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September 11, 2002

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

RE: In the Matter of US West Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996
Docket No. T-00000A-97-0238

Dear Sir or Madam:

Enclosed for filing please find Eschelon Telecom, Inc.'s Late Filed Exhibits E-B, E-C, E-D, and E-E and a Certificate of Service in connection with the above-referenced docket.

Please feel free to contact me with any questions.

Sincerely,

Tobe Goldberg

Tobe L. Goldberg
Senior Legal Secretary
Eschelon Telecom, Inc.
(612) 436-6084

Enclosures
cc: Service List

Arizona Corporation Commission
DOCKETED

SEP 19 2002

DOCKETED BY CAC

ESCHELON LATE FILED EXHIBIT E-B
IMPASSE ISSUES

1. SERVICE AFFECTING PERFORMANCE AND REPORTING: *See* Ex. E-A; *see also* Ex. E-1, pp. 1-2; *see, e.g.*, Tr. Vol. I, pp. 36-42, 62, 73-74, 76, 88, 94-98, 101-02, 122-23, 130-32, 137-43, 146-49, 153-67.

Are customer affecting problems occurring for Off-Net orders at an unacceptable level? Yes.

Are those customer affecting problems adequately addressed by Qwest's performance measures and proposed measures and related performance assurance plans? No.

Are proposed PO-20 and the augment to OP-5 adequate to capture the issues Eschelon has raised? No.

Should OP-3 be evaluated to determine whether it should reflect (unless adequately reflected elsewhere) that, when there is a service order error, Qwest did not meet its commitment ***to provision the order as written*** by the due date? Yes.

Are the Qwest PIDs adequately capturing troubles that are reported through Qwest's documented processes when those processes allow action other than opening a trouble ticket with the repair desk? No.

Are there service affecting errors and omissions (separate from service order errors) that are not being captured by the PIDs? Yes.

When service order errors occur but are corrected by CLECs (such as through the use of PSONs), should the errors be counted as a miss or otherwise accounted for in the PIDs and PAP? Yes.

Should Qwest use and escalate from the repair interval (rather than the longer service order interval) when a service order accuracy error occurs? Yes.

Should measures to address these issues be developed and revised and incorporated into the PAP before 271 approval is recommended (before long term PID administration)? Yes.

Should the form and content of any long-term PID administration plan be developed, so that a forum is available when needed, before 271 approval is recommended? Yes.

Should Qwest's reporting of UNE-E/UNE-M/UNE-Star lines be separated from its reporting of UNE-P to reflect differences in ordering, provisioning, and billing? Yes.

Should the Commission recommend 271 approval for Qwest before the end-user customer's experience improves and that improvement is documented and verified? No.

2. <u>UNE-P FEATURE AVAILABILITY[1] - REMOTE ACCESS FORWARDING</u>:
***See* Ex. E-D, pp. 15-18** (Ex Parte Comments of Eschelon Telecom, Inc. In Opposition to the Consolidated Application of Qwest Communications, *In the Matter of Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota* (Qwest I) FCC, Docket No. 02-148 (Aug. 15, 2002) (Eschelon's Ex Parte Comments); *see also* Ex. E-1, pp. 3-4; *see also* Tr. Vol. I, pp. 181-84; Vol. II, pp. 304-05, 30-09, 313.

Is Remote Access Forwarding an Advanced Network Architecture (AIN) feature of the type that Qwest need not unbundle in reliance on paragraph 419 of the FCC's Unbundling (UNE Remand) Order? No.

> Qwest must provide Remote Access Forwarding with UNE-P. Remote Access Forwarding is not a proprietary AIN feature. It is part of the features, functionalities, and capabilities of the switch that are included in the cost of the switch port. Qwest cannot move a feature that would otherwise be available to CLECs through UNE-P to the AIN platform to avoid its obligation to provide the features of the switch to CLECs while providing the feature to its own customers.

<u>Alternatively</u>, if Qwest is allowed to treat Remote Access Forwarding as an AIN feature unavailable with UNE-P:

Should Qwest be required to provide to CLECs a list of switches for which Remote Access Forwarding (and other switch features that Qwest claims are not otherwise available to CLECs) is activated? Yes.

> Qwest testified that "if Qwest used a switch-based feature prior to AIN development, we would not deactivate the feature." Tr. Vol. II, p. 313, lines 15-16. CLECs should not have to experience the delays associated with the Special Request Process to obtain features that are activated in the switch. Such features are supposed to routinely come with the switch port.
>
> UNANSWERED TAKE BACK: Qwest had a take back to provide a list of switches in which the feature is activated to Eschelon, *see id.*, p. 313, lines 11-13 & 18-20, but Qwest did not provide this information to Eschelon in its late filed exhibits.

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[1] With respect to the other feature availability issues raised by Eschelon (*see* Ex. E-1), Qwest attempted to address the specific USOCs identified by Eschelon but did not address the broader issue of creating more comprehensive, up-to-date documentation that does not leave to CLECs the task of identifying issues on a USOC-by-USOC basis.

Should Qwest be allowed to charge CLECs right to use fees for activating Remote Access Forwarding, when Qwest unilaterally chose to provide the feature through AIN instead of spreading the cost of any such fees across all users? No. *See* Ex. E-D, p. 17.

