

# OPEN MEETING ITEM

ORIGINAL

COMMISSIONERS  
KRISTIN K. MAYES - Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP



0000104450

Executive Director

## ARIZONA CORPORATION COMMISSION

DATE: NOVEMBER 2, 2009  
DOCKET NOS.: T-03406A-06-0572 and T-01051B-06-0572  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Opinion and Order on:

ESCHELON TELECOM, INC. and QWEST CORPORATION  
(ARBITRATION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

NOVEMBER 12, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

NOVEMBER 19, 2009 and NOVEMBER 20, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
4 GARY PIERCE  
5 PAUL NEWMAN  
6 SANDRA D. KENNEDY  
7 BOB STUMP

8 IN THE MATTER OF THE PETITION OF  
9 ESCHELON TELECOM, INC. FOR  
10 ARBITRATION WITH QWEST CORPORATION  
11 PURSUANT TO 47 USC SECTION 252(b) OF THE  
12 FEDERAL TELECOMMUNICATIONS ACT OF  
13 1996.

DOCKET NO. T-03406A-06-0572  
DOCKET NO. T-01051B-06-0572

DECISION NO. \_\_\_\_\_

14 OPINION AND ORDER

15 DATE OF ARBITRATION: August 11, 2009  
16 PLACE OF ARBITRATION: Phoenix, Arizona  
17 ARBITRATOR: Jane L. Rodda  
18 APPEARANCES: Mr. John M. Devaney PERKINS COIE, LLP and  
19 Mr. Norman Curtright, Qwest Corporation Legal  
20 Department. on behalf of Qwest Corporation; and  
21 Mr. Gregory Merz, GRAY PLANT MOOTY, on  
22 behalf of Eschelon Telecom of Arizona.

23 **BY THE COMMISSION:**

24 Having considered the entire record herein and being fully advised in the premises, the Arizona  
25 Corporation Commission ("Commission") finds, concludes, and orders that:

26 FINDINGS OF FACT

27 Procedural Background

28 1. On September 8, 2006, Eschelon Telecom of Arizona, Inc. ("Eschelon") filed with the  
Commission a Petition for Arbitration of an interconnection agreement ("ICA") with Qwest  
Corporation ("Qwest") pursuant to A.A.C. R14-2-1505 and Section 252(b) of the Communications  
Act of 1934, as amended by the Telecommunications Act of 1996 ("the 1996 Act").

2. In Decision No. 70356 (May 16, 2008), the Commission entered an Order that resolved  
all of the issues raised in the arbitration proceeding. However, with respect to Issue No. 9-59

1 concerning the repair and maintenance of Commingled EELs,<sup>1</sup> the Commission did not approve final  
2 contract language, but directed the parties to negotiate and submit with their compliance filing,  
3 language that incorporated Qwest's repair proposal. The Commission adopted Qwest's proposal  
4 because it was the most consistent with existing operation systems, however the Commission  
5 recognized that Qwest's proposal might not be as streamlined as possible. Consequently, the  
6 Commission also found that the contract language Eschelon submitted in its Exceptions to the  
7 Recommended Opinion and Order was a good starting point for negotiations, and that if the parties  
8 remained unable to negotiation final contract language for the repair and maintenance of Commingled  
9 EELs they should request final resolution from the Commission.

10 3. Pursuant to the directives of Decision No. 70356, on June 16, 2008, Eschelon filed with  
11 the Commission, as a compliance item, a copy of the ICA which Eschelon claimed reflected the  
12 Commission's Order. In its filing, Eschelon noted that Qwest did not agree with several of the  
13 provisions contained in the filed document – specifically, Section 24.3.2 (Issue 9-58(e) Interval for  
14 Commingled Arrangements); and Section 9.23.4.7 (Issue 9-59 Maintenance and Repair – Commingled  
15 EELs).

16 4. On June 18, 2008, Qwest filed a Motion to Request Resolution of Disputed Issues  
17 Relating to Eschelon Telecom's Compliance Filing. Qwest acknowledged that Qwest and Eschelon  
18 disagreed about the ICA language to implement the Commission's rulings relating to Issues 9-58(e)  
19 and 9-59. In addition, Qwest sought approval for a change to Section 9.20.14 of the ICA Exhibit A,  
20 which sets out the rate for design changes that had been the subject of Arbitration Issue 4-5.

21 5. On September 4, 2008, at a Procedural Conference, attended by Eschelon, Qwest and  
22 the Commission's Utilities Division ("Staff"), the parties were able to agree to final contract language  
23 for all sections in dispute except for Issue 9-59 concerning the repair of Commingled EELs. The  
24 parties agreed, however, that the final issue could be submitted for resolution by the arbitrator based  
25 on briefs.

26 6. Eschelon and Qwest filed their Opening Briefs on Issue 9-59 on September 18, 2008,  
27

28 <sup>1</sup> An EEL is an Enhanced Extended Link which consists of a combination of an unbundled loop and transport. In a Commingled EEL one of the elements of the EEL is not an unbundled network element ("UNE").

1 and Reply Briefs on September 26, 2008. On October 3, 2008, Qwest filed a Supplement to its  
2 Response Memorandum, containing its updated proposed language for Section 9.23.4.7. On October  
3 22, 2008, Eschelon filed Supplemental Authority comprised of the recent order in the Washington  
4 state arbitration.

