23.4.7.1 For trouble screening, isolation, and testing, ~~for both~~  
14 ~~circuits identified by CLEC in a Point-to-Point Commingled EELs,~~<sup>31</sup> see  
15 ~~Section 12.4.1. For a description of "point-to-point," see Sections~~  
16 ~~9.23.4.4.1 & 9.23.4.5.4.~~

17  
18 9.23.4.7.2 For trouble reporting, for both ~~circuits identified by CLEC~~  
19 ~~in portions of a Point-to-Point Commingled EEL identified by CLEC,~~ see  
20 Section 12.4.2.2.

21  
22 9.23.4.7.2.1 When CLEC reports a trouble through any of the  
23 means described in Section 12.4.2.2, CLEC may provide both  
24 circuit IDs associated with the Commingled EEL in a single  
25 trouble report.<sup>32</sup>

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<sup>31</sup> *Note:* Given that Point-to-Point EELs are referenced in the heading, Eschelon continues to believe the gray shaded language should be deleted. If, however, Qwest desires its use here, Eschelon has no objection to including it as shown here. Eschelon considers all of the gray shaded language in this Section 9.23.4.7.1 optional (given the heading), but offers it to address Qwest's stated concerns.

<sup>32</sup> *Note:* If Qwest chooses a more efficient approach rather than using two circuit IDs, as discussed below, all references in the language to two circuit IDs would need to be changed. The process would then be more like for a UNE EEL.

1  
2 9.23.4.7.2.1.1 Qwest recognizes CLEC does not always  
3 have the ability to isolate trouble to the specific circuit ID  
4 for a point-to-point when Commingled EEL. a point-to-  
5 point two circuits of the same bandwidth.  
6

7 9.23.4.7.2.1.2 If CLEC believes it has the ability to isolate  
8 trouble to a specific circuit ID, CLEC will identify that  
9 circuit ID as the one it believes has the trouble, and will  
10 also provide the other circuit ID. If CLEC does not provide  
11 the circuit ID of the second circuit, Qwest will be unable to  
12 open a second trouble report and therefore will not do so.  
13

14 9.23.4.7.2.1.2.1 If CLEC is using CEMR to submit  
15 the trouble report, for example, CLEC will include  
16 the other circuit ID in the remarks section.  
17

18 9.23.4.7.2.2 If trouble is found in the Qwest network on the first  
19 circuit ID identified by CLEC in its trouble report, Qwest will  
20 repair the trouble. A second trouble report will not be required if  
21 the trouble is found on the first circuit ID identified by CLEC in its  
22 trouble report.  
23

24 9.23.4.7.2.3 If no trouble is found on the first circuit ID and CLEC  
25 has provided a second circuit ID in its trouble report, Qwest will  
26 test the portion of the Commingled EEL associated with the second  
27 circuit ID. Qwest will open a manual trouble report in that  
28 instance.  
29

30 9.23.4.7.2.4 If the trouble is isolated to the Qwest network on the  
31 second Commingled circuit, Qwest will repair the trouble. Qwest  
32 will contact CLEC with the trouble ticket number.  
33

34 9.23.4.7.2.5 Qwest will assign and provide disposition codes as  
35 described in Section 12.4.4.  
36

37 9.23.4.7.3 If Qwest dispatches and no trouble is found on either circuit ID  
38 associated with the Commingled EEL, Qwest may charge only one  
39 Maintenance of Service or Trouble Isolation Charge for the Commingled  
40 EEL.  
41

1 9.23.4.7.3.1 No Maintenance of Service or Trouble Isolation  
2 Charge will apply if the trouble is in the Qwest network.  
3

4 9.23.4.7.4 Although there may be two trouble reports, no time delay will  
5 result because Qwest will use the testing information from the first report  
6 to begin the repair process for the second report. Qwest will open the  
7 second trouble report without delay.  
8

9 9.23.4.7.4.1 ~~Because Commingled EELs are comprised of two~~  
10 ~~different circuits, the time for quality service measurement will~~  
11 ~~start and end with the opening and closing of the ticket associated~~  
12 ~~with the specific circuit.~~

13 The time for quality service measurement will start and end with  
14 the opening and closing of the trouble ticket associated with the  
15 specific circuit ID. In no event, however, shall the total repair  
16 commitment time be increased as a result. The total repair  
17 commitment time for a Commingled EEL shall not exceed the  
18 repair commitment time for the greater of either a UNE EEL or a  
19 special access/private line EEL circuit for the same bandwidth.  
20

21 9.23.4.7.4.1.1 For example, if the repair commitment time  
22 for a UNE EEL is 4 hours and the repair commitment time  
23 for a special access/private line is 4 hours, the repair  
24 commitment time for a Commingled EEL will also be 4  
25 hours.  
26

27 9.23.4.7.5 The Parties will work together to address repair issues and to  
28 prevent adverse impacts to End User Customer(s).  
29

30 **Q. WHAT IS THE ORIGIN OF ESCHELON'S COMPLIANCE FILING**  
31 **LANGUAGE PROPOSAL?**

32 A. Eschelon's language was developed not to reflect Eschelon's substantive position  
33 but to reflect the Commission's order, as part of the compliance filing in response  
34 to the Commission's Order (Decision No. 70356).<sup>33</sup> Attachment 1 to Eschelon's

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<sup>33</sup> See Comments of Eschelon Telecom of Arizona, Inc. Regarding Issue 9-59 (Maintenance and

1 September 2008 Comments contains a section-by-section description of  
2 Eschelon's compliance language and how it conforms to the Commission's Order.  
3 Attachment 5 to Eschelon's September 2008 Reply Comments contain the latest  
4 differences between the Eschelon and Qwest language, which is reproduced  
5 above.

6 **Q. HOW DOES ESCHELON'S CURRENT PROPOSAL DIFFER FROM ITS**  
7 **COMPLIANCE FILING LANGUAGE PROPOSAL?**

8 A. Eschelon's current proposal differs in two respects, now that the purpose is to re-  
9 visit certain language on this issue rather than compliance with all of the  
10 previously ordered language. First, Eschelon has inserted the phrase "for Point-  
11 to-Point" before "Commingled EELs." It did not make sense to include this  
12 phrase when the issue was compliance to the Commission's ordered language  
13 whereas, as a substantive matter, Eschelon has consistently been clear that its  
14 proposal relates to point-to-point EELs, as discussed below. Second, Eschelon  
15 has clarified the terminology to be clear that, even though at this time the  
16 Commission has allowed Qwest to use two circuit *identifiers*, the EEL is made up  
17 of two portions of a single commingled circuit.<sup>34</sup> The commingled EEL does not

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Report – Commingled EELS) – Section 9.23.4.7 of ICA (“Eschelon Issue 9-59 Comments”),  
September 18, 2008, p. 2 and Attachment 1; and Reply Comments of Eschelon Telecom of  
Arizona, Inc. Regarding Issue 9-59 (Maintenance and Repair – Commingled EELS) – section  
9.23.4.7 of ICA (“Eschelon Issue 9-59 Reply Comments”), September 25, 2008, p. 4, lines 5-6  
and Attachment 5.

<sup>34</sup> See TRO ¶594; see also agreed upon definition of commingled EEL in ICA Section 9.23.4  
(quoted above).

1 have two physical circuits, as discussed in Section II above (regarding the  
2 identical physical configuration of the UNE EEL and the commingled EEL).  
3 Clarity regarding this terminology will help avoid future disputes.

4 **Q. QWEST WITNESS, MS. STEWART, DISCUSSES CERTAIN CONTRACT**  
5 **LANGUAGE RELATED TO THIS ISSUE. WHAT IS THE SOURCE OF**  
6 **THE LANGUAGE SHE CITES?**

7 A. Ms. Stewart cites Eschelon's initial proposed language for this issue, prior to a  
8 Commission decision in this case.<sup>35</sup> Ms. Stewart appears to be making the  
9 argument that Qwest has been responsive to the concerns raised by Eschelon.<sup>36</sup>  
10 That is not the case. Eschelon's primary concern with Qwest's proposed  
11 commingling language is that Qwest is attempting to erect operational barriers  
12 making it difficult and competitively inferior for Eschelon to use commingled  
13 EELs in order to force Eschelon to purchase a higher cost, pure special access  
14 product.<sup>37</sup> Eschelon has demonstrated why Qwest's responses to Eschelon's

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<sup>35</sup> Stewart Issue 9-59 Direct, pp. 4, line 23 through 5, line 23.

<sup>36</sup> Stewart Issue 9-59 Direct, p. 4, lines 16-19.

<sup>37</sup> Denney Direct, pp. 144, line 6 through 145, line 2; Denney Rebuttal, p. 80, lines 16-17 and p. 81, lines 4-8; and Denney Rebuttal, pp. 85, line 13 through p. 86, line 5.

1 language proposals were inadequate<sup>38</sup> and documented the difficulty in engaging  
2 Qwest in negotiations to resolve this issue.<sup>39</sup>

3 *Summary of Differences*

4 **Q. WHAT ARE THE CURRENT DIFFERENCES BETWEEN ESCHELON'S**  
5 **PROPOSED LANGUAGE AND QWEST'S PROPOSED LANGUAGE?**

6 A. There are four general differences between the Eschelon and Qwest language.  
7 The first difference is in sections 9.23.4.7 and 9.23.4.7.1 relating to multiplexing  
8 of point-to-point EELs.<sup>40</sup> Eschelon's compliance filing language is from prior  
9 Qwest proposed language (*i.e.*, it was compliant with an order to use Qwest's  
10 language)<sup>41</sup> and Qwest's proposal introduces ambiguous terms that are not  
11 defined or used elsewhere within the ICA ("Point A," "Point B" and "no mux").<sup>42</sup>

12 The second difference is in sections 9.23.4.7.2.1 and 9.23.7.2.1.2 allowing the  
13 CLEC to report two circuit IDs on a single trouble report. Eschelon's compliance  
14 filing language memorializes language previously proposed by Qwest

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<sup>38</sup> Denney Direct, pp. 171-174; Denney Rebuttal, pp. 88, line 10 through 89, line 6; and Denney Surrebuttal, pp. 93, line 8 through 94, line 3.

<sup>39</sup> Eschelon Issue 9-59 Comments, pp. 3, line 18 through 5, line 8; and Eschelon Issue 9-59 Reply Comments, pp. 2, line 26 through 6, line 13.

<sup>40</sup> Regarding the term "point-to-point" (separate from Qwest's unclear "no mux" language), see Eschelon's current proposal above and discussion below of Eschelon's proposal having related to point-to-point EELs.

<sup>41</sup> This was discussed in Eschelon Issue 9-59 Comments, Attachment 1, #1.

<sup>42</sup> This was discussed in Eschelon Issue 9-59 Reply Comments, pp. 27, line 16 through 28, line 20.

1 (9.23.4.7.2.1)<sup>43</sup> and removes unclear language proposed by Qwest  
2 (9.23.7.2.1.2).<sup>44</sup>

3 The third difference is in sections 9.23.4.7.2.3 and 9.23.4.7.2.4, which describe  
4 what happens if trouble is not found on the first circuit. Eschelon's language  
5 removes undefined and unnecessary Qwest language in 9.23.4.7.2.3<sup>45</sup> and clarifies  
6 that Qwest will repair trouble found on its network by deleting Qwest's  
7 ambiguous proposal in 9.23.4.7.2.4.<sup>46</sup>

8 The fourth difference is in sections 9.23.4.7.4.1 and 9.23.4.7.4.1.1. This  
9 difference captures the essence of the dispute and involves the repair commitment  
10 time. Eschelon's language clarifies that the end user customer will not experience  
11 a delay in repair due to the fact that the customer is being served via a  
12 commingled circuit, while Qwest's language allows Qwest to delay the repair of  
13 commingled circuits and thus erects an anticompetitive operational barrier as  
14 compared to the corresponding UNE EEL or SA EEL product.

15 **Q. WHICH OF THE DISPUTES REFLECTED IN THE FOUR LANGUAGE**  
16 **DIFFERENCES DISCUSSED ABOVE IS THE FOCUS OF QWEST'S**  
17 **TESTIMONY?**

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<sup>43</sup> This was discussed in Eschelon Issue 9-59 Reply Comments, pp. 28, line 21 through 29, line 5.

<sup>44</sup> This was discussed in Eschelon Issue 9-59 Reply Comments, pp. 29, line 6 through 30, line 4.

<sup>45</sup> This was discussed in Eschelon Issue 9-59 Reply Comments, p. 30, lines 5 - 18.

1 A. Qwest's testimony focuses on the first dispute associated with point-to-point  
2 EELs (9.23.4.7 and 9.23.4.7.1) and the fourth dispute (9.23.4.7.4.1 and  
3 9.23.4.7.4.1.1) associated with repair commitment time.

4 **Qwest Testimony Incorrectly Describes the Decisions of the Arizona**  
5 **Commission, the FCC and Other State Commissions Regarding Commingled**  
6 **EELs**

7 **Q. DID THE COMMISSION ORDER QWEST'S REPAIR PROCESS, AS**  
8 **REFLECTED IN QWEST'S LANGUAGE, FOR THIS ISSUE?**

9 A. No. Qwest incorrectly states on numerous occasions that the "Commission  
10 adopted Qwest's proposed repair process."<sup>47</sup> Ms. Stewart's references to the  
11 Commission's Decision No. 70356 ignores the Commission's later decision in  
12 which the Commission states regarding the repair commitment, "we were  
13 concerned that Qwest's process of required two repair tickets would result in  
14 unnecessary delay."<sup>48</sup> Further, the Commission said, "Qwest's approach appears  
15 to be more cumbersome than necessary and would double the repair commitment  
16 time over Eschelon's proposal and over the commitment for the repair of UNE  
17 EELs and special access / private lines."<sup>49</sup> Further, the Commission said, "Qwest

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<sup>46</sup> This was discussed in Eschelon Issue 9-59 Reply Comments, pp. 30, line 20 through 31, line 4.

<sup>47</sup> Stewart Issue 9-59 Direct, p. 11, line 24. See also, Stewart Issue 9-59 Direct, p. 2, lines 3-6, p. 12, lines 1-4, and p. 16, lines 13-17.

<sup>48</sup> Decision No. 70740, p. 11, lines 1-2.

<sup>49</sup> Decision No. 70740, p. 11, lines 11-13.

1 has not convinced us that the repair time of 4 hours is overly burdensome,”<sup>50</sup> and  
2 the Commission states, “[o]ur resolution of this issue in Decision No. 70356 did  
3 not decide the merits of this issue or we would have rejected Eschelon’s proposal  
4 presented in its Exception.”<sup>51</sup> Clearly, the Commission did not adopt all the  
5 processes currently reflected in Qwest’s PCAT, as suggested by Qwest’s witness..

6 **Q. DOES THE FCC STATE THAT TERMS AND CONDITIONS FOR**  
7 **COMMINGLED EELS DO NOT BELONG IN INTERCONNECTION**  
8 **AGREEMENTS?**

9 A. No. Qwest witness implies, by reference to an FCC footnote in the *Triennial*  
10 *Review Order*,<sup>52</sup> that the Commission can not determine terms and conditions for  
11 commingled products because “the interconnection agreement would apply to the  
12 UNE (*i.e.*, the EEL Loop) circuit, while the provisions of the tariff (or price list as  
13 appropriate) would dictate the terms and conditions that would apply to the  
14 private line transport circuit in the arrangement.”<sup>53</sup> Qwest witness only quotes  
15 from a portion of this footnote.<sup>54</sup> When the entire footnote is viewed, it is clear

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<sup>50</sup> Decision No. 70740, p. 11, lines 16-17.

<sup>51</sup> Decision No. 70740, p. 11, lines 18-20.

<sup>52</sup> Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, (“Triennial Review Order”), 17 FCC Rcd 16978 (2003).

<sup>53</sup> Stewart Issue 9-59 Direct, p. 10-15.

<sup>54</sup> Stewart Issue 9-59 Direct, p. 16-18.

1 that the FCC was discussing rates for various components of a commingled EEL.

2 The entire footnote reads:

3 For example, a competitive LEC connecting a UNE loop to special  
4 access interoffice transport facilities would pay UNE rates for the  
5 unbundled loops and tariffed rates for the special access service.  
6 We recognize that, at some point, competitive LECs may make a  
7 business decision to either use UNEs or wholesale services to serve  
8 a customer. For example, a competitive LEC buying UNE DS1  
9 transport continues to add UNE DS1 transport facilities to its  
10 network. At some point, the competitive LEC will make a  
11 business decision to either buy DS3 special access (and convert its  
12 traffic onto the larger facility) or to buy UNE DS3 transport, where  
13 available and if the competitive LEC meets the service eligibility  
14 requirements.<sup>55</sup>

15 In addition, the FCC clearly stated that: "...competitive LECs may connect,  
16 combine, or otherwise attach UNEs and combinations of UNEs to wholesale  
17 services (e.g., switched and special access services offered pursuant to tariff), and  
18 incumbent LECs shall not deny access to UNEs and combinations of UNEs on the  
19 grounds that such facilities or services are somehow connected, combined, or  
20 otherwise attached to wholesale services."<sup>56</sup> The FCC specifically noted that it  
21 modified its rules "... to require incumbent LECs to perform the necessary  
22 functions to effectuate such commingling upon request."<sup>57</sup> Further, the FCC  
23 acknowledged arguments made by ILECs that commingling should be prohibited  
24 because of billing and operational issues involved in commingling and concluded

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<sup>55</sup> *Triennial Review Order*, fn 1796.

<sup>56</sup> *Triennial Review Order*, ¶579.

1 that such issues should be addressed “through the same process that applies for  
2 other changes in our unbundling requirements adopted herein, i.e., through change  
3 of law provisions in interconnection agreements.”<sup>58</sup> In effect, the FCC said that  
4 CLECs have a right to obtain commingled EELs under Section 251 of the Act,  
5 and therefore the state commission has authority over the interrelationship of the  
6 two components because such interrelationship necessarily affects the CLECs’  
7 251 rights. The end result is that commingling operational issues should be  
8 addressed in the ICA.