5 7. In a Recommended Opinion and Order (“ROO”) issued on December 28, 2008, the  
6 arbitrator recommended adopting Eschelon’s single interval proposal for the repair of Commingled  
7 EELs. However, in Decision No. 70740 (February 12, 2009), the Commission determined that the  
8 record did not contain evidence of the costs of establishing Eschelon’s proposed single interval, and  
9 the Commission could not evaluate the reasonableness of Eschelon’s proposal without additional  
10 information. The Commission directed the Hearing Division “to schedule additional proceedings to  
11 take evidence on the costs and benefits of the parties’ positions, such proceedings should also include  
12 whether Qwest has a right to recover the costs of implementing a single repair interval for  
13 Commingled EELs.”

14 8. Pursuant to the directive of Decision No. 70740, on February 18, 2009, the Arbitrator  
15 set a Procedural Conference for March 2, 2009. Following the discussions at the March 2, 2009,  
16 Procedural Conference, on March 10, 2009, the arbitrator issued a Procedural Order establishing a  
17 schedule for filing testimony and setting an arbitration hearing for August 5, 2009.<sup>2</sup>

18 9. On August 11, 2009, the parties appeared and participated in an arbitration hearing on  
19 the final disputed issue of how long Qwest would have to repair a Commingled EEL, and the costs of  
20 implementing a single repair interval. During the course of the hearing, Qwest propounded a new  
21 proposal, which in essence would adopt the shorter time commitment advocated by Eschelon by  
22 having the parties simultaneously open two repair tickets. At the time of the hearing, Qwest did not  
23 have final contract language in writing for Eschelon or the arbitrator to review. Because Eschelon had  
24 not had time to thoroughly study and comment on the new proposal, the parties proceeded with the  
25 arbitration of their positions as they stood prior to Qwest’s new proposal. As a result, the arbitration  
26 was able to examine facets of Qwest’s August 11, 2009 proposal, as well as the parties’ positions on  
27

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28 <sup>2</sup> The hearing was subsequently continued until August 11, 2009, pursuant to Procedural Order dated July 21, 2009.

1 the costs of Eschelon's single interval proposal.

2 10. At the conclusion of the hearing, the parties agreed to appear at a status conference on  
3 September 11, 2009, at which time they would report on whether they were able to negotiate final  
4 contract language or would proceed with briefing. By Procedural Order dated August 28, 2009, the  
5 status conference was continued until September 21, 2009 to give the parties additional time to study  
6 proposed contract language.

7 11. At the September 21, 2009 status conference, the parties requested additional time to  
8 negotiate. By Procedural Order dated September 21, 2009, a second status conference was set for  
9 October 5, 2009. At the October 5, 2009, status conference, the parties reported that they were able to  
10 reach final agreement on the repair interval issue and would be filing final contract language with the  
11 Commission.

12 12. On October 7, 2009, Eschelon filed substitute ICA pages to replace pages that it had  
13 filed with the Commission on June 16, 2008.<sup>3</sup>

14 13. On October 13, 2009, Eschelon filed a Motion and Memorandum in Support of its  
15 Request for Approval of Interconnection Agreement on an Expedited Basis. Eschelon attached a fully  
16 executed signature page and copies of the substitute contract pages.

17 14. On October 15, 2009, Qwest filed a Response to Eschelon's Motion to Approve the  
18 Interconnection Agreement on Expedited Basis. Qwest also seeks expedited approval, but not for the  
19 reasons stated in Eschelon's Motion.

20 15. On October 28, 2009, Staff filed a Memorandum that indicates that in Staff's opinion  
21 the ICA, as amended by the substitute pages filed on October 7, 2009, is consistent with the 1996 Act  
22 and the Arizona Administrative Code, and should be approved.

23 Repair of Commingled EELs

24 16. A copy of the substitute ICA pages filed on October 7, 2009, are attached hereto as  
25 Exhibit A. The Section that was the focus of the August 11, 2009 arbitration hearing is Section  
26 9.23.4.7. Eschelon and Qwest have agreed that Eschelon shall have the option of opening two  
27

28 <sup>3</sup> The parties were authorized to file the substitution pages instead of the entire ICA, which including its exhibits, is over 700 pages long.

1 Trouble Tickets (one for each circuit ID),<sup>4</sup> and that in such cases Qwest will test and work both  
 2 Trouble Tickets simultaneously.<sup>5</sup> The time for quality service measurement will start and end with the  
 3 opening and closing of each trouble report associated with the specific circuit ID, and when Eschelon  
 4 opens two Trouble Tickets simultaneously, the total repair commitment time for the Commingled EEL  
 5 will not exceed the repair commitment time for the longer of the applicable individual Trouble Ticket  
 6 commitment times.<sup>6</sup> If Qwest dispatches and no trouble is found in the Qwest network as to either  
 7 circuit ID, Qwest may charge only one Maintenance of Service or Trouble Isolation Charge for the  
 8 Commingled EEL.<sup>7</sup> Qwest will repair the trouble if it is in the Qwest network and no charge will  
 9 apply if the trouble is in the Qwest network.<sup>8</sup>

10 17. The parties' negotiated language concerning the Repair of Commingled EELs is a fair  
 11 and reasonable solution and complies with previous Commission Orders, the 1996 Act and the  
 12 Arizona Administrative Code.

13 18. With the negotiated resolution of the dispute concerning the repair of Commingled  
 14 EELs, there are no outstanding contract issues. The ICA, originally filed on June 16, 2008, and as  
 15 amended by the substitute pages filed October 7, 2009, complies with Commission Decision Nos.  
 16 70356 and 70740, the 1996 Act and FCC regulations, and the Arizona Administrative Code, is in the  
 17 interest of the parties and the public interest, and should be approved.

### CONCLUSIONS OF LAW

19 1. Eschelon is a public service corporation within the meaning of Article XV of the  
 20 Arizona Constitution.

21 2. Eschelon is a telecommunications carrier within the meaning of 47 U.S.C. § 252.

22 3. Qwest is a public service corporation within the meaning of Article XV of the Arizona  
 23 Constitution.

24 4. Qwest is an ILEC within the meaning of 47 U.S.C. § 252.

25 5. The Commission has jurisdiction over Eschelon and Qwest and of the subject matter

26 <sup>4</sup> See Section 9.23.4.7.3.2.

27 <sup>5</sup> See Section 2.23.4.7.3.3.

28 <sup>6</sup> See Section 2.23.4.7.3.4.

<sup>7</sup> See Section 9.23.4.7.5.

<sup>8</sup> See Section 9.23.4.7.5.1.

1 of the Petition.

2           6.     The negotiated terms of the ICA, as amended by the substitution of the pages attached  
3 hereto as Exhibit A, are consistent with the public interest, and with federal and state law  
4 requirements.

5           7.     The arbitrated terms of the ICA meet the requirements of 47 USC §252 and applicable  
6 FCC regulations, are consistent with the best interests of the parties, and are in the public interest.

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**ORDER**

IT IS THEREFORE ORDERED that the Interconnection Agreement between Eschelon Telecom of Arizona, Inc. and Qwest Corporation filed with the Commission on June 16, 2008, and as amended by the substitute pages attached hereto as Exhibit A, is approved.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2009.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

JR::DAP

1 SERVICE LIST FOR:

ESCHELON TELECOM, INC. and QWEST CORPORATION

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T-03406A-06-0572 and T-01051B-06-0572

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28

EXHIBIT A

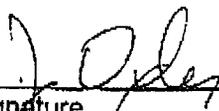
Section 25  
Signature Page

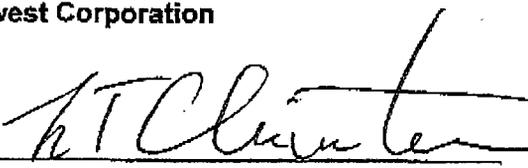
SECTION 25.0 - SIGNATURE PAGE

By signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Interconnection Agreement.

Eschelon Telecom of Arizona, Inc.

Qwest Corporation

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

J. Jeffery Oxley  
\_\_\_\_\_  
Name Printed/Typed

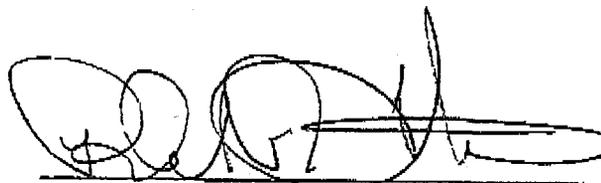
Larry Christensen  
\_\_\_\_\_  
Name Printed/Typed

EVP-General Counsel  
\_\_\_\_\_  
Title

Director-Interconnection  
\_\_\_\_\_  
Title

10/5/09  
\_\_\_\_\_  
Date

10/8/09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature

Roland Thornton  
\_\_\_\_\_  
Name Printed/Typed

EVP-Wholesale Markets  
\_\_\_\_\_  
Title

10/8/09  
\_\_\_\_\_  
Date

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to address billing issues and to prevent adverse impacts to the End User Customer. For Commingling, see Section 24.

9.23.4.6.7 For Out of Hours Coordinated Installations rate elements, see Section 9.2.3.7.

9.23.4.6.8 A rearrangement nonrecurring charge ("NRC") as described in Exhibit A applies to each rearrangement described in Section 9.23.4.4.6.

**9.23.4.7 Maintenance and Repair for UNE Component for Point-to-Point Commingled EELs.**

9.23.4.7.1 For trouble screening, isolation and testing for both circuit IDs associated with a Point-to-Point Commingled EEL, see Section 12.4.1. For a description of "Point-to-Point," see Section 9.23.4.4.1.

9.23.4.7.2 For trouble reporting, for both circuit IDs associated with a Point-to-Point Commingled EEL, see Section 12.4.2.2.

9.23.4.7.3 Qwest recognizes CLEC does not always have the ability to isolate trouble to one of the two circuit IDs associated with a Point-to-Point Commingled EEL.

9.23.4.7.3.1 If CLEC isolates trouble to one of the two circuit IDs associated with a Point-to-Point Commingled EEL, CLEC will submit a Trouble Ticket to Qwest for that circuit ID. If CLEC submits a single Trouble Ticket pursuant to this Section 9.23.4.7.3.1, CLEC need not cross-reference the other circuit ID associated with the Point-to-Point Commingled EEL.