9 **Q. DOES QWEST FULLY DESCRIBE THE DECISIONS IN OTHER**  
10 **STATES?**

11 A. No. Qwest’s witness states that Qwest’s proposed language for this issue is “in  
12 effect in Minnesota, Oregon, Utah and Washington.”<sup>59</sup> First, this is not true with  
13 respect to Washington, as the Commission adopted Eschelon’s language proposal  
14 for this issue (9-59).<sup>60</sup> Second, in all three of the other states, the language of  
15 Section 9.23.4.7 in effect in the contract does *not* include any reference to repair  
16 commitment time. Both Oregon and Minnesota ruled that the issue should be  
17 decided in a separate docket, and neither has yet finally determined the issue in

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<sup>57</sup> *Triennial Review Order*, ¶579.

<sup>58</sup> *Triennial Review Order*, ¶583.

<sup>59</sup> Stewart Issue 9-59 Direct, p. 10, line 5.

<sup>60</sup> UT-063061, Order 16, January 18, 2008, ¶114

1 separate dockets at this time.<sup>61</sup> Thus, any implication that all other states have  
2 decided this issue in favor of Qwest is inaccurate.

3 **Q. QWEST CONCLUDES THAT, BECAUSE ESCHELON HAS NOT**  
4 **COMPLAINED RECENTLY IN OTHER STATES, QWEST'S**  
5 **DISCRIMINATORY PROCESS MUST BE OKAY. IS THIS AN**  
6 **ACCURATE CONCLUSION?**

7 A. No. Eschelon has complained throughout all of the Qwest-Eschelon ICA  
8 arbitrations in six states about Qwest's commingled EEL process and specifically  
9 the repair commitment time. Both Qwest witnesses refer to lack of additional  
10 complaints by Eschelon since then, as though this indicates satisfaction with  
11 Qwest's process.<sup>62</sup> First, as mentioned above, in the both Minnesota and Oregon,  
12 the Commissions ordered that separate dockets be opened to address issues  
13 related to commingled EELs.<sup>63</sup> Issuing separate complaints in these states would  
14 likely be referred to, or consolidated with, those dockets. Eschelon's ongoing  
15 opposition to Qwest's position, which is still subject to resolution in those states,

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<sup>61</sup> Oregon ARB 775, Arbitrator's Decision, March 26, 2008, p. 55; and Minnesota P-5340,421/IC-06-768 – Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigations and Referring Issue to Contested Case Proceeding, March 30, 2007, p. 22

<sup>62</sup> Stewart Issue 9-59 Direct, p. 10, lines 6-10 and Gaines Issue 9-59 Direct, p. 9, lines 6-11.

<sup>63</sup> The Minnesota docket is underway and the Commission recently concluded that it has jurisdiction over these issues. In the matter of Qwest Corporation's Conversion of UNEs to Non-UNEs and In the Matter of Qwest Corporation's Arrangements for Commingled Elements, *Order Adopting Administrative Law Judge's Recommended Order on Motion for summary Disposition*, Docket Nos. P-421/C-07-370 and P-421/C07-371, March 23, 2009. This order is attached to this testimony as Exhibit DD-28.

1 shows that Eschelon continues to complain about Qwest's practices, despite  
2 Qwest's allegation of complacency. Second, as I testified previously in this  
3 docket, Qwest's proposals create operational and competitive barriers to using  
4 commingled EELs.<sup>64</sup> Thus, as a result, Eschelon cannot incorporate use of  
5 commingled EELs into its business planning so long as its customers would suffer  
6 a delay up to twice what a Qwest retail customer would suffer for repairs. In  
7 Washington, where Eschelon language was adopted more recently, Eschelon has  
8 initiated that process of planning for commingled EELs, though separate Qwest  
9 operational issues have arisen there.

10 **POINT-TO-POINT COMMINGLED EELS**

11 **Multiplexed EEL versus Point-to-Point EEL**

12 **Q. WHAT IS THE DIFFERENCE BETWEEN A MULTIPLEXED EEL AND**  
13 **A POINT-TO-POINT EEL?**

14 **A.** An EEL is considered point-to-point when the loop and transport portion of the  
15 EEL are the same bandwidth. The EEL is considered a multiplexed EEL when  
16 the loop and transport are of different bandwidths. This is explained in ICA  
17 language that is not in dispute, which Eschelon cross references in its current  
18 proposal (see existing ICA Sections 9.23.4.4.1 & 9.23.4.5.4, cited in proposed

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<sup>64</sup> See, e.g., Denney Direct, pp. 144, line 13 through 145, line 2; Denney Rebuttal, pp. 80, line 16 through 81, line 12; and Denney Surrebuttal, pp. 85, line 9 through 86, line 7.

1 Section 9.23.4.7.1.<sup>65</sup>) It should be noted that, when I refer to bandwidth, I refer to  
2 the signal at the end points of the EEL. It is likely that all transport circuits ride  
3 over higher capacity circuits, such as an OC-3 or OC-48. However, for a point-  
4 to-point EEL, the signal both originates and terminates at a same level (e.g., DS1  
5 for a DS1 point-to-point EEL) regardless of whether the signal rides over higher  
6 capacity circuits. The most common type of multiplexed EEL is when a CLEC  
7 leases DS1 loops, a multiplexer and DS3 transport from Qwest. The multiplexer  
8 combines the DS1 signals so they can ride over the DS3 transport. Up to 28 DS1s  
9 can be combined onto a DS3. The most common type of point-to-point EEL is a  
10 DS1 point-to-point EEL.

11 **Q. IS THERE AN ISSUE REGARDING WHETHER THE REPAIR PROCESS**  
12 **CONTAINED IN THE LANGUAGE IN 9.23.4.7 APPLIES TO**  
13 **MULTIPLEXED EELS?**

14 A. No. Eschelon's commingling language has consistently applied to point-to-point  
15 EELs. For example, in the second paragraph of my *direct* testimony in this case, I  
16 wrote, "[t]he the intent of Eschelon's proposed language is to ensure that *point-to-*  
17 *point* Commingled EELs are a useful offering and a meaningful alternative to the  
18 point-to-point UNE EEL product it is replacing."<sup>66</sup> I further explained,

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<sup>65</sup> Cross referencing existing ICA sections, instead of re-stating an issue, avoids the problem of ambiguities and conflicts caused by attempting to describe something in somewhat different ways in different parts of the ICA.

<sup>66</sup> Denney Direct, p. 144, lines 6-8. [emphasis added]

1 “Eschelon’s proposals are simple, as these proposals align the ordering, tracking,  
2 repair and billing provisions of a point-to-point UNE EEL and a *point-to-point*  
3 *Commingled EEL.*”<sup>67</sup> Eschelon’s initial language proposal for issue 9-59  
4 specifically refers to point-to-point commingled EELs.<sup>68</sup> This concept is repeated  
5 in my rebuttal testimony<sup>69</sup> and in my surrebuttal testimony. I specifically explain  
6 why multiplexed commingled EELs are not an issue.<sup>70</sup>

7 **Q. WHY ARE MULTIPLEXED COMMINGLED EELS NOT AN ISSUE?**

8 A. The reason that multiplexed EELs are different is that the loop and transport  
9 portions are of different bandwidth. This is significant for two reasons. First,  
10 because the transport portion of the multiplexed EEL contains numerous lower  
11 capacity circuits, multiple circuit IDs help to identify a specific customer’s circuit  
12 in this multi-capacity, multi-circuit arrangement. Second, when trouble on a  
13 multiplexed EEL occurs, a single CLEC experiencing trouble typically knows  
14 what portion of the EEL (loop or transport) is likely experiencing the difficulty,  
15 *which is not the case with a point-to-point EEL.* This is because multiple loop  
16 circuits are multiplexed together and ride on a higher capacity transport circuit  
17 when the multiplexing or transport portion of the circuit has trouble, multiple

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<sup>67</sup> Denney Direct, p. 145, lines 4-6. [emphasis added]

<sup>68</sup> Denney Direct, p. 149, lines 15-16.

<sup>69</sup> Denney Rebuttal, p. 80, lines 16-17 and p. 85, lines 8-10.

<sup>70</sup> Denney Surrebuttal, pp. 92, line 8 through p. 93, line 7.

1 CLEC customers are impacted. When a single CLEC customer on a multiplexed  
2 EEL experiences trouble, then it is highly likely that the trouble is in the loop  
3 portion of the multiplexed EEL.<sup>71</sup>

4 Second, repair on a multiplexed EEL is treated the same whether it is a UNE,  
5 private line, or commingled arrangement.<sup>72</sup> As a result, Eschelon does not claim  
6 that Qwest has made the repair of a multiplexed commingled EEL more difficult,  
7 longer, and thus competitively inferior than its UNE or special access equivalent  
8 as Qwest has done with its commingled EEL product.

9 **Q. WHY DOES QWEST SPEND SO MUCH OF ITS TESTIMONY**  
10 **DISCUSSING MULTIPLEXED EELS?**<sup>73</sup>

11 A. I don't know. It should not be because of the language difference in the  
12 compliance filing proposals (difference number one discussed above), because  
13 Eschelon clearly indicated at the time that the difference was due to the need to  
14 comply with the order to adopt Qwest's language on that point, and Eschelon's  
15 proposed language exactly reflected the language Qwest proposed in the case.<sup>74</sup>

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<sup>71</sup> The CLEC would first confirm that the trouble was not in its own network. See, e.g., ICA Section 12.4.1.

<sup>72</sup> See Stewart Issue 9-59 Direct, p. 15, lines 3-13 and p. 16, lines 1-4.

<sup>73</sup> See Stewart Issue 9-59 Direct, p. 6, lines 15-19, p. 12, lines 23-25, pp. 13, line 11 through 15, line 18, pp. 15, line 26 through 16, line 4; and Gaines Issue 9-59 Direct, p. 8, lines 12-19, p. 11, lines 1-18, p. 14, lines 10-12, and p. 15, lines 8-27.

<sup>74</sup> Eschelon explained this in Eschelon Issue 9-59 Comments, Attachment 1, Row #1 [citing Q-17 (Stewart Direct), p. 81, lines 24-27 & p. 82, lines 18-19].

1 Eschelon has litigated these issues with Qwest in six states and has consistently  
2 discussed its proposals as they relate to point-to-point commingled EELs. By  
3 focusing on multiplexing, Qwest may seek to distract the Commission from the  
4 real issue regarding Qwest's proposal for substandard repair of a commingled  
5 point-to-point EEL compared to its UNE and special access equivalents. Qwest  
6 also attempts to convince this Commission that Eschelon is asking for something  
7 more than what Qwest offers its retail and private line customers.<sup>75</sup> Qwest is also  
8 able, via this argument, to refer to inapplicable examples when the repair time  
9 commitments on the different portions of the commingled circuit are different,<sup>76</sup>  
10 thus creating confusion. The Commission should not be distracted by Qwest's  
11 arguments regarding multiplexed commingled EELs, as they are not the issue.

12 **Q. IS ESCHELON NONETHELESS WILLING TO MODIFY ITS REPAIR**  
13 **LANGUAGE TO REFER TO POINT-TO-POINT COMMINGLED EELS?**

14 **A.** Yes. Now that compliance with the order's adoption of Qwest's language on this  
15 point is not the pending issue, Eschelon proposes, as it has proposed from the  
16 beginning of this case,<sup>77</sup> that 9.23.4.7 read:

17 9.23.4.7 Maintenance and Repair for UNE Component of Point-to-Point  
18 Commingled EELs

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<sup>75</sup> Stewart Issue 9-59 Direct, p. 15, lines 14-18 and Gaines Issue 9-59 Direct, p. 15, lines 8-27.

<sup>76</sup> Gaines Issue 9-59 Direct, p. 11, lines 1-18 and p. 14, lines 10-12.

<sup>77</sup> This was Eschelon's original proposal for this section of 9-59. See Denney Direct, p. 149, lines 15-16.

1 The remaining changes proposed by Qwest in this section and section 9.23.4.7.1  
2 are unnecessary and confusing, for the reasons previously given.<sup>78</sup>

3 **REPAIR COMMITMENT**

4 **Summary of Issue**

5 **Q. WHAT IS THE ISSUE REGARDING REPAIR OF COMMINGLED**  
6 **POINT-TO-POINT EELS?**

7 A. The issue, and the heart of this debate, revolves around whether Qwest should be  
8 allowed to provide commingled EELs on an operationally inferior basis (*i.e.*, with  
9 longer repair commitment times) compared to their UNE and special access  
10 equivalents.<sup>79</sup> Qwest proposes to do this by imposing a process that can result in  
11 delayed repairs for commingled EELs. Instead of committing to a 4 hour repair  
12 window, as it does for UNE EELs and special access EELs, Qwest's proposal  
13 allows it up to 8 hours to repair commingled EELs. The Commission recognized  
14 this and set this proceeding "to develop a record on the costs and benefits of  
15 Eschelon's proposed single interval proposal, including whether Qwest has a right

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<sup>78</sup> This was discussed in Eschelon Issue 9-59 Comments, Attachment 1, #1 and Eschelon Issue 9-59 Reply Comments, pp. 27, line 16 through 28, line 20.

<sup>79</sup> As separately discussed, where UNE EELs are unavailable after the TRRO, the alternative to a commingled EEL is the higher priced special access private line product.

1 to recover the costs of implementing a single repair interval for Commingled  
2 EELs.”<sup>80</sup>

3 **Q. WHAT ARGUMENTS HAS QWEST MADE WITH REGARD TO COSTS**  
4 **AND BENEFITS OF A SINGLE REPAIR INTERVAL?**

5 A. After stripping away Qwest’s arguments that have nothing to do with this issue,  
6 Qwest argues that (1) a CLEC should be able to identify which portion (loop or  
7 transport) of a commingled circuit has trouble; (2) a single repair commitment  
8 time will adversely impact the PIDs and Qwest’s associated payments under the  
9 PAP; and (3) it would be expensive for Qwest to implement a solution for a single  
10 repair commitment time (which Qwest refers to as a repair “interval”).

11 **Q. WHAT ARE THE RELEVANT REPAIR COMMITMENT TIMES FOR**  
12 **UNE EELS, SPECIAL ACCESS EELS, AND THEIR INDIVIDUAL**  
13 **COMPONENTS, AND HOW DO THESE INTERVALS COMPARE TO**  
14 **QWEST’S PROPOSAL FOR COMMINGLED EELS?**

15 A. Table 1 below compares Qwest repair commitment times for UNE and special  
16 access, DS1 and DS3 loops and transport circuits. This table also compares  
17 Qwest repair commitment times for DS1 and DS3 point-to-point UNE EELs,  
18 point-to-point special access EELs and Qwest’s proposed repair commitment  
19 times for point-to-point commingled EELs. Qwest argues that it has “separate

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<sup>80</sup> Arizona Commission Decision No. 70740, p. 14, lines 23-25.

1 repair intervals for the UNE and non-UNE circuits of a commingled EEL”<sup>81</sup>  
 2 because, “[s]eparate and distinct repair intervals are established by different tariffs  
 3 and interconnection agreements for individual products and services.”<sup>82</sup>  
 4 However, as can be seen from the table, Qwest commits to a 4 hour repair  
 5 window for both UNE and non-UNEs. This is true when loops and transport are  
 6 purchased alone or when they are combined into a UNE or special access EEL.  
 7 Thus the argument that Qwest needs separate and distinct repair times for  
 8 commingled EELs to “comply with the intervals in those tariffs and  
 9 agreements”<sup>83</sup> makes no sense as a 4 hour repair commit time would comply with  
 10 both the tariffs and agreements.

11 **Table 1: Comparison of Qwest Repair Commitment Times**<sup>84</sup>

Product	Repair Commitment Times		
	Loop Only	Transport Only	EEL (Loop & Transport)

<sup>81</sup> Gaines Issue 9-59 Direct, p. 6, lines 1-2.

<sup>82</sup> Gaines Issue 9-59 Direct, p. 6, lines 3-4.

<sup>83</sup> Gaines Issue 9-59 Direct, p. 6, lines 4-5.

<sup>84</sup> Repair commitment times for UNEs are contained in Exhibit C, Service Interval Tables, to the Eschelon / Qwest ICA. Loop repair commitments are contained in section 1.0(i); transport repair commitments are contained in section 2.0; and EEL repair commitments are contained in section 6.0. Repair commitment times for special access circuits are contained in Qwest’s Tariff FCC #1 section 7.1.2.G.6.a. (Note that Qwest’s AZ Competitive Private Line Transport Services Price Cap Tariff also has a repair commitment of 4 hours for DS1s and DS3s (see section 2.4.5.B.5).) The tariff pages are attached to this testimony as Exhibit DD-29. Qwest’s proposed repair commitment times for commingled EELs is taken from Qwest’s testimony. Ms. Stewart states, “the repair clock for quality service measurements will start and end with the opening and closing of the ticket associated with the specific circuit.” (Stewart Issue 9-59 Direct, p. 8, lines 5-7.)

UNE DS1	4 hours	4 hours	4 hours
Special Access DS1	4 hours	4 hours	4 hours
Qwest Proposed Commingled DS1			up to 8 hours
UNE DS3	4 hours	4 hours	4 hour
Special Access DS3	4 hours	4 hours	4 hours
Qwest Proposed Commingled DS3			up to 8 hours

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Qwest takes it one step further and argues throughout its testimony that customers served over a commingled EEL could be out of service for more than 4 hours, and Qwest could still be considered meeting its repair commitment times.<sup>85</sup>

**Trouble Isolation**

**Q. WHEN THERE IS TROUBLE IN QWEST’S NETWORK, CAN ESCHELON IDENTIFY WHICH PORTION OF A POINT-TO-POINT EEL (LOOP OR TRANSPORT) CONTAINS THE TROUBLE?**

A. No. Ms. Stewart states, “with appropriate trouble isolation testing, the CLEC will generally know which circuit is experiencing the trouble.”<sup>86</sup> Mr. Gaines also states that “a CLEC is required to perform thorough testing to isolate the problem before submitting a trouble report,”<sup>87</sup> and he implies that the CLEC is required to determine “which network (the CLEC’s or Qwest’s) has the trouble and, if it is on

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<sup>85</sup> See Gaines Issue 9-59 Direct, p.13, lines 1 – 19. Mr. Gaines provides an example where Qwest takes 4 hours and 20 minutes to repair the commingled EEL, but under Qwest’s process its commitments would be met.

<sup>86</sup> Stewart Issue 9-59 Direct, p. 10, lines 16-17.