9.23.4.7.3.2 When CLEC reports a trouble through any of the means described in Section 12.4.2.2, CLEC may open two Trouble Tickets (one for each circuit ID associated with the Point-to-Point Commingled EEL) consecutively (if trouble is reported electronically) or within one telephone call (if trouble is reported manually through the support centers). Qwest will assign trouble report tracking numbers for each circuit ID as described in Section 12.1.3.3.3.1.1.

9.23.4.7.3.2.1 When CLEC reports trouble electronically using the GUI interface, Qwest will provide CLEC notice containing assigned trouble report tracking numbers by email when CLEC provides an email address for such notices (or other process mutually agreed upon in writing). The trouble report tracking numbers will be posted to the electronic interface gateways (Electronic Bonding and GUI) consistent with Section 12.4.2. If CLEC opens two Trouble Tickets as described in Section 9.23.4.7.3.2, CLEC will indicate in the remarks field that the circuit ID is associated with a Commingled EEL. After receiving the assigned trouble report tracking numbers from Qwest, CLEC will edit the information for each Trouble Ticket with the trouble report tracking number associated with the other circuit ID (i.e., CLEC

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Unbundled Network Elements

will cross reference them) using the applicable field or function of the electronic interface gateways. The electronic interface gateways will notify Qwest of the cross-reference information.

9.23.4.7.3.2.2 When CLEC reports trouble manually through the support centers, Qwest when opening the trouble reports will include the assigned trouble report tracking number for the other circuit ID in the history function for each of the two trouble reports (*i.e.*, Qwest will cross-reference them).

9.23.4.7.3.3 If CLEC submits two Trouble Tickets as described in Section 9.23.4.7.3.2, Qwest will test and work both trouble reports simultaneously.

9.23.4.7.3.4 The time for quality service measurement will start and end with the opening and closing of each trouble report associated with the specific circuit ID. When the CLEC has opened two consecutive and immediate Trouble Tickets, one on each circuit ID of the Point-to-Point Commingled EEL, the total repair commitment time will not be increased as a result. The total repair commitment time for the Point-to-Point Commingled EEL shall not exceed the repair commitment time for the longer of the applicable individual Trouble Ticket commitment times.

9.23.4.7.3.4.1 If the repair commitment time for a UNE is 4 hours and the repair commitment time for a special access/private line service is 4 hours, the repair commitment time for the Point-to-Point Commingled EEL will be 4 hours. If one of the commitment times that applies to the separate trouble reports for the Point-to-Point Commingled EEL is longer, the longer commitment time will apply.

9.23.4.7.3.4.2 When submitting the trouble reports electronically, delay on the part of CLEC in submitting the second trouble report (beyond the time normally needed to submit two consecutive trouble reports) may result in a repair commitment time that is lengthened by a corresponding amount of time. The repair commitment time will not be lengthened if the delay is on Qwest's part (*e.g.*, delay in, or a Qwest failure, to provide a timely trouble report tracking number as described in Sections 9.23.4.7.3.2.1 and 12.1.3.3.3.1.1).

9.23.4.7.3.4.3 Qwest will track each trouble report individually within the Qwest repair systems, and each trouble report will carry its own unique information (*e.g.*, opening time, closing time, testing results). Qwest will maintain in the log of each trouble report the cross-reference information described in Section 9.23.4.7.3.2, which will be available to Qwest's technicians working on the repair. Qwest will use the testing information from one trouble report as needed to repair the trouble for the other trouble report, and vice versa.

9.23.4.7.5 If Qwest dispatches and no trouble is found in the Qwest network as to either

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circuit ID associated with the Point-to-Point Commingled EEL, Qwest may charge only one Maintenance of Service or Trouble Isolation Charge for the Point-to-Point Commingled EEL.

9.23.4.7.5.1 Qwest will repair the trouble if the trouble is in the Qwest network. No Maintenance of Service or Trouble Isolation Charge will apply if the trouble is in the Qwest network (as to one or both circuit IDs).

9.23.4.7.6 Qwest will assign and provide disposition codes as described in Section 12.4.4.

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

### 9.23.5 General UNE Combinations Rates and Charges

9.23.5.1 The rates and charges for the individual Unbundled Network Elements that comprise UNE Combinations are contained in Exhibit A for both recurring and non-recurring application.

9.23.5.1.1 Recurring monthly charges for each Unbundled Network Element that comprise the UNE Combination shall apply when a UNE Combination is ordered. The recurring monthly charges for each UNE are contained in Exhibit A.

9.23.5.1.2 Nonrecurring charges, if any, will apply based upon the cost to Qwest of Provisioning the UNE Combination consistent with Section 252(d) of the Act and providing access to the UNE Combination and will be compliant with Existing Rules. These nonrecurring charges, if any, are described in Exhibit A.

9.23.5.1.3 If CLEC elects to use the SR process to obtain access to a different UNE Combination, the recurring rates for the UNE Combination will be no greater than the total of the recurring rates in Exhibit A in that combination, unless Qwest negotiates with CLEC that the particular SR request would require different recurring rates. Any disputes regarding different rates other than in Exhibit A would follow the dispute resolution process outlined in Section 5.18. While any such rate dispute is pending, Qwest shall make the different UNE Combination available at recurring rates for the UNE Combination that are no greater than the total of the recurring rates in Exhibit A in that combination, and those recurring rates will be Interim Rates.