<sup>87</sup> Gaines Issue 9-59 Direct, p. 3, lines 1-2.

1 Qwest's network, where within the network the trouble is located."<sup>88</sup> As I  
2 describe in more detail below, Qwest's testimony is contrary to closed language  
3 in the Eschelon / Qwest ICA, to Qwest's PCAT and to the ability of CLECs to  
4 locate trouble within the Qwest network.

5 **Q. WHAT OBLIGATIONS ARE OUTLINED IN THE CLOSED SECTIONS**  
6 **OF THE ESCHELON / QWEST INTERCONNECTION AGREEMENT?**

7 A. Section 12.4.1.1 of the Eschelon / Qwest ICA states, "Before either Party reports  
8 a trouble condition, it shall use its best efforts to isolate the trouble to the other  
9 Party's facilities." Section 12.4.1.3 states that "Qwest and CLEC will report  
10 trouble isolation test results to the other."<sup>89</sup> There is no obligation to determine  
11 what portion of the Qwest network is experiencing trouble. Qwest's PCAT  
12 recognizes this fact stating, "Qwest recognizes the CLEC does not always have  
13 the ability to isolate trouble to the specific circuit when commingling two circuits  
14 of the same bandwidth; however it remains the CLEC's responsibility to isolate  
15 the trouble to Qwest's network and provide those test results when reporting  
16 trouble."<sup>90</sup> Like the ICA, Qwest own documentation shows that Qwest requires

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<sup>88</sup> Gaines Issue 9-59 Direct, p. 3, lines 5-6.

<sup>89</sup> All of ICA Section 12.4.1 (entitled "Trouble Screening, Isolation, and Testing") is cross-referenced in Section 9.23.4.7.1 of Eschelon's proposal.

<sup>90</sup> Qwest's process for maintenance and repair of commingled EELs in Qwest's TRRO - Commingling and Unbundled Network Elements - Combinations (UNE-C) PCAT (See <http://www.qwest.com/wholesale/clecs/trocommingunec.html>)

1 CLECs to isolate the trouble to the Qwest network, and not to a specific location  
2 within that network.

3 **Q. WHY IS IT DIFFICULT FOR CLECS TO DETERMINE WHAT**  
4 **PORTION OF A POINT-TO-POINT EEL (LOOP OR TRANSPORT)**  
5 **CONTAINS TROUBLE?**

6 A. When Eschelon is experiencing trouble with a point-to-point EEL,<sup>91</sup> it typically  
7 uses test equipment to place a signal on the line and attempts to loop that signal  
8 to the network interface unit ("NIU"). The NIU is located at the customer  
9 premise, and the test equipment is placed at the end of the circuit where Qwest's  
10 network connects to the CLEC network. If the test equipment has difficulties  
11 receiving signals from the NIU, then Eschelon knows there is a problem  
12 somewhere between the test equipment and the NIU – in other words, whether the  
13 trouble is on Qwest's network since Qwest's network is what is between the test  
14 equipment and the NIU. However, Eschelon will not know where in Qwest's  
15 network it is experiencing trouble. Eschelon provides Qwest with test results that  
16 could include error codes and signal patterns or details such as times the circuit is  
17 out of service (assuming the problem is intermittent) or simply a notice that the  
18 circuit is down hard and Eschelon can't loop to the NIU (*i.e.* the customer is

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<sup>91</sup> This is true for all types of point-to-point EELs we have been discussing (*i.e.* UNE, special access and commingled).

1 completely out of service).<sup>92</sup> Qwest technicians do not ask Eschelon where on the  
2 Qwest network the trouble occurs.<sup>93</sup> As indicated, if Eschelon has test results, it  
3 gives them to Qwest.

4 **Q. WHAT IMPACT DOES THE INABILITY TO DETERMINE WHAT**  
5 **PORTION OF A POINT-TO-POINT EEL CONTAINS TROUBLE HAVE**  
6 **ON QWEST'S REPAIR COMMITMENTS?**

7 A. This should have no impact on Qwest's repair commitment. For both a point-to-  
8 point UNE EEL and a point-to-point special access EEL, Qwest is able to commit  
9 to a 4 hour repair window regardless of whether a CLEC is able to determine  
10 where on Qwest's network the trouble resides. Qwest should offer the same  
11 commitments for commingled EELs. Instead, Qwest is proposing separate,  
12 consecutive repair commitments for each portion (loop and transport) of a  
13 commingled EEL. The result is that, if the CLEC's trouble isolation does not  
14 yield which portion of the Qwest network contains the trouble, Qwest's repair  
15 commitment becomes something greater than 4 hours. This is because, under  
16 Qwest's proposal, the repair clock on the second portion of a commingled EEL  
17 does not begin until Qwest determines that there is no problem on the first portion

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<sup>92</sup> "Can't Loop the NIU" is a valid test result: See  
[http://www.qwest.com/wholesale/downloads/2006/060901/Test\\_Results\\_Information\\_10\\_04.do](http://www.qwest.com/wholesale/downloads/2006/060901/Test_Results_Information_10_04.do)  
c

<sup>93</sup> If Eschelon had information regarding where on the Qwest network the trouble existed, Eschelon would pass this information onto Qwest.

1 of the commingled EEL. End user customers should not have to tolerate this  
2 delay because Qwest has chosen an onerous policy for implementation of CLECs'  
3 right to serve those customers using commingled EELs.

4 **PID/PAP**

5 **Q. HOW DOES QWEST'S PROPOSAL IMPACT ITS PERFORMANCE**  
6 **MEASURE COMMITMENTS?**

7 A. Qwest's proposed language for commingled circuits allows Qwest the opportunity  
8 to meet its repair commitment of restoring service within 4 hours even when the  
9 CLEC customer is out of service for longer than 4 hours due to troubles on the  
10 Qwest network. It also allows Qwest to report repair commitment times shorter  
11 than the actual time a customer is out of service. Mr. Gaines provides a "typical  
12 scenario"<sup>94</sup> in which Qwest receives a trouble report on a point-to-point  
13 commingled circuit. The trouble is on the Qwest network, and the customer is out  
14 of service for 4 hours and 20 minutes.<sup>95</sup> In this scenario, the CLEC representative  
15 guesses incorrectly and initially reports trouble on the portion of the commingled  
16 EEL that did not have problems. In Mr. Gaines' example, it takes Qwest 25  
17 minutes to determine that the CLEC guessed at the wrong circuit.<sup>96</sup> Qwest opens

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<sup>94</sup> Gaines Issue 9-59 Direct, p. 13, line 15.

<sup>95</sup> In the scenario the trouble is reported at 14:00 (Gaines Issue 9-59 Direct, p. 13, line 1) and resolved at 18:20 (Gaines Issue 9-59 Direct, p. 13, line 13).

<sup>96</sup> The first trouble report is cleared at 14:25 (Gaines Issue 9-59 Direct, p. 13, lines 3-4).

1 the second trouble ticket on the portion of Qwest's network that Qwest is able to  
2 determine for its own network actually contained the problem, and Qwest uses  
3 almost the entire 4-hour window to repair the circuit.<sup>97</sup> Mr. Gaines concludes:

4 In this typical scenario, under the current process used by Qwest  
5 for all customers reporting *two different circuits*, each report  
6 would have been a "met" report, with no financial penalties. The  
7 reported duration for the first circuit would be 25 minutes, and the  
8 reported duration for the second circuit would be three hours and  
9 54 minutes.<sup>98</sup>

10 Thus, despite the fact that it took Qwest more than 4 hours to put the customer  
11 (served via a single circuit) back in service, Qwest's proposal would allow it to  
12 consider its performance obligations met. This is precisely the scenario  
13 Eschelon's language is designed to avoid. If the same customer switched to the  
14 same service purchased using special access facilities or, where available a UNE  
15 EEL service, and the exact same single-circuit facility was reused (see Section II  
16 above), the end user customer would be given a four hour commitment time and,  
17 if not met, Qwest could and should see that reflected in the performance  
18 measurements. Qwest should not be able to claim credit for meeting a 4 hour  
19 repair commitment when a customer is out of service for more than 4 hours.  
20 Qwest should be provided with the proper incentives to clear troubles within the

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<sup>97</sup> The second ticket is opened at 14:26 (Gaines Issue 9-59 Direct, p. 13, line 8) and closed at 18:20 (Gaines Issue 9-59 Direct, p. 13, line 13).

<sup>98</sup> Gaines Issue 9-59 Direct, p. 13, lines 15-19 (emphasis added). *But see* my testimony above (regarding the fact that a commingled EEL is comprised of one circuit).

1 commitment times regardless of whether the circuit is provided over UNEs,  
2 private lines, or some combination of the two.

3 Qwest considers the case when a customer is out of service for more than 4 hours  
4 due to a trouble on Qwest's network, but Qwest is able to repair individual piece  
5 parts of the trouble in less than 4 hours as an "artificially inflate[d]"<sup>99</sup> restoral  
6 times and could lead to "results implying a lack of parity."<sup>100</sup> What is artificial is  
7 Qwest's proposal to *consider* a customer repaired (*i.e.* the customer's service is  
8 working) even when the customer remains out of service due to a trouble on  
9 Qwest's network. It also cannot be considered parity when Qwest fails to repair  
10 commingled EELs within the same time frames for their UNE or special access  
11 counterparts.

12 **Q. HOW SHOULD PERFORMANCE MEASURES BE TREATED FOR**  
13 **EACH COMPONENT OF A COMMINGLED CIRCUIT?**

14 A. Unless otherwise ordered by the Commission<sup>101</sup> or negotiated between a CLEC  
15 and Qwest, each component of a commingled circuit should be subject to the  
16 performance metrics associated with that circuit (*i.e.*, simultaneously, not  
17 consecutively). For example, the most common commingled circuit is likely to be

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<sup>99</sup> Gaines Issue 9-59 Direct, p. 7, line 22.

<sup>100</sup> Stewart Issue 9-59 Direct, p. 18, line 18.

<sup>101</sup> For example, as part of Qwest's AFOR petition in Washington, the Commission required Qwest to provide the performance standards as outlined in Qwest's PAP and associated PIDs for all UNEs and UNE substitute (e.g. special access / private line) circuits. This decision is attached to

1 a combination of a UNE Loop and special access transport. Each has a 4-hour  
2 repair commitment, and neither should result in a customer's outage lasting more  
3 than 4 hours total. Different provisions describe what happens per component  
4 when the commitment is not met. The UNE consequences are governed by  
5 Qwest's PAP and associated PIDs,<sup>102</sup> while the special access circuit  
6 consequences are governed by the associated tariff. For all the reasons given,  
7 there is no reason, at this time, to overcomplicate the issue by creating a new PID  
8 measure for the commingled circuit and associated benchmark or parity  
9 standard.<sup>103</sup>

10 The key is that service should not be considered working when the trouble is on  
11 the Qwest network and the end user customer is out of service.

12 **Q. HAS QWEST OFFERED TO COMPENSATE ESCHELON FOR LOST**  
13 **BUSINESS REVENUES AS A RESULT OF QWEST'S DEGRADED**  
14 **REPAIR PROCESS FOR COMMINGLED EELS?**

15 A. No. Qwest witness suggests that Qwest may be responsible for "possible liability  
16 for business losses result from a failure to meet performance requirements."<sup>104</sup>

17 Qwest, however, has made no language proposal or conceptual offer to Eschelon

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this testimony as Exhibit DD-30.

102 Qwest's PAP and PIDs are part of the Eschelon / Qwest interconnection agreement. Exhibit B to the ICA contains the PIDs and Exhibit K contains the PAP.

<sup>103</sup> See Stewart Issue 9-59 Direct, pp. 21, line 13 through 22, line 6 where she suggests the opposite.

<sup>104</sup> Gaines Issue 9-59 Direct, p. 7, lines 2-3.

1 to compensate Eschelon directly for lost revenue in the event Eschelon loses  
2 revenue as a result of Qwest's delay in repairing its customer's service.

3 **Q. HAS QWEST OFFERED ANY SERVICE PERFORMANCE MEASURE**  
4 **OTHER THAN A POTENTIAL 8 HOUR REPAIR WINDOW FOR A**  
5 **COMMINGLED EEL?**

6 A. No. Though Qwest has provided a "typical scenario"<sup>105</sup> in which it says it was  
7 able to repair an out of service commingled EEL in 4 hours and 20 minutes,  
8 Qwest has not proposed any repair commitments for commingled EELs other than  
9 the maximum 8 hour repair commitment.

10 **Cost Estimate**

11 **Q. QWEST DESCRIBES SOME SYSTEM CHANGES THEY CLAIM**  
12 **WOULD BE REQUIRED TO IMPLEMENT ESCHELON'S PROPOSED**  
13 **LANGUAGE. WHAT IS THE UNDERLYING ASSUMPTION THAT**  
14 **DRIVES QWEST'S PROPOSED SYSTEM CHANGES?**

15 A. Qwest's proposed systems solution is based on the incorrect assumption that two  
16 separate circuit IDs for each component of a commingled EEL are required as a  
17 physical matter. Qwest, in its September 25, 2008 proposed ICA language,  
18 specifically stated that the reason for its position as to the longer "time for quality  
19 service measurement" is "[b]ecause Commingled EELs are comprised of two

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<sup>105</sup> Gaines Issue 9-59 Direct, p. 13, line 15.

1 different circuits.”<sup>106</sup> In other words, Qwest’s proposed systems solution is driven  
2 by the fact that Qwest requires two separate circuit IDs, for the UNE and non-  
3 UNE component of a commingled EEL, which is in turn driven by the erroneous  
4 assumption that two circuit IDs are needed because these two components are two  
5 separate circuits. Ms. Stewart states, “there are very legitimate and necessary  
6 reasons why two repair intervals are required for a commingled EEL, including,  
7 in part, because two circuit IDs are required to effectively manage the tracking  
8 and repair of *each circuit* in the commingled arrangement.”<sup>107</sup> She further  
9 explains, “ILECs manage all trouble reports and repair intervals on a circuit-by-  
10 circuit basis.”<sup>108</sup>

11 **Q. WHAT REASON DOES QWEST GIVE AS TO WHY TWO CIRCUIT IDS**  
12 **ARE ALLEGEDLY ESSENTIAL TO THE REPAIR PROCESS?**

13 A. Mr. Gaines asserts that the “*circuit specific* management is vital to the repair  
14 process, as it ensures that trouble reports are routed to the repair centers and  
15 technicians that are best equipped to handled the specific type of circuit at  
16 issue.”<sup>109</sup>

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<sup>106</sup> See Qwest’s 9/25/09 proposal at Section 9.23.4.7.4.1 (shown in Eschelon’s 9/26/08 Reply Comments at Attachment 5).

<sup>107</sup> Stewart Issue 9-59 Direct, pp. 3, line 25 through 4, line 2 (emphasis added). See also Stewart Issue 9-59 Direct, p. 16, lines 5-9.

<sup>108</sup> Stewart Issue 9-59 Direct, p. 4, lines 3-4. See also Gaines Issue 9-59 Direct, p. 4, lines 20-21.

<sup>109</sup> Gaines Issue 9-59 Direct, p. 4, lines 21-24 (emphasis added).

1 **Q. DO POINT-TO-POINT UNE EELS OR POINT-TO-POINT SPECIAL**  
2 **ACCESS EELS HAVE SEPARATE CIRCUIT IDS FOR EACH**  
3 **COMPONENT (LOOP AND TRANSPORT) OF THE CIRCUIT?**

4 A. No. Both of these loop-transport combinations are one circuit and, accordingly,  
5 one circuit ID. As discussed above in Section II regarding the physical  
6 configuration of the commingled EEL and reuse of facilities, the physical facility  
7 is the same for all three point-to-point loop-transport combinations (UNE,  
8 commingled, special access). They are all comprised of one circuit.

9 **Q. HOW IS QWEST ABLE TO ROUTE POINT-TO-POINT UNE EELS AND**  
10 **POINT-TO-POINT SPECIAL ACCESS EELS TO THE PROPER**  
11 **TECHNICIANS AND REPAIR CIRCUITS WITHIN THE TIME**  
12 **COMMITMENTS USING ONE CIRCUIT ID FOR BOTH**  
13 **COMPONENTS?**

14 A. Mr. Gaines addresses this question, stating that "certain repair centers and  
15 individual technicians have particular expertise in circuits of a specific  
16 transmission parameter (e.g. DS0, DS1, or DS3), while other centers and  
17 technicians have expertise in circuits of a different transmission parameter."<sup>110</sup>

18 This shows that, because point-to-point EELs are combinations of components  
19 with specific transmission parameters (in this case either DS1 or DS3), a single  
20 circuit ID can be used to ensure that troubles are routed to the proper technicians.

1 Regarding the specific transmission parameter (e.g. DS0, DS1, or DS3), Qwest  
2 agrees (via language in Section 9.23.4) that a “High Capacity EEL” is a loop-  
3 transport Combination (*either EEL or Commingled EEL*) when the Loop or  
4 transport is of DS1 or DS3 capacity. High Capacity EELs may also be referred to  
5 as ‘DS1 EEL’ or ‘DS3 EEL,’ depending on capacity level” (emphasis added). To  
6 the extent that Mr. Gaines, when referring to “different transmission parameters,”  
7 is attempting to suggest that a UNE DS1 EEL has different transmission  
8 parameters from a Commingled DS1 EEL, this agreed upon definition illustrates  
9 that is not the case.

10 **Q. DOES QWEST’S TESTIMONY GIVE ANY INDICATION THAT IT**  
11 **CONSIDERED WHETHER THE USE OF A SINGLE CIRCUIT ID FOR**  
12 **POINT-TO-POINT COMMINGLED EELS OR ANY OTHER OPTION**  
13 **MAY BE A MORE EFFICIENT SOLUTION THAN THE SYSTEM**  
14 **MODIFICATIONS PROPOSED BY QWEST?**

15 A. No. The systems modification is the only solution proffered by Qwest. Qwest  
16 has not provided any cost studies or other supporting data to show how the costs  
17 of Eschelon’s long-proposed solutions compare to Qwest’s inefficient and  
18 unnecessary proposal or even that Qwest has conducted such an analysis.  
19 Eschelon filed its petition for arbitration, with its requested relief, in September of  
20 2006. Since then, Qwest has expended substantial resources opposing Eschelon’s

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<sup>110</sup> Gaines Issue 9-59 Direct, p. 4, lines 24-27.