### 9.23.6 UNE Combinations Ordering Process

9.23.6.1 Ordering processes are contained in Section 12 of this Agreement. The following is a high-level description of the ordering process for UNE Combinations:

9.23.6.1.1 Step 1: Complete product questionnaire with account team representative. See Section 3.

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9.23.6.1.2 Step 2: Obtain Billing Account Number (BAN) through account team representative. See Section 21.

9.23.6.1.3 Step 3: Allow 2-3 weeks from Qwest's receipt of a completed questionnaire for accurate loading of UNE Combination rates to the Qwest Billing system.

9.23.6.1.4 Step 4: After account team notification, place UNE Combination orders via an LSR or ASR as appropriate. CLEC will provide the Connecting Facility Assignment (CFA) associated with each circuit pursuant to either Local Service Ordering Guidelines (LSOG) or, Access Service Ordering Guidelines (ASOG). Submission of LSRs and ASRs is addressed in Section 12.

9.23.6.2 Service intervals for each UNE Combination are set forth in Exhibit C. For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.

9.23.6.3 Due Date intervals are established when Qwest receives a complete and accurate LSR or ASR made through the IMA, XML or QORA interfaces or through facsimile. For EEL, and all other UNE Combinations, the date the LSR or ASR is received is considered the start of the service interval if the order is received on a business day prior to 3:00 p.m. For EEL, and all other UNE Combinations, the service interval will begin on the next business day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4th of July), Labor Day, Thanksgiving Day and Christmas Day.

9.23.6.4 Intentionally Left Blank.

9.23.6.5 When Qwest's End User Customer or the End User Customer's New Service Provider orders the discontinuance of the End User Customer's existing service in anticipation of moving to another service provider, Qwest will render its closing bill to its End User Customer effective with the disconnection. If Qwest is not the local service provider, Qwest will issue a bill to CLEC for that portion of the service provided to CLEC, a New Service Provider, or CLEC request service be discontinued to the End User Customer. Qwest will notify CLEC OSS via interface or other agreed upon processes when an End User Customer moves to another service provider. (For Loss and Completion reports, see Section 12.) Qwest shall not provide CLEC or Qwest retail operations or personnel with the name of the other service provider selected by the End User Customer.

9.23.6.6 For UNE Combinations, CLEC shall provide Qwest and Qwest shall provide CLEC with points of contact for order entry, problem resolution, repair, and in the event special attention is required on service request.

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**9.23.7 Billing**

9.23.7.1 For Connectivity Billing, Recording, and Exchange of Information, see Section 21.

**9.23.8 UNE Combinations Maintenance and Repair**

9.23.8.1 Qwest will maintain facilities and equipment that comprise the service provided to CLEC as a UNE Combination. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the written consent of Qwest.

**9.23.9 Loop-Mux Combination (LMC)**

## 9.23.9.1 Description

9.23.9.1.1 Loop-Mux combination (LMC) is an unbundled Loop as defined in Section 9.2 of this Agreement (referred to in this Section as an LMC Loop) combined with a DS1 or DS3 multiplexed facility with no interoffice transport. The multiplexed facility is provided as an Interconnection Tie Pair (ITP) from the high side of the multiplexer to CLEC's Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.

9.23.9.1.2 LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.

9.23.9.1.3 Qwest offers the LMC as a Billing conversion or as new Provisioning.

## 9.23.9.2 Terms and Conditions

9.23.9.2.1 A UNE Extended Enhanced Loop (EEL) may be combined with the multiplexed facility.

9.23.9.2.2 LMC will be provisioned where existing facilities are available or pursuant to the provisions of Section 9.1.2.1 of the Agreement.

9.23.9.2.3 The DS1 or DS3 multiplexed facility must terminate in a Collocation.

9.23.9.2.4 Intentionally Left Blank

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9.23.9.2.5 The multiplexer and the Collocation must be located in the same Qwest Wire Center.

9.23.9.2.6 Rearrangements may be requested for work to be performed by Qwest on an existing LMC, or on some private line/special access circuits, when coupled with a conversion-as-specified request to convert to LMC.

9.23.9.3 Rate Elements

9.23.9.3.1 The LMC Loop is the Loop connection between the End User Customer Premises and the multiplexer in the Serving Wire Center where CLEC is Collocated. LMC Loop is available in DS0 and DS1. Recurring and non-recurring charges apply and are contained in section 9.23.6 of Exhibit A.

9.23.9.3.2 LMC multiplexing is offered in DS3 to DS1 and DS1 to DS0 configurations. LMC multiplexing is ordered with LMC Loops. The recurring and nonrecurring rates in Exhibit A apply.

9.23.9.3.2.1 3/1 multiplexing rates are contained in Exhibit A of this Agreement, and include the following:

- a) Recurring Multiplexing Charge. The DS3 Central Office Multiplexer provides de-multiplexing of one DS3 44.736 Mbps to 28 1.544 Mbps channels.
- b) Non-recurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service.

9.23.9.3.2.2 1/0 multiplexing rates are contained in Exhibit A of this Agreement, and include the following charges:

- a) Recurring Multiplexing Charge. The DS0 Central Office multiplexer provides de-multiplexing of one DS1 1.544 Mbps to 24 64 Kbps channels.
- b) Non-recurring Multiplexing Charge. One-time charges apply for a specific work activity associated with installation of the multiplexing service, including low side channelization of all 24 channels.

9.23.9.3.3 DS0 Mux Low Side Channelization. LMC DS0 channel cards are required for each DS0 LMC Loop connected to a 1/0 LMC multiplexer. Channel cards are available for analog loop start, ground start, reverse battery, and no signaling. See channel performance for recurring charges as set forth in Exhibit A.

9.23.9.3.4 Nonrecurring charges for Billing conversions to LMC are set forth in Exhibit A.

9.23.9.3.5 A rearrangement nonrecurring charge as described in Exhibit A may be assessed on some requests for work to be performed by Qwest on an existing LMC, or on some private line/special access circuits, when coupled with a conversion-as-specified request to convert

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to LMC.

**9.23.9.3.6 Out of Hours Project Coordinated Installations** For coordinated project installations scheduled to commence out of hours, or rescheduled by CLEC to commence out of hours, in addition to standard nonrecurring charges set forth in Exhibit, CLEC will incur additional charges for the out of hours coordinated installation set forth under Miscellaneous Charges in Section 9 of Exhibit A.

**9.23.9.4 Ordering Process**

**9.23.9.4.1** Ordering processes for LMC(s) are contained below and in Section 12 of this Agreement. Qwest will document its ordering processes in Qwest's Product Catalog (PCAT). The following is a high-level description of the ordering process:

**9.23.9.4.1.1** Step 1: Complete product questionnaire for LMC(s) with account team representative.

**9.23.9.4.1.2** Step 2: Obtain Billing account number (BAN) through account team representative.

**9.23.9.4.1.3** Step 3: Allow two (2) to three (3) weeks from Qwest's receipt of a completed questionnaire for accurate loading of LMC rates to the Qwest Billing system.

**9.23.9.4.1.4** Step 4: After account team notification, place LMC orders via an LSR.

**9.23.9.4.2** Intentionally Left Blank

**9.23.9.4.3** Service intervals for LMC(s) are set forth in Exhibit C. For UNE Combinations with appropriate retail analogues, the Provisioning interval will be no longer than the interval for the equivalent retail service. CLEC and Qwest can separately agree to Due Dates other than the interval.

**9.23.9.4.4** Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA and XML interfaces or through facsimile. For LMC, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4<sup>th</sup> of July), Labor Day, Thanksgiving Day and Christmas Day.

**9.23.9.4.5** Out of Hours Project Coordinated Installations: CLEC may request an out of hours Project Coordinated Installation. This permits CLEC to obtain a coordinated installation for LMC with installation work performed by Qwest outside of Qwest's standard installation hours. For purposes of this Section, Qwest's standard installation hours are 8:00 a.m. to 5:00 p.m. (local time), Monday through Friday, except holidays. Installations commencing outside of these hours are considered to be out

of hours Project Coordinated Installations.

9.23.9.4.5.1 Intentionally Left Blank

9.23.9.4.5.2 To request out of hours Project Coordinated Installations, CLEC will submit an LSR designating the desired appointment time. CLEC must specify an out of hours Project Coordinated Installation in the "remarks" section of the LSR.

#### 9.23.9.5 Billing

9.23.9.5.1 For Connectivity Billing, Recording, and Exchange of Information, see Section 21.

#### 9.23.9.6 Maintenance and Repair

9.23.9.6.1 Qwest will maintain facilities and equipment for LMC provided under this Agreement. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest.

### 9.24 Loop Splitting

#### 9.24.1 Description

Loop Splitting provides CLEC/DLEC with the opportunity to offer advanced data service simultaneously with voice over an existing Unbundled Loop by using the frequency range above the voice band on the copper Loop. The advanced data service may be provided by the Customer of record or another data service provider chosen by the Customer of record. The POTS Splitter separates the voice and data traffic and allows the copper Loop to be used for simultaneous DLEC data transmission and CLEC provided voice service to the End User Customer. "CLEC" will herein be referred to as the voice service provider while "DLEC" will be referred to as the advanced data service provider. CLEC and DLEC may be the same entity. Only one (1) Customer of record determined by the CLEC/DLEC partnership will be identified to Qwest.

9.24.1.1 With regard to Qwest current requirement that Loop Splitting be offered over an existing Unbundled Loop, Qwest acknowledges that there are ongoing industry discussions regarding the Provisioning of Loop Splitting over a new Unbundled Loop. If as a result of those discussions, a process is developed for Loop Splitting over a new Loop, Qwest will negotiate an amendment to this Agreement at CLEC's request to eliminate the limitation of Loop Splitting to existing Unbundled Loops. Requests for other Loop Splitting applications must be

submitted through the Special Request Process (SRP).

## 9.24.2 Loop Splitting General Terms

### 9.24.2.1 General

9.24.2.1.1 Qwest is not responsible for providing the Splitter, filter(s) and/or other equipment necessary for the End User to receive separate voice and data service across a single copper Loop.