1 position without providing any cost data throughout that time period to show that  
2 other solutions (such as the USOCs, discussed below) are not more cost effective.

3 **Q. GIVEN THAT MS. STEWART AND MR. GAINES AGREE THAT**  
4 **CIRCUIT-SPECIFIC MANAGEMENT IS VITAL FOR MANAGING**  
5 **TROUBLE REPORTS,<sup>111</sup> WHAT DO YOU CONCLUDE?**

6 A. To effectively manage and track repairs, Qwest should manage these repairs  
7 based on the single circuit that comprises a commingled EEL, just as Qwest does  
8 for UNE EELs and special access EELs. It simply cannot be as difficult as Qwest  
9 is making it to develop a more cost efficient solution than the one that Qwest is  
10 now proposing for an identical physical facility. Because Qwest is also  
11 Eschelon's competitor, Qwest's self-interest is served by exaggerating the costs  
12 and difficulties of providing a commingled EEL to force CLECs into its higher  
13 priced special access product. Qwest can not, consistent with its  
14 nondiscrimination obligations, relegate CLECs to less efficient and less "vital"  
15 trouble report tracking and management simply because Qwest chooses to charge  
16 a higher price for one component of a circuit.

17 **Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF QWEST'S**  
18 **PROPOSED SYSTEMS MODIFICATION APPROACH.**

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<sup>111</sup> Stewart Issue 9-59 Direct, p. 4, lines 3-4. See also Gaines Issue 9-59 Direct, p. 4, lines 20-24.

1 A. Qwest's proposal appears to allow the CLEC to simultaneously submit both  
2 circuit IDs associated with each component of a commingled EEL in such a way  
3 that Qwest's systems simultaneously open two repair tickets and each repair ticket  
4 will indicate to the Qwest technician that it is related to another ticket, in case two  
5 different technicians are working each ticket.<sup>112</sup> This system modification would  
6 be used instead of the process contained in the Eschelon's proposed compliance  
7 language, under which Eschelon would indicate the second circuit ID in the  
8 existing remarks section of the trouble ticket, and Qwest's technician would repair  
9 both circuits as necessary.

10 **Q. WHAT IS THE ESTIMATED COST OF THESE SYSTEM**  
11 **MODIFICATIONS?**

12 A. Qwest provided an estimate from its vendor for "approximately \$375,000 and  
13 \$425,000."<sup>113</sup>

14 **Q. HAS QWEST PROVIDED A COST ESTIMATE FOR THE PROCESS**  
15 **OUTLINED BY ESCHELON'S PROPOSED COMPLIANCE LANGUAGE**  
16 **FOR DEALING WITH THE SECOND CIRCUIT ID CONTAINED IN THE**  
17 **REMARKS SECTION OF THE TROUBLE TICKET?**

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<sup>112</sup> Gaines Issue 9-59 Direct, p. 17, lines 9-33.

<sup>113</sup> Gaines Issue 9-59 Direct, p. 16, line 7.

1 A. Unfortunately not. Although Eschelon made this proposal to use the existing  
2 remarks field (familiar to both companies' personnel via its use for conveying  
3 other repair information) in this docket as early as September 8, 2006<sup>114</sup> (and  
4 before that in negotiations), Qwest has provided no cost estimate or cost data  
5 regarding this proposal, even after more recently being ordered to develop the  
6 record. Qwest should have attempted to demonstrate that its systems solution is  
7 the least cost most efficient solution. At a minimum, Qwest should have  
8 compared the estimated costs of the systems changes with the cost associated with  
9 the process outlined in the Eschelon proposed compliance language, as well as the  
10 cost of the single circuit ID solution presented by Eschelon in its Petition in  
11 September 2006<sup>115</sup> and described in testimony in this case.

12 **Q. IS ESCHELON REFUSING TO COMPENSATE QWEST FOR**  
13 **REQUIRED CHANGES TO IMPLEMENT A SINGLE REPAIR**  
14 **COMMITMENT TIME FOR COMMINGLED EELS?**

15 A. Eschelon has taken no such position. Both Qwest witnesses claim that Eschelon's  
16 failure to agree in advance to compensate Qwest amounts to Eschelon's refusal to  
17 compensate Qwest for changes.<sup>116</sup> First, Qwest has not proposed or specifically  
18 asked for compensation to implement a single repair commitment time for

---

<sup>114</sup> See Ex. 4 (Proposed ICA) to Eschelon Petition (9/8/06), p. 227, §9.23.4.7.1 ["If CLEC is using CEMR to submit the trouble report, for example, CLEC may report one circuit ID and include the other circuit ID in the remarks section (unless the Parties agree to a different method)."].

<sup>115</sup> See Ex. 4 (Proposed ICA) to Eschelon Petition (9/8/06), p. 225, §9.23.4.5.4.

1 commingled EELs, but instead has promised it would be significant amounts of  
2 dollars.<sup>117</sup> Second, Qwest's most recent testimony is the first time Qwest has  
3 even attempted to estimate the amount of dollars that it asserts implementing its  
4 unilaterally selected process would cost. Third, as described above, Qwest  
5 provided no evidence that it made any effort to seek a least cost solution to  
6 implementing a solution. Fourth, Eschelon initially asked Qwest to negotiate a  
7 solution before Qwest had implemented any process, and Qwest refused.<sup>118</sup> At  
8 the time, Qwest indicated it would develop these issues with CLECs through  
9 CMP,<sup>119</sup> which Qwest did not do and instead implemented an inefficient and  
10 discriminatory process without CLEC input over Eschelon's objection.<sup>120</sup> Finally,  
11 Qwest's concern is already addressed in the general Terms and Conditions section  
12 (Section 5) of the ICA. Specifically, Section 5.1.6 of the ICA provides: "Nothing  
13 in this Agreement shall prevent either Party from seeking to recover the costs and  
14 expenses, if any, it may incur in (a) complying with and implementing its  
15 obligations under this Agreement, the Act, and the rules, regulations and orders of  
16 the FCC and the Commission. . . ."<sup>121</sup> This is not a license to impose unproven

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<sup>116</sup> Gaines Issue 9-59 Direct, p. 18, lines 9-18; and Stewart Issue 9-59 Direct, p. 11, lines 1-12.

<sup>117</sup> Hearing Exhibit Q-17, Stewart Direct, p. 84, lines 14-24.

<sup>118</sup> Hearing Exhibit E-10, Johnson Direct, Exhibit BJJ 18

<sup>119</sup> *Id.*

<sup>120</sup> Hearing Exhibit E-10, Johnson Direct, Exhibit BJJ7, p. 4

<sup>121</sup> In addition, if the rates are approved, they are reflected in Exhibit A or will be pursuant to

1 charges for inefficient solutions, but it does give Qwest an ability to recover  
2 legitimate costs and expenses after making the appropriate showing to the  
3 Commission. It has not made that showing here.

4 **Q. IF QWEST WERE TO IMPLEMENT ITS SYSTEM CHANGES OR SOME**  
5 **OTHER SOLUTION, WOULD QWEST BE COMPENSATED?**

6 A. Yes, and it is likely Qwest has already been compensated. Qwest is required to  
7 make commingled EELs available to CLECs. Implicit in that requirement is that  
8 Qwest provide commingled EELs in such a way that they are useful.<sup>122</sup>  
9 Otherwise, Qwest could absolve itself of every requirement of the Telecom Act  
10 by implementing products in such a way that make it impossible for CLECs to  
11 compete effectively. While the *Triennial Review Order* required Qwest to offer  
12 commingled arrangements,<sup>123</sup> it also allowed Qwest to charge rates in excess of  
13 forward looking economic cost for the non-UNE portion of these arrangements.

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Section 2.2 when approved. If the rates are unapproved, Section 22.6 provides a mechanism for Qwest to recover its costs. If Qwest seeks a right to charge a non-TELRIC based rate in some other proceeding (*see* Hearing Exhibit E-7 (Starkey Reb.) at MS-6 [MNI Transcript, Vol. 2, pp. 136-137, Ms. Stewart]) and prevails, then the change in law provisions of the ICA will apply. Under Qwest's argument, none of these provisions are given effect, though they must be under Arizona law.

<sup>122</sup> See FCC First Report and Order at ¶268. See generally the discussion of nondiscriminatory access to UNEs in Mr. Starkey's testimony. E.g., Hearing Exhibit E-6 (Starkey Dir.), pp. 131-144. This illustrates that the concept of availability is intended to mean available as a practical, operational matter.

<sup>123</sup> TRO ¶ 579. The FCC defines "commingling" as "the connecting, attaching, or otherwise linking of a UNE or a UNE combination to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services."

1 Rates in excess of economic cost are considered economic profit.<sup>124</sup> As stated,  
 2 the most common type of commingled arrangement is likely to be a DS1 UNE  
 3 Loop combined with DS1 special access transport. Table 2 below compares the  
 4 cost of a UNE EEL and a commingled EEL assuming either 5 miles or 10 miles  
 5 of transport.<sup>125</sup>

6 **Table 2: Comparison of UNE EEL and Commingled EEL Prices**

<b>Transport Mileage</b>	<b>DS1 UNE EEL</b>	<b>DS1 Commingled EEL (SA xport and UNE Loop)</b>	<b>Difference</b>
5 miles	\$106.47	\$245.37	\$138.90
10 miles	\$112.63	\$325.37	\$212.74
Source <sup>126</sup>	ICA, Exhibit A section 9.1.2 for ITP, 9.2.3.3.1 for DS1 loop and 9.6.2 for DS1 transport	FCC #1, Section 21.5.2.C for ITP, 17.2.11.C.1 for DS1 transport and ICA, Exhibit A 9.2.3.3.1 for a DS1 UNE Loop	

7  
 8 With a monthly difference in revenue of between \$139 and \$213, Qwest would  
 9 recoup its investment in its proposed systems modification after the first 74 to 164  
 10 commingled circuits it sold.<sup>127</sup> Given that Qwest had already made “1,436 UNE

<sup>124</sup> Economic cost includes what is considered a normal profit, which is profit that can be earned in a highly competitive environment. Economic profit is profit in excess of a normal profit.

<sup>125</sup> Each EEL consists of an interconnection tie pair, a loop component and a transport component. I disagree with Ms. Stewart’s suggestion that a commingled EEL would require an additional central office connection channel to connect the loop and transport pieces together.

<sup>126</sup> The source documents for these rates are attached to this testimony as Exhibit DD-31.

<sup>127</sup> These numbers are calculated assuming a 2 year average customer life. The upper bound was calculated by dividing the upper bound cost estimate (\$425,000) by the two year EEL revenue increase from 5 miles of transport (\$138.90 \* 24) and dividing the result by 0.78 to account for potential discounts from Qwest’s regional commitment plan. The lower bound was calculated

1 to private line conversions”<sup>128</sup> during 2006<sup>129</sup> alone, Qwest has undoubtedly  
2 already recouped more than enough money from CLECs to make these or more  
3 efficient systems or other changes.

4 **Q. WHY DO YOU BELIEVE THAT ALLOWING CLECS TO USE A SINGLE**  
5 **CIRCUIT ID FOR COMMINGLED EELS WOULD BE A LOWER COST**  
6 **SOLUTION THAN THE SYSTEM CHANGES PROPOSED BY QWEST?**

7 A. The FCC recognized that the conversion away from UNEs to non-UNEs was  
8 primarily a billing change.<sup>130</sup> Qwest currently bills UNE EELs on a single bill  
9 and utilizes a single circuit ID. Each bill contains USOCs for each component of  
10 the EEL circuit which dictates the price the CLEC pays. Qwest could have  
11 simply charged higher rates for the portion of the circuit that was no longer a  
12 UNE. This could have been done either through a new set of USOCs specific to  
13 commingled circuits, for tracking purposes, or simply by implementing rate  
14 increases as the FCC envisioned. Retaining a single circuit ID would eliminate  
15 the need for a half a million dollar system change as there is no repair  
16 commitment issue when a single circuit ID is utilized. The cost of new USOCs is

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by dividing the lower bound cost estimate (\$375,000) by the two year EEL revenue increase from 10 miles of transport (\$212.74 \* 24) and does not include the regional commitment plan.

<sup>128</sup> Million Surrebuttal, p. 12, line 14.

<sup>129</sup> It should be noted that these conversions weren't necessarily to commingled EELs (Qwest did not provide how many commingled EELs CLECs actually buy), but the price increases available to Qwest as a result of these conversions would be similar.

<sup>130</sup> TRO ¶ 588.

1 likely to be in the neighborhood of tens of thousands of dollars rather than the  
2 hundreds of thousands of dollars associated with Qwest's systems change  
3 proposal. Qwest has the burden to establish its costs, and it has not shown this is  
4 not the case. As discussed above, it had not provided evidence that it even  
5 developed such cost data or conducted such an analysis. Focusing instead on a  
6 high cost less efficient approach allows Qwest to argue it should not have to meet  
7 the 4 hour repair commitment time at all for a commingled EEL, rather than  
8 engaging in the exercise ordered by the Commission, to develop the record as to  
9 costs.

10 I recognize that the Commission did not order Qwest to implement the single  
11 circuit ID solution, as I proposed in earlier testimony in this case.<sup>131</sup> However, as  
12 part of Qwest's obligation "to develop a record on the costs and benefits of  
13 Eschelon's proposed single interval proposal,"<sup>132</sup> Qwest should demonstrate that  
14 its solution is the least cost solution to implementing a single repair commitment

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<sup>131</sup> It also did not prohibit Qwest from doing so. As I indicated earlier, the Commission did not state in its Resolution of Issues 9-58 and 9-59 on pages 66-68 that there are two different circuits (as opposed to a "portion of a commingled circuit" per TRO ¶594). Rather, the Commission allowed Qwest to use two circuit identifiers ("IDs") for the Commingled EEL (the "commingled circuit," *id.*). Although the Commission allowed Qwest to use two circuit IDs, Qwest is not *required* to do so as a physical or legal matter. The Commission said that it was adopting Qwest's repair proposal "given existing operation systems." Order No. 70356, p. 67, lines 25-26. Since then, the Commission has ordered Qwest to develop the record as to costs, but Qwest did not provide evidence for the record of costs associated with other feasible uses of its existing operations systems, such as using the existing remarks field, as discussed above.

<sup>132</sup> Arizona Commission Decision No. 70740, p. 14, lines 23-24.

1 time and, at the very least, consider the cost of the single proposals long presented  
2 by Eschelon in this case.

3  
4 **IV. CONCLUSION**

5 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

6 A. The remaining issue for resolution as a result of the Commission's recent order is  
7 fundamentally about the end user customer experience. CLECs have a right to  
8 serve its customers via commingled EELs, but Qwest seeks to effectively vitiate  
9 that right by making commingled EELs an unusable alternative, compared to their  
10 UNE or special access equivalent, by unnecessarily allowing itself a longer repair  
11 commitment, up to 8 hours, for commingled EELs, compared with a 4 hour repair  
12 commitment for UNE and special access EELs. CLECs using commingled EELs  
13 can not compete effectively with Qwest if they must give their customers an  
14 anticipated repair time that is twice what a Qwest retail customer would receive  
15 when served over the identical physical facility. Qwest's proposal should be  
16 rejected.

17 Qwest has failed to "to develop a record on the costs and benefits of Eschelon's  
18 proposed single interval proposal"<sup>133</sup> as required by the Commission. Instead  
19 Qwest has selectively considered one possible solution, without regard for other

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<sup>133</sup> Arizona Commission Decision No. 70740, p. 14, lines 23-25.

1 alternatives and the costs of those alternatives. Qwest has not demonstrated that  
2 its solution is the least cost solution and, at a minimum, should have compared the  
3 cost of the system changes to the cost of using the existing electronic process in  
4 association with comments in the existing remarks section of a trouble report, and  
5 Eschelon's single circuit ID proposal.

6 The benefit of Eschelon's proposal to end user customers and competition is clear.  
7 Customers served via commingled EELs will not be subject to longer repair  
8 commitment times and are less likely to suffer delays, if Eschelon's proposal is  
9 adopted. With Qwest's proposal, even though Qwest may happen to repair the  
10 commingled circuit within less than 8 hours in particular or even typical  
11 instances, CLECs cannot commit to less time to their customers and therefore  
12 cannot set customer expectations and plan their businesses accordingly. This is a  
13 competitive disadvantage, to the detriment of competition.

14 Finally, Qwest should not be relieved of its performance obligations with respect  
15 to commingled EELs. Qwest should not be allowed to consider a customer  
16 repaired even when a trouble continues to exist on Qwest's network causing the  
17 customer to be out of service.

18 **Q. WHAT ARE YOUR RECOMMENDATIONS TO THE COMMISSION?**

19 A. I recommend that the Commission adopt Eschelon's proposed language for the  
20 repair of commingled EELs, with the changes reflected in Eschelon's current

1 language proposal (shown above). Eschelon also requests any further relief that  
2 the Commission deems just and proper, based on this additional record, to  
3 facilitate the efficient, effective, and nondiscriminatory provision and repair of  
4 commingled EELs as requested by Eschelon.

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A.** Yes.