9.24.2.1.2 To order Loop Splitting, CLEC/DLEC must have a POTS Splitter installed in the Qwest Wire Center that serves the End User Customer. The POTS Splitter must meet the requirements for Central Office equipment Collocation set by the FCC or be compliant with ANSI T1.413.

9.24.2.1.3 There may only be one DLEC at any given time that provides advanced data service on any given Unbundled Loop.

9.24.2.1.4 If Loop Splitting is requested for an analog Loop, the Loop must be converted to a 2/4 wire non-loaded Loop or ADSL compatible Loop.

9.24.2.1.4.1 The Customer of record will be able to request conditioning of the Unbundled Loop. Qwest will perform requested conditioning of Unbundled Loops to remove load coils and excess Bridged Taps under the terms and conditions associated with Loop conditioning contained in Section 9.2 of this Agreement.

9.24.2.1.4.2 If requested conditioning significantly degrades the existing service over the Unbundled Loop to the point that it is unacceptable to CLEC, Customer of record shall pay to convert back to an analog Loop.

9.24.2.1.5 POTS Splitters may be installed in Qwest Wire Centers in either of the following ways at the discretion of CLEC/DLEC: (a) via the standard Collocation arrangements set forth in the Collocation Section; or (b) via Common Area Splitter Collocation as set forth in the Line Sharing Section of this Agreement. Under either option, POTS Splitters will be appropriately hard-wired or pre-wired so that points of termination are kept to a minimum. For Loop Splitting, Qwest shall use the same length of tie pairs as it uses for Line Sharing, except for the additional CLEC to CLEC connection, which is not required for Line Sharing.

9.24.2.1.6 POTS Splitter Collocation requirements are covered in the Line Sharing Section of this Agreement.

### 9.24.3 Loop Splitting Rate Elements

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The following Loop Splitting rate elements are contained in Exhibit A of this Agreement.

9.24.3.1 Recurring Rates for Loop Splitting

9.24.3.1.1 Interconnection TIE Pairs (ITP)- A monthly recurring charge to recover the costs associated with the use of ITPs. See Section 9.1 of Exhibit A.

9.24.3.1.2 OSS Charge – A monthly recurring charge to recover the cost of the OSS modifications necessary to provide access to the high frequency portion of the Unbundled Loop. See Section 9.4.4 of Exhibit A.

9.24.3.2 Non-recurring Rates for the Loop Splitting

9.24.3.2.1 Basic Installation Charge for Loop Splitting – A non-recurring charge for Loop Splitting installed will apply.

9.24.3.3 Non-recurring Rates for Maintenance and Repair

9.24.3.3.1 Trouble Isolation Charge – A non-recurring charge for Trouble Isolation will be applied in accordance with the Support Functions – Maintenance and Repair Section.

9.24.3.3.2 Additional Testing – The Customer of record may request Qwest to perform additional testing, and Qwest may decide to perform the requested testing on a case-by-case basis. A non-recurring charge will apply in accordance with Exhibit A.

9.24.3.4 Rates for POTS Splitter Collocation are included in Exhibit A of this Agreement.

9.24.3.5 Exhibit A identifies the rates that have been approved by the Commission. The other rates are interim and will be subject to true-up based on either mutually agreed permanent rates or permanent rates established in a cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the interim rates set forth in Exhibit A will be changed to reflect the interim rates set by the Commission; however, no true up will be performed until mutually agreed to permanent rates are established or permanent rates are established by the Commission.

**9.24.4 Loop Splitting Ordering Process**

9.24.4.1 Loop Splitting

9.24.4.1.1 As a part of the pre-order process, GLEC/DLEC may access Loop characteristic information through the Loop Information Tool described in Section 12. The Customer of record will determine, in its sole discretion and at its risk, whether to add data services to any specific Unbundled Loop.

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9.24.4.1.2 The Customer of record will provide on the LSR, the appropriate frame terminations that are dedicated to POTS Splitters. Qwest will administer all cross connects/jumpers on the COSMIC/MDF and IDF.

9.24.4.1.3 Basic Installation "lift and lay" procedure will be used for all Loop Splitting orders. Under this approach, a Qwest technician "lifts" the Loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting to CLEC's/DLEC's collocated equipment in the same Wire Center.

9.24.4.1.4 The Customer of record shall not place orders for Loop Splitting until all work necessary to provision Loop Splitting in a given Qwest Wire Center, including, but not limited to, POTS Splitter installation and TIE Cable reclassification or augmentation has been completed.

9.24.4.1.5 The Customer of record shall submit the appropriate LSRs associated with establishing Unbundled Loop and Loop Splitting.

9.24.4.1.6 If a Loop Splitting LSR is placed to change from Line Sharing to Loop Splitting or to change the voice provider in an existing Loop Splitting arrangement and the data provider does not change or move Splitter location, the data service will not be interrupted.

#### 9.24.5 Billing

9.24.5.1 For Connectivity Billing, Recording, and Exchange of Information, see Section 21.

9.24.5.2 Qwest shall bill the Customer of record for all recurring and non-recurring Loop Splitting rate elements.

#### 9.24.6 Repair and Maintenance

9.24.6.1 Qwest will allow CLEC/DLEC to access Loop Splitting at the point where the combined voice and data Loop is cross connected to the POTS Splitter.