7

1 ORIGINAL and 15 copies sent via UPS overnight delivery for filing this 5<sup>th</sup> day of June,  
2 2009, to:

3 Arizona Corporation Commission  
4 Docket Control – Utilities Division  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7  
8 COPIES of the foregoing sent by U.S. Mail and/or UPS Overnight to:  
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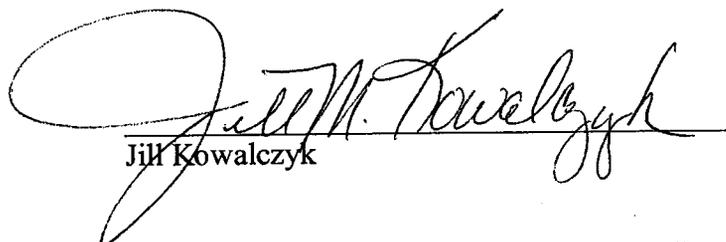
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12

  
Jill Kowalczyk



**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**KRISTIN K. MAYES, Chairman**  
**GARY PIERCE**  
**SANDRA D. KENNEDY**  
**PAUL NEWMAN**  
**BOB STUMP**

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

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**EXHIBIT DD-28**

**RESPONSIVE TESTIMONY**

**OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**ESCHELON TELECOM OF ARIZONA, INC.**

June 5, 2009

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd  
J. Dennis O'Brien  
Thomas Pugh  
Phyllis A. Reha  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Qwest Corporation's  
Conversion of UNEs to Non-UNEs

ISSUE DATE: March 23, 2009

DOCKET NO. P-421/C-07-370

In the Matter of Qwest Corporation's  
Arrangements for Commingled Elements

DOCKET NO. P-421/C-07-371

ORDER ADOPTING ADMINISTRATIVE  
LAW JUDGE'S RECOMMENDED ORDER  
ON MOTION FOR SUMMARY  
DISPOSITION

AMENDED NOTICE AND ORDER FOR  
HEARING

**PROCEDURAL HISTORY**

On June 26, 2007, the Commission referred the jurisdictional issues in these two related cases to the Office of Administrative Hearings under Minn. Stat. § 14.57 *et seq.* On December 9, 2008, the Administrative Law Judge filed her Recommended Order on Motion for Summary Disposition, finding that the Commission did have jurisdiction in both cases and explaining her reasons for reaching that conclusion.

On December 19, 2008, Qwest Corporation (Qwest) filed exceptions to the Administrative Law Judge's recommended order. The following parties filed replies supporting the conclusions of the Administrative Law Judge: the Minnesota Department of Commerce; Integra Telecom of Minnesota, Inc.; Eschelon Telecom of Minnesota, Inc.; and the CLEC Coalition, a group of competitive local exchange carriers.<sup>1</sup> On March 3, 2009, the Administrative Law Judge's Recommended Order on Motion for Summary Disposition came before the Commission.

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<sup>1</sup> The members of the CLEC Coalition are McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; TDS Metrocom; and XO Communications of Minnesota, Inc.

## **FINDINGS AND CONCLUSIONS**

### **I. Threshold Jurisdictional Issues**

The issues in both these cases stem from decisions of the Federal Communications Commission (FCC) releasing Qwest and other incumbent local exchange carriers from earlier obligations under 47 U.S.C. §§ 251 (c) (3) and 252 (d) (1) to provide certain services as unbundled network elements (UNEs) to competitive local exchange carriers at cost-based rates. As services are “de-listed” as UNEs, incumbent carriers become free to charge higher, market-based rates for them, even when these services are commingled with services that remain UNEs.

In these two cases, competitive local exchange carriers purchasing wholesale services from Qwest asked this commission to set rates and terms and conditions of service for the conversion of specific existing service arrangements from UNE-based facilities to non-UNE-based facilities and for the commingling of UNE and non-UNE service components on a going-forward basis. Qwest challenged the Commission’s jurisdiction over these issues, claiming that exclusive jurisdiction lay with the FCC.

The Administrative Law Judge to whom the Commission referred the jurisdictional issues in these cases framed them as follows:

- Does the Commission have authority with respect to issues arising over the rates, terms and conditions for conversions from UNE to non-UNE facilities? (Docket 07-370)
- Does the Commission have authority with respect to disputes arising over the terms and conditions for the UNE and non-UNE components and the interrelationship of them in commingled arrangements? (Docket 07-371)

After briefing by all parties, the Administrative Law Judge found that this Commission had jurisdiction in both cases. On the conversion issue, she found as follows:

The Administrative Law Judge has concluded, based on the provisions of the TRO<sup>2</sup> and the TRRO,<sup>3</sup> that the FCC has expressly directed the negotiation of rates, terms, and conditions relating to conversion processes in interconnection agreements, and consequently the Commission has legal authority under § 252 to address these issues in this docket.<sup>4</sup> (Footnotes added.)

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<sup>2</sup> Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd. 16978 (2003), vacated in part, remanded in part, U.S. Telecom Ass’n v. FCC, 359 F.3d 554 (D.C.Cir. 2004) (TRO).

<sup>3</sup> Order on Remand, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 FCC Rcd. 2533 (2005), aff’d, Covad Communications Co. v. FCC, 450 F.3d 528 (D.C. Cir. 2006) (TRRO).

<sup>4</sup> ALJ’s Recommended Order, p. 6.

On the issue of commingling, she found:

The FCC has clearly stated that these are the types of issues to be addressed in interconnection agreements, and the Administrative Law Judge accordingly concludes the Commission has the legal authority under § 252 to resolve issues in this docket relating to the terms and conditions under which Qwest provides commingled elements and services.<sup>5</sup>

The Commission has carefully examined the Administrative Law Judge's recommended order and the record on which it is based. Her recommended order is closely reasoned in its analysis and compelling in its conclusions; the Commission will accept and adopt it.

The Commission will also refer the remaining issues, which relate to rates and terms and conditions of service, for evidentiary development, as set forth below.

## **II. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has jurisdiction over the remaining substantive issues in this case as set forth in detail in the Recommended Order of the Administrative Law Judge, adopted herein.

The Commission finds that it cannot resolve the remaining issues of rates and terms and conditions of service on the basis of the record before it. These issues turn on numerous, specific facts that are best developed in formal evidentiary hearings. The Commission will therefore amend its original Notice and Order for Hearing to refer the remaining issues in this case for contested case proceedings.

## **III. Issues to be Addressed**

The remaining issues in this case relate to appropriate rates and terms and conditions of service under 47 U.S.C. § 252 (d), Minn. Stat. §§ 237.09 and 237.12, and related statutes and regulations. The parties shall address these issues in the course of contested case proceedings. They may also raise and address other issues relevant to rates and terms and conditions of service.

## **IV. Procedural Outline**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Kathleen D. Sheehy. Her address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101; (651) 361-7848. The mailing address of the Office of Administrative Hearings is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

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<sup>5</sup> ALJ's Recommended Order, p. 8.

**B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Ganesh Krishnan, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2215; or Jeanne Cochran, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-2106.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities: Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing who has not already done so must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are Qwest; the Minnesota Department of Commerce; Integra Telecom of Minnesota, Inc.; Eschelon Telecom of Minnesota, Inc.; and the CLEC Coalition. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will inform the parties and the Commission of its time, date, and place.

Parties and persons intending to intervene in the matter should participate in the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to participate in the pre-hearing conference and to file their petitions to intervene as soon as possible.

### **V. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to rate setting cases. Persons appearing in this proceeding may be subject to registration, reporting,

and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

**VI. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

**ORDER**

1. The Commission hereby accepts, adopts, and incorporates herein the Administrative Law Judge's Recommended Order on Motion for Summary Disposition, which is attached as Attachment B.
2. The Commission hereby refers the remaining issues in this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

  
Burl W. Haar  
Executive Secretary

(SEAL)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of Qwest Corporation's  
Conversion of UNEs to Non-UNEs

MPUC Docket No. P-421/C-07-370  
P-421/C-07-371

In the Matter of Qwest Corporation's  
Arrangements for Commingled Elements

OAH Docket No. 3-2500-19047-2

**NOTICE OF APPEARANCE**

Name, Address, Mailing Address, and Telephone Number of Administrative Law Judge:

Kathleen D. Sheehy, Office of Administrative Hearings, 600 North Robert Street, St. Paul,  
Minnesota 55101; Mailing Address: P.O. Box 64620, St. Paul, Minnesota 55164-0620;  
Telephone Number: (651) 361-7848.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTACHMENT B**

**OAH 3-2500-19047-2  
MPUC P-421/C-07-370  
& P-421/C-07-371**

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION**

**In the Matter of Qwest Corporation's  
Conversion of UNEs to Non-UNEs**

**RECOMMENDED ORDER  
ON MOTION FOR  
SUMMARY DISPOSITION**

**In the Matter of Qwest Corporation's  
Arrangements for Commingled  
Elements**

This matter is before Administrative Law Judge Kathleen D. Sheehy on Qwest's Motion for Summary Disposition, filed September 15, 2008. The motion record closed October 31, 2008, upon receipt of Qwest's Reply Memorandum.

Jason D. Topp, Qwest Corporation, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared on behalf of Qwest. Dennis D. Ahlers, Associate General Counsel, Integra Telecom, 730 Second Avenue South, Suite 900, Minneapolis, MN 55402, appeared for Integra. Dan Lipschultz, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh St., Minneapolis, MN 55402-4129, appeared on behalf of the CLEC Coalition. Linda S. Jensen, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101-2131, appeared on behalf of the Department of Commerce (Department).

Based upon all of the files, records, and proceedings herein, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDATION AND ORDER**

1. IT IS HEREBY RECOMMENDED that Qwest's Motion for Summary Disposition be DENIED.
2. IT IS HEREBY ORDERED that this Recommendation is certified for final decision to the Minnesota Public Utilities Commission.

Dated: December 9, 2008

s/Kathleen D. Sheehy

**KATHLEEN D. SHEEHY**  
Administrative Law Judge

## MEMORANDUM

The Minnesota Public Utilities Commission opened these dockets to further investigate issues that arose during the arbitration of an interconnection agreement between Qwest and Eschelon (now Integra). In the arbitration proceeding, Eschelon and Qwest disagreed about the appropriate language in the interconnection agreement relating to Qwest's processes and prices for converting unbundled network elements (UNEs)—which Qwest is no longer obligated to offer at TELRIC prices under § 251 of the Telecommunications Act of 1996—into services available (at higher prices) through Qwest's tariff or through a commercial agreement. In addition, the parties disagreed about the appropriate language relating to Qwest's processes and prices for providing commingled enhanced extended loops (EELs), which are composed of both a § 251 UNE (the loop) and a non-UNE facility (the transport circuit).

Qwest objected to the Commission's assertion of authority over these issues, and in its order referring this matter to the Office of Administrative Hearings, the Commission requested that Qwest's jurisdictional objections be addressed before any further proceedings take place.<sup>1</sup> The parties jointly agreed to defer consideration of these issues for a time in order to focus on other pending dockets.<sup>2</sup> They have slightly reframed the wording of the legal issues referred by the Commission.<sup>3</sup> And they have further agreed that Qwest's motion for summary disposition is the best procedural method for presenting these jurisdictional issues and that there are no genuine issues of material fact that would preclude resolution of these issues as a matter of law.<sup>4</sup>

### Legal Issues

1. Does the Commission have authority with respect to issues arising over the rates, terms and conditions for conversions from UNE to non-UNE facilities? (Docket 07-370)

2. Does the Commission have authority with respect to disputes arising over the terms and conditions for the UNE and non-UNE components and the interrelationship of them in commingled arrangements? (Docket 07-371)

### Arguments of the Parties

Qwest maintains that state commissions are limited to setting rates, terms, and conditions for UNEs and other services that incumbent local exchange carriers (ILECs) are required to provide pursuant to § 251. Because UNE conversions and commingled EELs involve non-251 services, state commissions lack authority to set rates, terms, and conditions for them. It maintains that a

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<sup>1</sup> Notice and Order for Hearing (June 26, 2007).

<sup>2</sup> Joint Request for Continuance (September 21, 2007).

<sup>3</sup> Joint Statement of Legal Issues (May 29, 2008).

<sup>4</sup> First Prehearing Order ¶ 5 (September 12, 2007).

state commission's only authority with respect to these arrangements is to establish rates and terms for the UNE component of a commingled EEL, because that is the only component that is within a commission's § 251 authority. Qwest cites a variety of commission decisions and federal court decisions for the proposition that the arbitration authority of state commissions under § 252 only permits the imposition of terms and conditions for services and UNEs included within § 251. Accordingly, Qwest contends the commission "has no jurisdiction to determine how Qwest should provide the non-251 services used with UNE conversions or the non-251 services used with commingled EELs."<sup>5</sup> Qwest also maintains that the UNE and non-UNE components of commingled EELs are subject to different regulatory schemes and that Qwest cannot be compelled to provide the non-UNE elements and services under the "ultra-regulatory framework" of § 251. Finally, Qwest maintains that a state commission lacks jurisdiction to establish terms and conditions for interstate access services, because that is within the exclusive regulatory authority of the FCC.

Integra maintains that the FCC has explicitly addressed conversion processes and has made it clear that carriers are to negotiate those processes through the § 252 arbitration process and that state commissions have the obligation to address and resolve these issues through that process. In addition, Integra argues that the FCC has provided guidance on the pricing and procedures to be employed, indicating that conversion should be a "seamless" process that does not affect a customer's perception of service quality. Consequently, Integra contends the Minnesota Commission has not only the authority but the obligation to oversee this process under § 252. With regard to commingling, Integra maintains that because Qwest is obligated under § 251 to provide commingled EELs, the Commission has the authority to prohibit Qwest from erecting operational barriers that would make the process of ordering, provisioning, and repairing commingled EELs difficult or impossible for competitive local exchange carriers (CLECs) to use. Both Integra and the CLEC Coalition urge the Commission to follow the approach taken by the Washington State Utilities and Transportation Board, which concluded that conversions and commingled arrangements fall within the arbitration authority of state commissions.<sup>6</sup>

The Department contends that Qwest has overstated the distinction between § 251 and non-251 elements, maintaining that conversion involves the process of moving a § 251 element to a different status and that all activities involved in the process therefore relate to the cost, provisioning, and pricing of § 251 UNEs, over which the Commission has exclusive authority. The Department also argues that the Commission has independent authority under state law to ensure that the wholesale pricing of converting and commingling non-251 elements is fair and reasonable.

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<sup>5</sup> Qwest Memorandum in Support of Motion for Summary Disposition at 9.

<sup>6</sup> *In the Matter of the Petition of Qwest Corporation and Eschelon Telecom, Inc.*, Order No. 18, Commission's Final Order at ¶¶ 68-70, 92-108, Docket No. UT-063061 (WUTC Oct. 16, 2008).

## Analysis

Under 47 U.S.C. § 251, ILECs are required to negotiate in good faith the terms and conditions of interconnection agreements with CLECs and to lease certain network facilities at TELRIC rates. If an agreement cannot be negotiated, the Act requires that unresolved § 251 disputes be submitted to arbitration, subject to oversight by state public service commissions. Initially, the FCC took the position that ILECs had to "unbundle" and provide most basic network elements at TELRIC prices. Since then, the FCC has changed its analysis of unbundling and interconnection obligations and has progressively limited the number of network elements ILECs must provide under § 251. Those changes were announced in 2003, in the Triennial Review Order (TRO),<sup>7</sup> and in 2005, in the Triennial Review Remand Order (TRRO).<sup>8</sup> The issues in this case arise as a result of the FCC's de-listing of certain § 251 elements in those orders, which have required ILECs and CLECs to address both the conversion of a product originally provided as a UNE to an alternative service arrangement and the commingling of a UNE with another product.

## Conversions

In a section of the TRO addressed to the scope of unbundling obligations, the FCC addressed conversion issues as follows:

We decline the suggestions of several parties to adopt rules establishing specific procedures and processes that incumbent LECs and competitive LECs must follow to convert wholesale services (e.g., special access services offered pursuant to interstate tariff) to UNEs or UNE combinations, and the reverse, *i.e.*, converting UNEs or UNE combinations to wholesale services. Because both the incumbent LEC and requesting carriers have an incentive to ensure correct payment for services rendered, and *because both parties are bound by duties to negotiate in good faith, we conclude that these carriers can establish any necessary procedures to perform conversions with minimal guidance on our part.*<sup>9</sup>

. . . Converting between wholesale services and UNEs or UNE combinations should be a seamless process that does not affect the customer's perception of service quality. We recognize that conversions may increase the risk of service disruptions to

<sup>7</sup> Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd. 16978 (2003), vacated in part, remanded in part, *U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (TRO).

<sup>8</sup> Order on Remand, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd. 2533 (2005), *aff'd*, *Covad Communications Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006) (TRRO).

<sup>9</sup> TRO ¶ 585 (emphasis added) (footnote omitted).

competitive LEC customers because they often require a competitive LEC to groom interexchange traffic off circuits and equipment that are already in use in order to comply with eligibility criteria. Thus, *requesting carriers should establish and abide by any necessary operational procedures to ensure customer service quality is not affected by conversions.*<sup>10</sup>

. . . We recognize . . . that once a competitive LEC starts serving a customer, there exists a risk of wasteful and unnecessary charges, such as termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time. We agree that such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC as a result of converting a UNE or UNE combination to a wholesale service. Because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, we conclude that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions. Moreover, we conclude that such charges are inconsistent with section 202 of the Act, which prohibits carriers from subjecting any person or class of persons (e.g., competitive LECs purchasing UNEs or UNE combinations) to any undue or unreasonable prejudice or advantage.<sup>11</sup>

We conclude that conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments. *We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts.*<sup>12</sup>

Qwest argues, creatively, that the TRO addressed only the reverse of the situation here—conversions from wholesale non-251 services to Section 251 UNEs—and that the absence of codified regulations governing conversions to non-251 services underscores the fact that state commissions lack authority over this process.<sup>13</sup> On the contrary, the FCC could not have been more clear in its direction that conversion processes include both the procedures to convert wholesale services to UNEs "and the reverse, *i.e.*, converting UNEs or UNE combinations to wholesale services."<sup>14</sup> The FCC clearly envisioned that the availability of an element as a UNE might change, depending on other

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<sup>10</sup> TRO ¶ 586 (emphasis added) (footnotes omitted).

<sup>11</sup> TRO ¶ 587 (footnotes omitted).

<sup>12</sup> TRO ¶ 588 (emphasis added).

<sup>13</sup> Qwest Reply Memorandum at 4-5.

<sup>14</sup> TRO ¶ 585.

circumstances, and that ILECs and CLECs should be prepared to shift their billing for these elements between prices set in interconnection agreements and those contained in long-term commercial contracts.<sup>15</sup> The FCC did not adopt rules for the conversion process because it determined the parties should negotiate these terms in good faith in their interconnection agreements.

Moreover, in the TRRO the FCC reaffirmed the validity of its existing rules governing conversions and commingling in the situation where one element used as part of an EEL (dedicated transport) is no longer subject to unbundling pursuant to section 251(c)(3).<sup>16</sup> It also declined to prohibit conversions entirely, as requested by Bell Operating Companies (including Qwest), in part because of the difficulty CLECs have in purchasing circuits as UNEs:

For example, competitive LECs demonstrate that they often must purchase special access circuits because they encountered difficulties in purchasing the circuits as UNEs. In those cases, the competitive LECs accept special access pricing in order to provide prompt service to their customers, then convert those circuits to UNEs as soon as possible. Competitive LECs also explain that they may purchase special access services as part of a broader contract, which enables them to avoid having to coordinate connectivity through the access service request and local service request processes. But that option is available only because the availability of UNEs gives the competitive LECs leverage to negotiate lower prices for tariffed services.<sup>17</sup>

The Administrative Law Judge has concluded, based on the provisions of the TRO and the TRRO, that the FCC has expressly directed the negotiation of rates, terms, and conditions relating to conversion processes in interconnection agreements, and consequently the Commission has legal authority under § 252 to address these issues in this docket.

### **Commingling**

At one point in time, the FCC had restricted the obligation of an ILEC to "commingle" UNEs and combinations of UNEs with tariffed services; in the TRO, the FCC eliminated this restriction. The TRO provides, in relevant part:

We therefore modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g., switched and special access services offered pursuant to tariff), and to *require incumbent LECs to perform the necessary functions to effectuate such commingling upon request.*

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<sup>15</sup> TRO ¶ 587.

<sup>16</sup> TRRO ¶ 142 n. 398 (citing TRO ¶¶ 585-89 (conversions) and ¶¶ 579-84 (commingling)).

<sup>17</sup> TRRO ¶ 231.

By commingling, we mean the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act, or the combining of a UNE or UNE combination with one or more such wholesale services.<sup>18</sup>

We conclude that the Act does not prohibit the commingling of UNEs and wholesale services and that section 251(c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services. An incumbent LEC's wholesale services constitute one technically feasible method to provide nondiscriminatory access to UNEs and UNE combinations. . . . For these reasons, we require incumbent LECs to effectuate commingling by modifying their interstate access service tariffs to expressly permit connections with UNEs and UNE combinations.<sup>19</sup>

Finally, the FCC addressed arguments advanced by incumbent LECs that commingling should be prohibited because of the billing and operational issues involved in commingling a UNE with an interstate access service. It concluded that these issues could be addressed "through the same process that applies for other changes in our unbundling requirements adopted herein, i.e., through change of law provisions in interconnection agreements."<sup>20</sup> As noted above, the FCC reaffirmed the validity of these commingling rules in the TRRO.<sup>21</sup>

Qwest's argument that the Commission lacks authority is based more on semantics than on any substantive analysis of a state commission's legal authority to address the terms and conditions under which an ILEC is obligated to provide commingled facilities. It does not appear to the ALJ that Integra has advocated contract language that would impermissibly require Qwest to provide transport or any other non-251 facility as a UNE or at a TELRIC rate.<sup>22</sup> What

<sup>18</sup> TRO ¶ 579 (emphasis added).

<sup>19</sup> TRO ¶ 581 (footnotes omitted).

<sup>20</sup> TRO ¶ 583.

<sup>21</sup> TRRO ¶142 n. 398.

<sup>22</sup> See Integra Memorandum at 6 (UNE component of a commingled EEL is priced at TELRIC; the non-UNE may be priced at a tariffed or other non-UNE rate). See also *In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration to Resolve Issues Relating to an interconnection Agreement with Qwest Corporation*, Arbitrator's Report at PP 46, 48 (Dec. 15, 2004), adopted by Minnesota Public Utilities Commission, Docket No. P-5692, 421/IC-04-549 (Mar. 14, 2005) (declining to characterize non-251 elements and services as UNEs or to require their provision at TELRIC rates); *Qwest Corp. v. Arizona Corporation Commission*, 496 F.Supp.2d 1069 (D. Ariz. 2007) (state commission cannot require unbundling of non-251 elements or require their provision at TELRIC rates as a matter of state law); *Bellsouth Telecommunications, Inc., v. Kentucky Public Service Commission*, 2007 WL 2736544 (E.D. Ky.) (state commission cannot arbitrate rates for switching, a non-251 element).

Integra has disputed are the duplicative operational processes involved in ordering, provisioning, billing, and repairing UNEs separately from interstate access services, maintaining these processes constitute an operational barrier to obtaining access to a UNE. The FCC has clearly stated that these are the types of issues to be addressed in interconnection agreements, and the Administrative Law Judge accordingly concludes the Commission has the legal authority under § 252 to resolve issues in this docket relating to the terms and conditions under which Qwest provides commingled elements and services.

Based on the agreement of the parties, the Administrative Law Judge hereby certifies this Recommended Order to the Commission for its consideration and final order pursuant to Minn. R. 1400.7600 A & B before any further proceedings take place in this docket.<sup>23</sup>

K.D.S.

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<sup>23</sup> Fourth Prehearing Order (June 27, 2008).

STATE OF MINNESOTA)  
  )SS  
COUNTY OF RAMSEY )

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 23rd day of March, 2009 she served the attached

ORDER ADOPTING ADMINISTRATIVE LAW JUDGE'S RECOMMENDED ORDER ON MOTION FOR SUMMARY DISPOSITION - AMENDED NOTICE AND ORDER FOR HEARING.

MNPUC Docket Number: P-421/C-07-370 & P-421/C-07-371

- XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid
- XX By personal service
- XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

- Commissioners
- Carol Casebolt
- Peter Brown
- Eric Witte
- Marcia Johnson
- Kate Kahlert
- Mark Oberlander
- Kevin O'Grady
- Ganesh Krishnen
- Mary Swoboda
- DOC Docketing
- AG - PUC
- Julia Anderson - OAG
- John Lindell - OAG

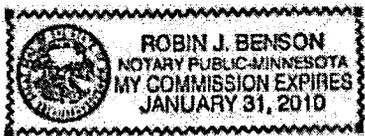
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 23 day of

March, 2009

Robin Benson  
Notary Public





**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**KRISTIN K. MAYES, Chairman**  
**GARY PIERCE**  
**SANDRA D. KENNEDY**  
**PAUL NEWMAN**  
**BOB STUMP**

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

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**EXHIBIT DD-29**

**RESPONSIVE TESTIMONY**

**OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**ESCHELON TELECOM OF ARIZONA, INC.**

June 5, 2009

**EXHIBIT C  
SERVICE INTERVAL TABLES**

(h) Established Repair Intervals for Basic 2-wire Analog Loops, Line Splitting,:

Twenty-four (24) hours OSS
Forty-eight (48) hours AS

(i) Established Repair Intervals for 4-wire Analog Loops, 2/4 Wire Non-Loaded Loops, Basic Rate ISDN Capable Loops, and ADSL Compatible Loops, xDSL-I Capable Loops, DS1 Capable Loops, and DS3 Capable Loops:

Four (4) hours
----------------

(j) Quick Loop (No dispatch required)

a)	1 to 8 Lines	Three (3) business days
b)	9 to 16 Lines	Three (3) business days
c)	17 to 24 Lines	Three (3) business days
d)	25 or more Lines	ICB

Quick Loop with Number Portability (No dispatch required)

a)	1 to 8 Lines	Three (3) business days
b)	9 to 24 Lines	Four (4) business days
c)	25 or more Lines	ICB

(k) Intentionally Left Blank

(l) Intentionally Left Blank

(M) Established Service Intervals for 2/4 wire Distribution and Non-loaded Distribution Loop

1 or more Lines	Two (2) business days or Appointment Scheduler
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**EXHIBIT C  
SERVICE INTERVAL TABLES**

**2.0 Unbundled Dedicated Interoffice Transport (UDIT) Service Interval Table:**

<b>Product</b>	<b>Services Ordered</b>	<b>Installation Commitments</b>	<b>Repair Commitments</b>
<b>UDIT Rearrangements</b>			
<b>DS0</b>	1 to 8	Zone 1: Five (5) business days  Zone 2: Six (6) business days	Four (4) hrs. Zone 1  Four (4) hrs. Zone 2
	9 to 16	Zone 1: Six (6) business days  Zone 2: Seven (7) business days	Four (4) hrs. Zone 1  Four (4) hrs. Zone 2
	17 to 24	Zone 1: Seven (7) business days  Zone 2: Eight (8) business days	Four (4) hrs. Zone 1  Four (4) hrs. Zone 2
	25 or more	ICB	ICB
<b>DS1</b>	1 to 8	Zone 1: Five (5) business days  Zone 2: Eight (8) business days	Four (4) hrs Zone 1  Four (4) hrs Zone 2
	9 to 16	Zone 1: Six (6) business days  Zone 2: Nine (9) business days	Four (4) hrs Zone 1  Four (4) hrs Zone 2
	17 to 24	Zone 1: Seven (7) business days  Zone 2: Ten (10) business days	Four (4) hrs Zone1  Four (4) hrs Zone 2
	25 or more	ICB	Four (4) hrs
<b>DS3</b>	1 to 3 Circuits	Zone 1: Seven (7) business days  Zone 2: Nine (9) business days	Four (4) hrs Zone 1  Four (4) hrs Zone 2
	4 through 12 Circuits	ICB	Four (4) hrs

**EXHIBIT C  
SERVICE INTERVAL TABLES**

**5.0 Intentionally Left Blank**

**6.0 Enhanced Extended Loop (EEL) and Loop Mux Combination (LMC) Service Interval Table:**

<b>Product</b>	<b>Services Ordered</b>	<b>Installation Commitments</b>	<b>Repair Commitments</b>
<b>Enhanced Extended Loop (EEL) - Loop Mux Combo (LMC)</b> DS0 or Voice Grade Equivalent	1 to 8	Zone 1: Five (5) business days  Zone 2: Six (6) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	9 to 16	Zone 1: Six (6) business days  Zone 2: Seven (7) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	17 to 24	Zone 1: Seven (7) business days  Zone 2: Eight (8) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	25 or more	ICB	Four (4) hrs
<b>Enhanced Extended Loop (EEL) - Loop Mux Combo (LMC)</b>  DS1	1 to 8	Zone 1: Five (5) business days  Zone 2: Eight (8) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	9 to 16	Zone 1: Six (6) business days  Zone 2: Nine (9) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	17 to 24	Zone 1: Seven (7) business days  Zone 2: Ten (10) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	25 or more	ICB	Four (4) hrs
<b>Enhanced Extended Loop (EEL) - Loop Mux Combo (LMC)</b>  DS3 Subject to cap limitations in the Agreement.	1 to 3 Circuits	Zone 1: Seven (7) business days  Zone 2: Nine (9) business days	Four (4) hrs High Density  Four (4) hrs Low Density
	4 or more Circuits	ICB	Four (4) hrs
<b>Enhanced Extended Loop Conversions--</b> Private Line (PLTS) to EEL - Conversion as is		ICB	4 hrs

**REGULATIONS, RATES AND CHARGES**

Applying to the provision of Access Services  
within a Local Access and Transport Area (LATA)  
or equivalent market areas for  
Connection to Interstate Communications Facilities  
for Customers within the operating territory of

**Qwest Corporation**

in the State(s) of

Arizona (AZ) (Company Code [CC] 5101)

Colorado (CO) (CC 5102)

Idaho (ID - Boise LATA) (CC 5103)

Idaho (ID - Spokane LATA) (CC 5162)

Iowa (IA) (CC 5141)

Minnesota (MN) (CC 5142)

Montana (MT) (CC 5104)

Nebraska (NE) (CC 5143)

New Mexico (NM) (CC 5105)

North Dakota (ND) (CC 5144)

Oregon (OR) (CC 5163)

South Dakota (SD) (CC 5145)

Utah (UT) (CC 5107)

Washington (WA) (CC 5161)

Wyoming (WY) (CC 5108)

as provided herein

d/b/a

Qwest

Original Tariff effective August 8, 2000

Access Services are provided by means of wire, fiber optics, radio or  
any other suitable technology or a combination thereof.

[1] This entire Tariff is issued under the authority of Special Permission No. 00-072.

(Filed under Transmittal No. 2.)

Issued: August 7, 2000

Effective: August 8, 2000

By: Director - Federal Regulatory  
Suite 5100  
1801 California Street  
Denver, Colorado 80202

**7. PRIVATE LINE TRANSPORT SERVICE**

**7.1 GENERAL**

**7.1.2 MISCELLANEOUS CHARGES AND CREDITS**

**G. Service Interruptions and Credits (Cont'd)**

(T)

**4. Use of an Alternative Service Provided by the Company**

Should the customer elect to use an alternative service provided by the Company during the period that a service is interrupted, the customer must pay the tariffed rates and charges for the alternative service used.

**5. Temporary Surrender of a Service**

In certain instances, the customer may be requested by the Company to surrender a service for purposes other than maintenance, testing or activity relating to a service order. If the customer consents, a credit allowance will be granted. The credit allowance will be 1/1440 of the monthly rate for each period of 30 minutes or fraction thereof that the service is surrendered. In no case will the credit allowance exceed the monthly rate for the service surrendered in any 1 monthly billing period.

**6. Service Guarantee - Repair**

**a. General**

The Company assures that all service interruptions for the following PLTS services and associated rate elements, excluding Self-Healing On-Net Channel Termination, will be restored within four hours from the time the interruption was reported by the customer.

- Low Speed Data
- D.C. Channel
- Voice Grade
- Audio and Video - monthly rated
- Digital Data Service
- Digital Data Service 2-Wire
- Simultaneous Voice Data Service
- DS1 Service
- DS3 Service
- Synchronous Service Transport
- SONET Ring Service CT

(Filed under Transmittal No. 157.)

Issued: March 24, 2003

Effective: April 8, 2003

**7. PRIVATE LINE TRANSPORT SERVICE**

**7.1 GENERAL**

**7.1.2 MISCELLANEOUS CHARGES AND CREDITS**

**G.6.a. (Cont'd)**

Service Guarantee - Repair credit allowances for SST concatenated services with SHARP apply only when a Company provided SONET-compatible Remote Node is available at the customer premises. Repair credit allowances do not apply to Optical SHARP.

When a Service Guarantee - Repair credit is applied to a service, no other service interruption credit calculation is applicable for the same interruption.

The process used to determine the credit allowance for service interruption shall be as follows:

- For Service Guarantee - Repair and Service Guarantee - Diversity two point services, one credit shall apply per inoperative two-point service, per occurrence as set forth in d., e. and 11.2.1.
- For Service Guarantee - Repair and Service Guarantee - Diversity, multipoint services, one credit shall apply per inoperative multipoint service, per occurrence as set forth in d., e. and 11.2.1.

(D)

(Filed under Transmittal No. 245.)

Issued: July 1, 2005

Effective: July 16, 2005

**7. PRIVATE LINE TRANSPORT SERVICE**

**7.1 GENERAL**

**7.1.2 MISCELLANEOUS CHARGES AND CREDITS**

**G.6.a. (Cont'd)**

(T)

- For Service Guarantee - Repair and Service Guarantee - Diversity multiplexed services, the credit shall apply per inoperative termination, per occurrence. When the facility which is multiplexed or the multiplexer itself is inoperative, the credit shall be assessed per inoperative termination associated with the service including the multiplexer on the facility to the hub, and all the individual services from the hub. When the service which rides a channel of the multiplexed facility is inoperative while the facility which is multiplexed and its multiplexer are operative, the credit shall apply to that portion of the service from the hub to a customer premises which is inoperative. For Service Guarantee - Repair and Service Guarantee - Diversity multiplexed services, the credit shall apply per inoperative termination, per occurrence as set forth in d., e. and 11.2.1, following.
- For Private Line Transport Services Digital Data Service, Digital Data Service 2-Wire, and DS1 Service any period during which the error performance is below that specified for the service will be considered as an interruption.

(Filed under Transmittal No. 157.)

Issued: March 24, 2003

Effective: April 8, 2003

**COMPETITIVE  
PRIVATE LINE  
TRANSPORT SERVICES**

**Qwest Corporation  
Price Cap Tariff  
Arizona**

**TITLE PAGE  
Release 1**

Issued: 7-30-01

Effective: 8-29-01

Regulations, terms, conditions and charges  
for connection to intrastate communications facilities  
to provide Private Line Transport Services  
within a Local Access and Transport Area (LATA)  
over facilities wholly within the state and between  
points within a LATA for customers within the  
operating territory of

Qwest Corporation

in the State of

**ARIZONA**

(Company Code 5101)

as provided herein

Issued: 9-24-07

Effective: 10-24-07

## 2. GENERAL REGULATIONS

### 2.4 PAYMENT ARRANGEMENTS AND CREDIT ALLOWANCES

#### 2.4.5 CREDIT ALLOWANCE FOR SERVICE INTERRUPTIONS

##### B. When a Credit Allowance Applies (Cont'd)

3. For Private Line Transport Service Self-Healing Alternate Route Protection (SHARP), out of service credit will apply when the customer experiences a service interruption and the system fails to switch to the protected electronics and/or facilities within one second. The protected electronics and/or facilities are between the Company point of termination located on the customer premises and/or the Company Wire Center(s) associated with the SHARP option. Such credit will be based on information provided by the network surveillance system associated with SHARP. In the event of a service interruption, one month's billing credit of the protected service will be given. Such credit will apply to the Channel Termination and the SHARP rate element for SHARP protected service. Credit will be limited to a maximum of one month for an interruption or series of interruptions within that month. (C)
4. For Self-Healing Network Service (SHNS), out of service credit will apply as specified in 5.2.15.B.3., following. (C)
5. Service Guarantee - Repair (C)

The Company assures that all service interruptions for DS1 and DS3 Service, excluding Free-Frame DS1, will be restored within four (4) hours from the time the interruption was reported by the customer. Failure to meet this commitment will result in a credit allowance as set forth in b., following.