9.24.6.2 The Customer of record will be responsible for reporting to Qwest service troubles provided over Loop Splitting. Qwest will be responsible to repair troubles on the physical line between Network Interface Devices at the End User Customer premises and the Demarcation Point in Qwest Wire Centers. Qwest, CLEC and DLEC each will be responsible for maintaining its equipment. The entity that controls the POTS Splitters will be responsible for their maintenance.

9.24.6.3 Qwest, CLEC and DLEC will continue to develop repair and maintenance procedures for Loop Splitting and agree to document final agreed to procedures in a methods and procedures document that will be made available on Qwest's web site.

**9.24.7 Customer of Record and Authorized Agents**

9.24.7.1 "Customer of record" is defined for the purposes of this Section 9.24 as the CLEC that is the billed Customer for Loop Splitting. The Customer of record may designate an authorized agent pursuant to the terms of Sections 9.24.7.2 and 9.24.7.3 to perform ordering and/or Maintenance and Repair functions.

9.24.7.2 In order for the authorized agent of the Customer of record to perform ordering and/or Maintenance and Repair functions, the Customer of record must provide its authorized agent the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that will allow the authorized agent to access the records of the Customer of record. Such access will be managed by the Customer of record.

9.24.7.3 The Customer of record shall hold Qwest harmless with regard to any harm Customer of record as a direct and proximate result of the acts or omissions of the authorized agent of the Customer of record or any other Person who has obtained from the Customer of record the necessary access and security devices, including but not limited to user identifications, digital certificates and SecurID cards, that allow Person to access the records of the Customer of record unless such access and security devices through the Customer of record were wrongfully obtained by such Person through the willful or negligent behavior of Qwest.

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Commingling

Commingling will not affect the prices of UNEs or UNE Combinations involved. CLEC shall be assessed the Tariffed rate, or resale rate, or the rate from other Qwest wholesale service offerings, (including ICB offerings) as appropriate, for the non-UNE service. Although Ratcheting is not required, Qwest shall not deny access to a UNE on the ground that the UNE or UNE Combination shares part of Qwest's network with Access Services or inputs for mobile wireless services and/or Interexchange services. Qwest shall not refuse to Commingle a UNE with special access or other wholesale services because Qwest multiplexes traffic for multiple Customers onto one facility within its own network.

24.2.1.1 A multiplexed facility will be ordered and billed at the rate in Exhibit A if all circuits entering the multiplexer are UNEs or the UNE Combination terminates at a Collocation, as described in Section 9.23. In all other situations when CLEC orders multiplexing with a UNE (e.g., CLEC orders a UNE Loop in combination with Qwest special access transport), the multiplexed facility will be ordered and billed pursuant to the applicable Tariff.

## 24.3 Commingled EELs

24.3.1 See Section 9.23.4.1 regarding Service Eligibility Criteria for High Capacity EELs, including Commingled EELs.

24.3.2 The service interval for Commingled EELs will be as follows. For the UNE component of the EEL, see Exhibit C. For the other component of the EEL the service interval is governed by the terms of the alternative service arrangement pursuant to which that component is offered (e.g. Qwest's applicable Tariffs, price lists, catalogs, or commercial agreements).

Eschelon / Qwest Exhibit A  
Compliance Filing

A: Cost Docket T-00000A-00-0194 Phase II Order No. 84922 Effective 8/12/02
B: Cost Docket T-00000A-00-0194 Phase IIa Order No. 85451 Effective 12/12/02
C: Cost Docket T-00000A-00-0194 Phase II & IIa Record Reopened Decision No. 66365 Effective Dates 8/12/02 & 10/6/03
D: Consolidated Arbitration docket No. U-3021-99-448 ET AL.
E: 271 Docket U-0000-97-0238
+ Eschelon and Qwest have agreed to Bill and Keep pursuant to 7.3.1.2 of the Agreement.
+++ Negotiated rate for the term of the ICA.
+++++ The nonrecurring charges for the EEL transport element are included in the EEL Loop and/or Multiplexed EEL nonrecurring charges. Therefore there is no additional nonrecurring charge for the EEL Transport. When an EEL transport circuit is commingled with a Private Line Channel Termination circuit, the nonrecurring charge for the commingled EEL will be the EEL Loop NRC.
(1) Rates not approved in cost docket.
(2) Market-based rates
(3) ICB, Individual Case Basis pricing.
(4) Rates per FCC Guidelines.
(5) Rates for this element will be proposed in Arizona Cost Docket Phase III and may not reflect what will be proposed in Phase III. There may be additional elements designated for Phase III beyond what are reflected here.
(6) Intentionally Left Blank
(7) Qwest can't bill the current rate structure, but will bill customers the lowest rate.
(8) Qwest has not implemented the NRC recurring charges but reserves the right to assess such a charge in the future.
(9) Per the terms of the Stipulated Agreement reached November 2001, Qwest will not charge for this element until the Commission has an opportunity to review and approve in Phase III of the cost proceeding.
(10) Rate to be reviewed in Phase III of the cost docket.
(11) The docket change charge for loops and CFAs will be reviewed by the Commission in the Phase III of the cost docket. (Arbitration Decision No. 70356)