Issued: 7-30-01

Effective: 8-29-01

2. GENERAL REGULATIONS .

2.4 PAYMENT ARRANGEMENTS AND CREDIT ALLOWANCES

2.4.5 CREDIT ALLOWANCE FOR SERVICE INTERRUPTIONS

B.5. (Cont'd)

a. In addition to B.1. through B.4., preceding, as applicable, the following terms and conditions apply to Service Guarantee - Repair:

- A service is interrupted when it becomes unusable to the customer because of a failure of a facility component used to furnish service under this Tariff or in the event that the protective controls applied by the Company result in the complete loss of service by the customer. An interruption period starts when an inoperative service is reported and ends when the service is operative.
- The interruption period is based on the start and stop time of the service interruption and excludes customer requested monitoring and other times when the service or customer's premises is not available for testing or repair of the service.
- The credit allowance for an interruption or a series of interruptions shall not exceed any applicable monthly charges for the service interrupted in any one monthly billing period, as determined in B.1., preceding.

b. Service Guarantee - Repair Credit

	USOC	CREDIT
• DS1 Service		
- 4 hours up to but not including 8 hours	SG3BB	\$ 60.00
- 8 hours up to but not including 16 hours	SG3CB	70.00
- 16 hours up to but not including 24 hours	SG3DB	80.00
- 24 hours and over	SG3EB	100.00
• DS3 Service		
- 4 hours up to but not including 8 hours	SG3BB	500.00
- 8 hours up to but not including 16 hours	SG3CB	700.00
- 16 hours up to but not including 24 hours	SG3DB	800.00
- 24 hours and over	SG3EB	1,000.00



**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**KRISTIN K. MAYES, Chairman**  
**GARY PIERCE**  
**SANDRA D. KENNEDY**  
**PAUL NEWMAN**  
**BOB STUMP**

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

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**EXHIBIT DD-30**

**RESPONSIVE TESTIMONY**

**OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**ESCHELON TELECOM OF ARIZONA, INC.**

June 5, 2009

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	)	DOCKET UT-061625
	)	
QWEST CORPORATION	)	ORDER 08
	)	
For an Alternative Form of Regulation	)	ORDER ACCEPTING, SUBJECT TO
Pursuant to RCW 80.36.135	)	CONDITIONS, AFOR CARRIER-TO-
	)	CARRIER SERVICE QUALITY
	)	PLAN AND GRANTING MOTION
	)	TO FILE REPLY TO COMMENTS
.....	)	

1 *Synopsis: The Commission accepts, subject to conditions, the AFOR carrier-to-carrier service quality plan filed by Qwest Corporation and grants its motion to file reply comments.*

**MEMORANDUM**

**I. Background and Procedural History**

2 On October 20, 2006, Qwest Corporation (Qwest) filed with the Washington Utilities and Transportation Commission (Commission) a request for an alternative form of regulation (AFOR) under RCW 80.36.135. On March 6, 2007, Qwest, the Commission’s Regulatory Staff (Staff)<sup>1</sup>, the Joint CLECs<sup>2</sup>, the Northwest Public Communications Council, Washington Electronic Business and Telecommunications Coalition and the Department of Defense and all other Federal Executive Agencies, filed a multi-party Settlement Agreement and modified AFOR.

<sup>1</sup> In formal proceedings such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “ex parte” wall separating the Commissioners, the presiding ALJ, and the Commissioners’ policy and accounting advisors from all parties, including Staff. *RCW 34.05.455*.

<sup>2</sup> Covad Communications Company, Integra Telecom of Washington, Inc., Time Warner Telecom of Washington, LLC, and XO Communications (collectively referred to as the Joint Competitive Local Exchange Carriers or Joint CLECs).

- 3 On July 24, 2007, the Commission entered Order 06 approving the modified AFOR, subject to conditions. We found that the modified AFOR did not meet the requirement in RCW 80.36.135(3) for a carrier-to-carrier service quality plan, and required, among other conditions, that Qwest file an acceptable plan. We allowed other parties to file comments on the plan within 14 days of its filing.
- 4 On July 31, 2007, Qwest filed its carrier-to-carrier service quality plan relying heavily on the Qwest Performance Assurance Plan (QPAP).<sup>3</sup> On August 10, 2007, Qwest replaced the original filing with the currently effective QPAP.<sup>4</sup> Qwest stated that it inadvertently filed proposed updates to the plan rather than the currently effective plan.
- 5 The Joint CLECs filed comments on August 13, 2007. Staff filed comments on August 14, 2007. On August 15, 2007, Qwest filed a motion for leave to file a reply to the comments accompanied by its reply.

## II. Discussion and Decision

### A. Qwest's Carrier-to-Carrier Service Quality Plan.

- 6 In response to Order 06, Qwest asserts that the modified AFOR, as set forth in the Settlement Agreement, meets the statutory requirement that an AFOR contain a proposal for ensuring adequate carrier-to-carrier service quality. Qwest's plan is "the simple statement that the AFOR *does not, in any way* affect existing carrier-to-carrier service quality requirements."<sup>5</sup> Qwest asserts that it will not argue the merits of whether its original proposal is sufficient under RCW 80.36.135(3), and argues that the following existing service quality requirements fulfill the statutory obligation: the QPAP; service quality provisions for tariffed switched access and payphone services;

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<sup>3</sup> The QPAP was developed as part of a multi-state collaborative in the Commission's Sec. 271 proceeding to allow Qwest to enter the long-distance market. It contains a series of detailed wholesale quality assurance measures with metrics and self-effectuating penalties payable to other CLECs and to the Commission. It was adopted by the Commission in Dockets UT-003022 and UT-003040, April 5, 2002, and is scheduled to expire by its terms in December 2008.

<sup>4</sup> The initial filing included Qwest's requested modifications to the QPAP filed in Docket UT-073034.

<sup>5</sup> Qwest Submittal, ¶ 1. (Emphasis in original).

Provision 3 of the modified AFOR;<sup>6</sup> and wholesale service quality standards and requirements in existing Commission rules.<sup>7</sup>

7 Qwest explains that the QPAP is a major component of existing carrier-to-carrier service quality requirements and that the QPAP is included in Qwest's Statement of Generally Available terms (SGAT) and the interconnection agreements of numerous CLECs. Qwest states that it is required under the QPAP to make payments to CLECs and the Commission for failure to provide service quality in parity to that it provides to its retail customers. Qwest asserts that the QPAP contains specific performance measures and self-executing remedies for failure to achieve those measures thus fulfilling its purpose to serve as an anti-backsliding mechanism. Qwest argues that the QPAP ensures adequate service quality because it provides a monetary incentive to Qwest to provide good service and compensates wholesale customers who are impacted when service falls below a certain standard.

8 Qwest acknowledges it has proposed modifications to the QPAP that are currently pending in Docket UT-073034.

#### **B. Comments on Qwest's Plan.**

9 The Joint CLECs contend that current carrier-to-carrier service quality standards are not sufficient to ensure service quality during the term of the AFOR because Qwest's QPAP is subject to potential modification in several ways. First, Qwest has requested approval from the Federal Communications Commission (FCC) to forbear from providing unbundled network elements (UNEs) in the Seattle Metropolitan Statistical Area (MSA).<sup>8</sup> If granted, the CLECs assert the petition would render the QPAP almost meaningless. Second, the QPAP, by its own terms and conditions, is scheduled to expire December 23, 2008. Third, they say, Qwest views the QPAP as

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<sup>6</sup> This provision applies if the Commission were to revoke previously-granted competitive classification for DS-1 or DS-3 private line services.

<sup>7</sup> See Qwest Submittal, ¶ 14, citing WAC 480-120-401 (network performance standards), -411 (safety standards), -402, (network maintenance standards), and -560 (collocation requirements).

<sup>8</sup> WC Docket No. 07-97 filed April 27, 2007, nearly two months after the parties, including the CLECs, reached their settlement in this matter. We note that Staff in its prefiled direct testimony in support of the settlement recommended that the Commission direct Qwest not to seek FCC forbearance from its unbundling obligations during the term of the AFOR (see Wilson: 142C, P.73).

subject to revision even when it has been included in Commission-approved interconnection agreements.<sup>9</sup>

- 10 The Joint CLECs argue that Qwest should be permitted to use the QPAP as a carrier-to-carrier service quality plan for the AFOR only if Qwest agrees to: (1) maintain the current QPAP for the term of the AFOR unless modified by the Commission and (2) apply the QPAP to all services Qwest provides to other carriers as a substitute for UNEs if the FCC grants Qwest's petition for forbearance in the Seattle MSA.
- 11 Staff concurs with Qwest that existing service quality requirements ensure adequate service quality and meet the statutory mandate of RCW 80.36.135(3). Staff notes that the Commission does not relinquish any authority over service quality standards by accepting the AFOR and could act to augment the requirements for carrier-to-carrier service quality through the QPAP review process or through adoption of rules. However, Staff recommends that the QPAP not be permitted to expire entirely during the term of the AFOR.
- 12 Staff suggests that if the Commission concludes that Qwest's proposal does not meet the statutory requirements, it could provide Qwest with guidance on how it could fulfill those requirements and allow Qwest to file an augmented plan to cure the deficiency. Staff asserts that if the Commission concludes that the modified AFOR meets the statutory requirements, the Commission could still adopt rules in a separate proceeding that would apply to all carriers, including Qwest, or extend or augment the QPAP.
- 13 Qwest requested leave to file a reply in order to address new issues raised for the first time in the comments of other parties.<sup>10</sup> We grant Qwest's motion and allow the Company to reply to the comments filed by the Joint CLECs and Staff. Qwest's need to respond to new arguments raised in the comments constitutes cause for allowing a reply.<sup>11</sup>

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<sup>9</sup> In its petition to modify the QPAP in Docket UT-073034, Qwest requests the Commission apply all approved changes to interconnection agreements with all carriers in Washington that have adopted the QPAP in their agreements.

<sup>10</sup> WAC 480-07-370(d)(i).

<sup>11</sup> *Id.*

14 In reply, Qwest asserts the Joint CLECs' comments are not consistent with supporting the Settlement. In addition, Qwest asserts that the Joint CLECs seek relief that exceeds the Commission's jurisdiction, is not relevant to an AFOR, or is not supported by the record in this case.

15 While Qwest notes that Staff continues to support the Settlement, Qwest opposes Staff's proposal to extend the term of the QPAP or include commercial agreements under the QPAP in this proceeding.

**C. Decision.**

16 The purpose of the AFOR statute is to achieve a number of public policy goals, including promoting diversity in the provision of telecommunications services and products in Washington and permitting flexible regulation of telecommunications companies previously regulated under traditional rate of return/rate base methodology. We must "order implementation of [an AFOR] unless [we] find that, on balance, an alternative plan as proposed or modified fails to meet" the policy considerations in subsection (2) of the statute.<sup>12</sup>

17 In contrast to the broad policy considerations of subsection (2), the directive of the AFOR statute on carrier-to-carrier service quality is specific. Independent of any other federal or state requirements, an AFOR "must include a proposal for ensuring carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event a company fails to meet those service quality standards or performance measures."<sup>13</sup> This provision of the statute is mandatory. The statutory standard is not simply a broad "consistency with the public interest" test. Rather, an AFOR's proposed carrier-to-carrier service quality plan must include required elements (standards or performance measures and remedies) and "ensure" wholesale service quality for the term of the AFOR.

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<sup>12</sup> RCW 80.36.135.

<sup>13</sup> *Id.*

- 18 In essence, adequate carrier-to-carrier service quality to preserve or enhance effective competition is part of the *quid pro quo* to replace traditional regulation at the retail level with an AFOR plan. We evaluate Qwest's proposal under this statutory standard.<sup>14</sup>
- 19 Qwest's submission fails to meet the statutory standard. We disagree with Qwest and Staff that the statutory requirement is met because of their assertion that the modified AFOR does not affect existing service quality measures. Simply referring to existing service quality measures, including the Commission's authority to adopt service quality rules or initiate a complaint to address service quality deficiencies, does not constitute a "plan" under the statute. Further, relying on existing measures, without more, does not "ensure" that the measures will remain in place for the term of the AFOR. As we have repeatedly noted, the law requires an AFOR to include specific carrier-to-carrier service quality measures or standards and appropriate enforcement or remedial provisions in the event the company fails to meet those standards.
- 20 All parties appear to agree that the current QPAP establishes service quality standards for the majority of services and facilities competitors obtain from Qwest and provides an incentive for Qwest to comply with those standards through self-effectuating penalties. We recognize that the current QPAP is effectively the only carrier-to-carrier service quality plan that covers the majority of products and services purchased by competitors. That said, we are not persuaded that the QPAP ensures adequate service quality within the meaning of the AFOR statute.
- 21 The QPAP fails to ensure adequate service quality while the AFOR will be in effect because it expires earlier. The AFOR is approved for a four-year term. The QPAP is scheduled to expire on December 23, 2008.<sup>15</sup> By its own terms and conditions, the QPAP cannot provide a carrier-to-carrier service quality plan for the full term of the AFOR. Second, even prior to the QPAP's expiration, Qwest has proposed changes in

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<sup>14</sup> We need not address directly the comments of parties regarding the effect of federal matters, outcomes of potential rulemaking proceedings, or pending cases in other jurisdictions in our consideration of the terms of a proper AFOR for Qwest in the state of Washington.

<sup>15</sup> Qwest Washington SGAT Eighth Revision, Ninth Amended – Exhibit K – November 30, 2004, ¶¶ 13.1, 16.3.

the QPAP that would reduce the Company's carrier-to-carrier service obligations.<sup>16</sup> The statutory emphasis on the importance of these obligations as integral to any AFOR persuades us that any changes to the QPAP must be measured against the standards of RCW 80.36.135(3) before approval by the Commission. Finally, the QPAP is only applicable to unbundled network elements, interconnection, collocation, and resale under interconnection agreements. This limitation does not ensure adequate carrier-to-carrier service quality for any other wholesale services competitors may use to compete with Qwest during the term of the AFOR.

- 22 Accordingly, we conclude that the QPAP must be modified to fulfill the requirements of RCW 80.36.135(3). Subject to the following conditions, the current provisions of the QPAP, together with other existing measures, should constitute an adequate carrier-to-carrier service quality plan within the meaning of the statute. First, the QPAP must remain in place for the full four-year term of the AFOR, unless modified by the Commission. This condition recognizes the current provisions of the QPAP including the requirement to review the QPAP after five and one-half years to determine whether to modify or terminate the QPAP, remain in effect.<sup>17</sup> Absent modification, the QPAP will provide carrier-to-carrier service quality standards for the full term of the AFOR.
- 23 Second, the QPAP must remain available to all wholesale carriers in its current form unless modified by the Commission. This condition does not preclude Qwest, or any other party, from seeking Commission approval of changes to the QPAP, such as those changes currently under consideration in a separate proceeding.<sup>18</sup> Third, the QPAP terms and conditions must apply to all wholesale services provided by Qwest as a substitute for unbundled network elements during the term of the AFOR, unless the affected parties agree otherwise.
- 24 We need not address the argument that we lack jurisdiction to impose QPAP terms and conditions on the provision of wholesale service under commercial agreements or special access services, because an AFOR is consensual. The AFOR terms and

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<sup>16</sup> In Docket UT-073034, Qwest requests approval to modify performance measures and remedies in the QPAP and apply those changes to all CLECs that have incorporated prior versions of the QPAP into their interconnection agreements.

<sup>17</sup> *Id.*, ¶16.3.

<sup>18</sup> *See, i.e.* Docket UT-073034.

conditions will not take effect unless Qwest agrees to these conditions within the time allotted by RCW 80.36.135(4).

**FINDINGS OF FACT**

- 25 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings of fact and conclusions upon issues and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the detailed findings:
- 26 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 27 (2) Qwest Corporation (Qwest) is engaged in the business of furnishing telecommunications service within the state of Washington as a public service company.
- 28 (3) Order 06 in this proceeding required Qwest to, among other conditions, file an acceptable carrier-to-carrier service quality plan in compliance with RCW 80.36.135(3).
- 29 (4) Qwest filed a carrier-to-carrier service quality plan that consists of existing wholesale service quality requirements, largely the existing Qwest Performance Assurance Plan (QPAP).
- 30 (5) The QPAP is effectively the only existing carrier-to-carrier service quality plan for the majority of services and facilities obtained by competitors from Qwest.
- 31 (6) The QPAP is scheduled to expire on December 23, 2008, during the term of the proposed AFOR.

- 32 (7) The QPAP does not apply to all wholesale services Qwest provides to its  
wholesale customers.
- 33 (8) Without modification, the plan submitted by Qwest does not provide the  
degree of certainty necessary to ensure that carrier-to-carrier service quality  
standards are met or that remedial measures will be imposed for failure to  
comply during the term of an alternative form of regulation.

### CONCLUSIONS OF LAW

34 Having discussed above all matters material to this decision, and having stated  
detailed findings, conclusions, and the reasons therefore, the Commission now makes  
the following summary conclusions of law, incorporating by reference pertinent  
portions of the preceding detailed conclusions:

- 35 (1) The Washington Utilities and Transportation Commission has jurisdiction over  
the subject matter of, and parties to, this proceeding. *RCW Title 80.*
- 36 (2) A plan for an alternative form of regulation must include a carrier-to-carrier  
service quality plan that ensures carrier-to-carrier service quality standards or  
performance measures are met and provides for remedial measures in the  
event the company fails to meet those standards or measures. *RCW*  
*80.36.135(3).*
- 37 (3) Qwest's existing wholesale service quality requirements fail to meet the  
statutory requirements of RCW 80.36.135(3), and the policy goals included in  
RCW 80.36.300(2) and 80.36.135(2)(d).
- 38 (4) A carrier-to-carrier service quality plan that will not be in effect for the term of  
an alternative form of regulation fails to meet the standard in RCW  
80.36.135(3).
- 39 (5) A carrier-to-carrier service quality plan that does not apply to all wholesale  
services provided during the term of an alternative form of regulation fails to  
meet the standard in RCW 80.36.135(3).

- 40 (6) If accepted, the Commission's modifications to and conditions on Qwest's carrier-to-carrier service quality plan would meet the statutory goals of RCW 80.135.
- 41 (7) The Commission should retain jurisdiction over the subject matters and the parties to this proceeding to effectuate the terms of this Order. *RCW Title 80.*

**ORDER**

THE COMMISSION ORDERS:

- 42 (1) The carrier-to-carrier service quality submission filed by Qwest Corporation is accepted, subject to the modifications and conditions set forth in the body of this Order, specifically:
- (a) The QPAP shall remain in effect for the full four-year term of the AFOR, unless modified by the Commission.
  - (b) The QPAP must remain available to all wholesale carriers in its current form unless modified by the Commission.
  - (c) The QPAP terms must apply to all wholesale services provided by Qwest as a substitute for unbundled network elements during the term of the AFOR, unless the affected parties agree otherwise.
- 43 (2) The AFOR terms and conditions as set forth in Order 06 and this Order will not take effect unless and until Qwest agrees to them within the time allotted by RCW 81.36.135(4).
- 44 (3) Qwest Corporation's motion for leave to file reply comments is granted.

- 45 (4) The Commission retains jurisdiction over the subject matter and parties to this proceeding to effectuate the terms of this Order.

**DATED at Olympia, Washington, and effective September 6, 2007.**

**WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

**MARK H. SIDRAN, Chairman**

**PATRICK J. OSHIE, Commissioner**

**PHILIP B. JONES, Commissioner**



**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

**KRISTIN K. MAYES, Chairman**  
**GARY PIERCE**  
**SANDRA D. KENNEDY**  
**PAUL NEWMAN**  
**BOB STUMP**

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

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**EXHIBIT DD-31**

**RESPONSIVE TESTIMONY**

**OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**ESCHELON TELECOM OF ARIZONA, INC.**

June 5, 2009

**Eschelon / Qwest Exhibit A  
Compliance Filing**

<b>8.14</b>	<b>Intentionally Left Blank</b>					
<b>8.15</b>	<b>Collocation Available Inventory</b>					
8.15.1	Standard Sites					
8.15.1.1	Removal of Terminations					
8.15.1.1.1	DS0, per 100 Terminations			ICB		3
8.15.1.1.2	DS1, per Termination			ICB		3
8.15.1.1.3	DS3, per Termination			ICB		3
8.15.1.1.4	OCN, per 12 Fibers			ICB		3
8.15.1.2	Quote Preparation Fee (QPF)					
8.15.1.2.1	Cageless (uses rate from 8.3.1.1)			\$1,381.54		A
8.15.1.2.2	Caged (uses rate from 8.4.1.1)			\$1,381.54		A
8.15.2	Special Sites					
8.15.2.1	Special Site Assessment Fee			\$1,058.00		1, 10
8.15.2.2	Network Systems Assessment Fee			\$1,663.00		1, 10
8.15.2.3	Site Survey Fee			\$150.00		1
8.15.3	Re-usable Elements			ICB		3
<b>8.16</b>	<b>Collocation Decommissioning (uses rates from 9.20)</b>					
8.16.1	Additional Labor Other - Basic			\$27.26		A
8.16.2	Additional Labor Other - Overtime			\$36.41		A
8.16.3	Additional Labor Other - Premium			\$45.57		A
8.16.4	Additional Dispatch			\$83.10		A
<b>8.17</b>	<b>Joint Testing (uses rates from 8.2.2.1)</b>					
8.17.1	Set-Up Fee (price contains a one hour set up fee)			\$55.20		1
8.17.2	Test Time Fee, per Half Hour			\$27.60		A
<b>9.0</b>	<b>Unbundled Network Elements (UNEs)</b>					
<b>9.1</b>	<b>Interconnection Tie Pairs (ITP) - Per Connection</b>					
9.1.1	DS0	\$0.36				A
9.1.2	DS1	\$0.85				A
9.1.3	DS3	\$8.06				A
<b>9.2</b>	<b>Unbundled Loops</b>					
9.2.1	Analog Loops				See 9.2.4	
9.2.1.1	2-Wire Voice Grade Loop					
9.2.1.1.1	Zone 1	\$9.05				A
9.2.1.1.2	Zone 2	\$14.84				A
9.2.1.1.3	Zone 3	\$36.44				A
9.2.1.2	Intentionally Left Blank					
9.2.1.3	4-Wire Voice Grade Loop					
9.2.1.3.1	Zone 1	\$11.77				A
9.2.1.3.2	Zone 2	\$19.29				A
9.2.1.3.3	Zone 3	\$47.37				A
9.2.2	Nonloaded Loops				See 9.2.4	
9.2.2.1	2-Wire Nonloaded Loop					
9.2.2.1.1	Zone 1	\$9.05				A
9.2.2.1.2	Zone 2	\$14.84				A
9.2.2.1.3	Zone 3	\$36.44				A
9.2.2.2	Intentionally Left Blank					
9.2.2.3	4-Wire Nonloaded Loop					
9.2.2.3.1	Zone 1	\$11.77				A
9.2.2.3.2	Zone 2	\$19.29				A
9.2.2.3.3	Zone 3	\$47.37				A
9.2.2.4	Cable Unloading / Bridge Tap Removal					
9.2.2.4.1	Under 18,000 Feet, per Loop			\$40.00		A, 7
9.2.2.4.2	Above 18,000 Feet, per Location (for Aerial and Buried)			\$70.00		A, 7
9.2.2.4.3	Above 18,000 Feet, per Location (for Underground)			\$400.00		A, 7
9.2.2.4.4	Above 18,000 Feet, Each Additional Coil or Tap at the Same Time &			\$2.00		A, 7
9.2.2.5	Unbundled Loop Grooming					
9.2.2.5.1	Unbundled Loop Grooming (2-Wire)	\$0.37				A, 5
9.2.2.5.2	Unbundled Loop Grooming (4-Wire)	\$0.85				A, 5
9.2.3	Digital Capable Loops				See 9.2.4	
9.2.3.1	Basic Rate ISDN / xDSL-I Capable / ADSL Compatible Loop					
9.2.3.1.1	Zone 1	\$9.05				A
9.2.3.1.2	Zone 2	\$14.84				A
9.2.3.1.3	Zone 3	\$36.44				A
9.2.3.2	Intentionally Left Blank					

**Eschelon / Qwest Exhibit A  
Compliance Filing**

9.2.3.3	DS1 Capable Loop		See 9.2.5		
9.2.3.3.1	Zone 1	\$67.39		A	
9.2.3.3.2	Zone 2	\$67.86		A	
9.2.3.3.3	Zone 3	\$76.06		A	
9.2.3.4	DS3 Capable Loop		See 9.2.5		
9.2.3.4.1	Zone 1	\$739.07		A	
9.2.3.4.2	Zone 2	\$749.77		A	
9.2.3.4.3	Zone 3	\$932.82		A	
9.2.3.5	Intentionally Left Blank				
9.2.3.6	2-Wire Extension Technology	\$4.06		A	
9.2.3.7	2-Wire Extension Technology - Unbundled Loop Grooming	\$0.37		A	
9.2.4	Loop Installation Charges for 2 & 4-Wire Analog & Nonloaded, ADSL Compatible, ISDN BRI Capable and xDSL - I Capable Loops where conditioning is not required.	See 9.2.1, 9.2.2, & 9.2.3.1			
9.2.4.1	Basic Installation				
9.2.4.1.1	First		\$53.86		A
9.2.4.1.2	Each Additional		\$46.40		A
9.2.4.2	Basic Installation with Performance Testing				
9.2.4.2.1	First		\$117.30		A
9.2.4.2.2	Each Additional		\$84.16		A
9.2.4.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation				
9.2.4.3.1	First		\$141.67		A
9.2.4.3.2	Each Additional		\$84.16		A
9.2.4.4	Coordinated Installation without Cooperative Testing / Project Coordinated				
9.2.4.4.1	First		\$58.18		A
9.2.4.4.2	Each Additional		\$50.73		A
9.2.4.5	Basic Installation with Cooperative Testing				
9.2.4.5.1	First		\$117.30		A
9.2.4.5.2	Each Additional		\$84.16		A
9.2.5	DS1 Loop Installation Charges	See 9.2.3.3			
9.2.5.1	Basic Installation				
9.2.5.1.1	First		\$87.93		A
9.2.5.1.2	Each Additional		\$67.58		A
9.2.5.2	Basic Installation with Performance Testing				
9.2.5.2.1	First		\$169.69		A
9.2.5.2.2	Each Additional		\$124.27		A
9.2.5.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation				
9.2.5.3.1	First		\$194.07		A
9.2.5.3.2	Each Additional		\$124.27		A
9.2.5.4	Coordinated Installation without Cooperative Testing / Project Coordinated				
9.2.5.4.1	First		\$93.49		A
9.2.5.4.2	Each Additional		\$73.14		A
9.2.5.5	Basic Installation with Cooperative Testing				
9.2.5.5.1	First		\$169.69		A
9.2.5.5.2	Each Additional		\$124.27		A
9.2.6	DS3 Loop Installation Charges	See 9.2.3.4			
9.2.6.1	Basic Installation				
9.2.6.1.1	First		\$87.93		A
9.2.6.1.2	Each Additional		\$67.58		A
9.2.6.2	Basic Installation with Performance Testing				
9.2.6.2.1	First		\$169.69		A
9.2.6.2.2	Each Additional		\$124.27		A
9.2.6.3	Coordinated Installation with Cooperative Testing / Project Coordinated Installation				
9.2.6.3.1	First		\$194.07		A
9.2.6.3.2	Each Additional		\$124.27		A
9.2.6.4	Coordinated Installation without Cooperative Testing / Project Coordinated				
9.2.6.4.1	First		\$93.49		A
9.2.6.4.2	Each Additional		\$73.14		A
9.2.6.5	Basic Installation with Cooperative Testing				
9.2.6.5.1	First		\$169.69		A
9.2.6.5.2	Each Additional		\$124.27		A
9.2.7	Intentionally Left Blank				
9.2.8	Private Line / Special Access to Unbundled Loop Conversion		\$40.32		A

**Eschelon / Qwest Exhibit A  
Compliance Filing**

9.6.1.3	Over 25 to 50 Miles	\$52.27	\$0.00		A, 5	A, 5	
9.6.1.4	Over 50 Miles	\$52.27	\$0.00		A, 5	A, 5	
9.6.1.5	Installation			\$7.60			A, 5
9.6.1.6	Disconnect			\$0.53			A, 5
9.6.2	DS1 UDIT (Recurring Fixed & per Mile)						
9.6.2.1	Over 0 to 8 Miles	\$35.98	\$0.65		C, 5	C, 5	
9.6.2.2	Over 8 to 25 Miles	\$35.99	\$0.94		C, 5	C, 5	
9.6.2.3	Over 25 to 50 Miles	\$36.00	\$1.75		C, 5	C, 5	
9.6.2.4	Over 50 Miles	\$36.00	\$1.59		C, 5	C, 5	
9.6.2.5	Installation			\$7.60			A, 5
9.6.2.6	Disconnect			\$0.53			A, 5
9.6.3	DS3 UDIT (Recurring Fixed & per Mile)						
9.6.3.1	Over 0 to 8 Miles	\$243.17	\$13.32		C, 5	C, 5	
9.6.3.2	Over 8 to 25 Miles	\$246.16	\$15.90		C, 5	C, 5	
9.6.3.3	Over 25 to 50 Miles	\$250.86	\$22.91		C, 5	C, 5	
9.6.3.4	Over 50 Miles	\$249.26	\$22.49		C, 5	C, 5	
9.6.3.5	Installation			\$7.60			A, 5
9.6.3.6	Disconnect			\$0.53			A, 5
9.6.4	Intentionally Left Blank						
9.6.5	Intentionally Left Blank						
9.6.6	Intentionally Left Blank						
9.6.7	Channel Performance						
9.6.7.1	DS0 Low Side Channel Performance	\$11.32			A		
9.6.8	Intentionally Left Blank						
9.6.9	Intentionally Left Blank						
9.6.10	Intentionally Left Blank						
9.6.11	UDIT Rearrangement						
9.6.11.1	DS0 Single Office			\$173.14			A
9.6.11.2	DS0 Dual Office			\$215.19			A
9.6.11.3	High Capacity Single Office			\$234.17			A
9.6.11.4	High Capacity Dual Office			\$261.31			A
9.6.12	Private Line / Special Access to UDIT Conversion			\$126.14			1, 10
9.7	Unbundled Dark Fiber (UDF)						
9.7.1	Initial Records Inquiry (IRI)						
9.7.1.1	Simple			\$156.67			A
9.7.1.2	Complex			\$199.77			A
9.7.2	Field Verification and Quote Preparation (FVQP)			\$1,459.05			A
9.7.3	Engineering Verification			\$346.77			1, 5
9.7.4	UDF - Single Strand						
9.7.4.1	UDF - Interoffice Facility (UDF-IOF) - Single Strand						
9.7.4.1.1	Order Charge, per Strand / Route / Order			\$553.66			A, 5
9.7.4.1.2	Order Charge, Each Additional Strand / Route / Order			\$267.08			A, 5
9.7.4.1.3	Fiber Transport, per Strand / Mile	\$62.75			1, 5		
9.7.4.1.4	Termination, per Strand / Office / Termination	\$3.33			1, 5		
9.7.4.1.5	Fiber Cross-Connect, per Strand	\$2.17			1, 5		
9.7.4.1.5.1	Installation			\$8.64			1, 5
9.7.4.1.5.2	Disconnect			\$9.44			1, 5
9.7.5	UDF - per Pair						
9.7.5.1	UDF - Interoffice Facility (UDF-IOF) - per Pair						
9.7.5.1.1	Order Charge, per First Pair / Route / Order			\$553.66			A
9.7.5.1.2	Order Charge, Each Additional Pair / Route / Order			\$267.08			A
9.7.5.1.3	Fiber Transport, per Pair / Mile	\$81.60			A		
9.7.5.1.4	Termination, per Pair / Office / Termination	\$6.65			A		
9.7.5.1.5	Fiber Cross-Connect, per Pair	\$3.96			A		
9.7.5.1.5.1	Installation			\$8.64			A
9.7.5.1.5.2	Disconnect			\$9.44			A
9.7.6	Dark Fiber Splice			\$663.01			1, 5
9.7.7	UDF MTE Subloop	ICB		ICB	3		3
9.8	Intentionally Left Blank						
9.9	Intentionally Left Blank						
9.10	Intentionally Left Blank						
9.11	Intentionally Left Blank						

**REGULATIONS, RATES AND CHARGES**

Applying to the provision of Access Services  
within a Local Access and Transport Area (LATA)  
or equivalent market areas for  
Connection to Interstate Communications Facilities  
for Customers within the operating territory of

**Qwest Corporation**  
in the State(s) of  
Arizona (AZ) (Company Code [CC] 5101)  
Colorado (CO) (CC 5102)  
Idaho (ID - Boise LATA) (CC 5103)  
Idaho (ID - Spokane LATA) (CC 5162)  
Iowa (IA) (CC 5141)  
Minnesota (MN) (CC 5142)  
Montana (MT) (CC 5104)  
Nebraska (NE) (CC 5143)  
New Mexico (NM) (CC 5105)  
North Dakota (ND) (CC 5144)  
Oregon (OR) (CC 5163)  
South Dakota (SD) (CC 5145)  
Utah (UT) (CC 5107)  
Washington (WA) (CC 5161)  
Wyoming (WY) (CC 5108)

as provided herein

d/b/a  
Qwest

Original Tariff effective August 8, 2000

Access Services are provided by means of wire, fiber optics, radio or  
any other suitable technology or a combination thereof.

[1] This entire Tariff is issued under the authority of Special Permission No. 00-072.

(Filed under Transmittal No. 2.)

Issued: August 7, 2000

Effective: August 8, 2000

By: Director - Federal Regulatory  
Suite 5100  
1801 California Street  
Denver, Colorado 80202

**21. EXPANDED INTERCONNECTION - COLLOCATION (EIC) SERVICE**

**21.5 RATES AND CHARGES (CONT'D)**

**21.5.2 EXPANDED INTERCONNECTION CHANNEL TERMINATIONS AND INTERCONNECTION TIE PAIRS**

**A. Private Line Transport Service EICT, per termination**

	<b>USOC</b>	<b>NONRECURRING CHARGE</b>	<b>MONTHLY RATE</b>
• Analog PLTS	TKCGX	\$467.44	\$ 4.02
• DDS	TKCHX	467.44	4.02
• 1.544 Mbps	TKCJX	313.25	17.22
• 44.736 Mbps or 45 Mbps	TKCKX	329.00	52.50

**B. Switched Access Service EICT, per termination**

• DS1 Switched Transport	TKCLX	313.25	17.22
• DS3 Switched Transport	TKCNX	329.00	52.50

**C. Private Line Transport Service ITP, per termination**

• 1.544 Mbps	TKCUX	211.78	5.98
• 44.736 Mbps or 45 Mbps	TKCVX	211.78	26.26
• Optical	TBCAX	211.78	18.89

(N)

(Filed under Transmittal No. 170.)

Issued: September 4, 2003

Effective: September 19, 2003

**17. PRIVATE LINE TRANSPORT SERVICE – PRICING FLEXIBILITY**

**17.2 RATES AND CHARGES**  
**17.2.11 DS1 SERVICE (CONT'D)**

**C. Transport Channels**

**1. 1.544 Mbps**

**a. Monthly**

MILEAGE BAND	USOC	NON-PLAN	MONTHLY RATE		
			ZONE 1	ZONE 2	ZONE 3
• 0	1YFC1				
- Fixed		-	-	-	-
- Per Mile		-	-	-	-
• Over 0 to 8	1YFC2				
- Fixed		\$92.00	\$92.00	\$92.00	\$92.00
- Per Mile		16.00 (I)	16.00 (I)	16.00 (I)	16.00 (I)
• Over 8 to 25	1YFC3				
- Fixed		92.00 (R)	92.00 (R)	92.00(R)	92.00(R)
- Per Mile		16.00 (I)	16.00 (I)	16.00 (I)	16.00 (I)

(Filed under Transmittal No. 206.)

Issued: August 16, 2004

Effective: August 31, 2004

**17. PRIVATE LINE TRANSPORT SERVICE – PRICING FLEXIBILITY**

**17.2 RATES AND CHARGES**

**17.2.11 DS1 SERVICE**

**C. Transport Channels**

**1. 1.544 Mbps**

**a. Monthly (Cont'd)**

MILEAGE BAND	USOC	NON-PLAN	MONTHLY RATE		
			ZONE 1	ZONE 2	ZONE 3
• Over 25 to 50 1YFC4					
- Fixed		\$92.00(R)	\$92.00(R)	\$92.00(R)	\$92.00(R)
- Per Mile		16.00 (I)	16.00 (I)	16.00 (I)	16.00 (I)
• Over 50 1YFC5					
- Fixed		92.00(R)	92.00(R)	92.00(R)	92.00(R)
- Per Mile		16.00 (I)	16.00 (I)	16.00 (I)	16.00 (I)

(Filed under Transmittal No. 206.)

Issued: August 16, 2004

Effective: August 31, 2004