> If there are no proprietary or other restrictions on an incumbent's ability to choose between providing a feature through the switch or through an AIN platform, the incumbent has an incentive to use the AIN platform to prevent competitors from winning customers who desire those features. If Qwest pays a right to use fee, it both has economies of scale that justify the cost and has the ability to recover the costs through recurring rates. In fact, some of those costs may already be acccounted for in the recurring switch port rate. If, however, Qwest may choose to provide that same feature through an AIN platform, regardless of whether it is proprietary, small carriers without those same economies of scale are effectively precluded from providing through UNE-P the same feature that is available to Qwest retail customers.

Should Qwest have to establish that its employees have been trained in the proper processes for CLECs to request the features, functions, and capabilities of the switch? Yes.

See Tr. Vol. II, p. 309, lines 8-11; Ex. E-D, p. 16.

Separate feature issue:

Should Market Expansion Line (MEL) be available with UNE-P? Yes.

Qwest identified MEL as a feature that is unavailable with UNE-P. *See* Qwest Ex. D, Section 7. With the exception of the additional phone number, it is simply a forwarding feature. A customer can use call forwarding variable either locally or as an interstate number. This is a major feature for a customer that is physically changing locations. Without this feature, a UNE-P provider is at a competitive disadvantage with respect to serving such customers.

3. TIME-CONSUMING AND CUMBERSOME ORDERING PROCESS: See Ex. E-D, pp. 13-15; *see also* Ex. E-1, p. 5 & Ex. E-3; Tr. Vol. I, pp. 185-86 & pp. 197-200; Vol. II, p. 535, lines 14-18.

Should Qwest have to successfully add the capability to convert customers as specified without having to list and map changes, adds or removes (migration as specified) before obtaining 271 approval? Yes.

Should Qwest have to successfully add migrate by telephone number capability before obtaining 271 approval? Yes.

4. CUTOVERS: *See* Ex. E-1, p. 7; E-5 to E-8 (Measure E2); E-D, pp. 67-72.

Should Qwest be required to show that it is providing timely cutovers and complying with its own documented cutover procedures? Yes.

Since Eschelon expressed concerns in the workshop that Qwest's conduct has changed and may create a renewal of problems, see Ex. E-1, p. 7, additional cutover problems have occurred. *See* Ex. E-D, pp. 67-72. The Commission should require that Qwest show documented compliance with its 48-hour dial tone test policy; Qwest provide evidence that it is providing timely notice to the CLEC of the results of the dial tone test; and that Qwest properly interpreting the SGAT language allowing Qwest to reschedule the installation by supplementing the order if CLEC is not ready within 30 minutes of the scheduled appointment time (see, e.g., SGAT § 9.2.2.9.4) so that it does not apply in situations in which the CLEC is ready but for Qwest's failure to inform CLEC of no dial tone. *See* Ex. E-D, pp. 67-72. (As indicated in footnote 60 to Ex. E-D, p. 70, through CMP, Allegiance Telecom requested the ability to receive no dial tone notices by email (rather than by telephone) (Change Request #PC050302-1). Because emails indicate the time at which they were sent, a review of such emails should show whether the notices are being sent on a timely basis.)

5. <u>UNANNOUNCED CLEC AFFECTING SYSTEMS CHANGES</u>: *See* Ex. E-9, pp. 4-5; E-D, pp. 20-26.

Should Qwest have to show that it is adequately notifying CLECs of changes to systems, including changes to Qwest's back end systems, when those changes may impact CLECs? Yes.

Despite assurances from Qwest that problems have been corrected, this problem has occurred again since the July workshop. When submitting a change order on a CTX21 account, IMA suddenly began to require a directory listings form in error. Previously, such orders could be completed without completing a directory listings form, and Eschelon received no notice that the process would change. *See* **Ex. E-D**, pp. 25-26. Despite escalation by Eschelon, the problem remains uncorrected at this time.

6. <u>OSS – LACK OF FLOW THROUGH</u>: *See* Ex. E-A for additional impasse issues.

Should Qwest be required to show that Centrex 21 orders successfully flow through to UNE-P-POTS after Release 10.1? Yes.

Qwest claimed that these orders would flow through after 10.1. Since the July workshop, however, Eschelon has observed that these orders do not flow through. Eschelon recently provided approximately 7 examples to its service manager. Qwest's late filed exhibit confirmed that Centrex Plus and Centron do not flow through. Overall, Qwest's flow through eligibility chart and its instructions for manual handling show that Qwest needs to increase the amount of flow through and decrease the amount of manual handling. *See* Ex. E-A.

UNANSWERED REQUEST FOR CLARIFICATION: Eschelon asked Qwest to address the process when an order does not flow through ***the switch,*** *see* Tr. Vol. I, p. 113, lines

4-19, but can not find that explanation in Qwest's Late Filed Exhibits. When orders fall out for manual handling, the line side translations should be worked immediately so that the customer is not without dial tone. When an order does not flow through, the disconnect is worked but the new side is not. Both should be worked in a manner that allows the frame due time to be met. Where is this documented and how is compliance monitored?

7. <u>UNANNOUNCED DISPATCHES</u>: *See* Ex. E-9, pp. 7-8; E-D, pp. 30-38.

Should a documented process that is available to CLECs for non-emergency maintenance visits to CLEC end-user premises be established to ensure that proper procedures are followed regarding notice, branding, and coordination? Yes. Such protections may need to be added to the SGAT.

In some cases, Qwest may claim that it needs to visit a CLEC's end-user customer premises for routine maintenance or other non-emergency reason. The CLEC is the owner of such facilities, and it needs to be aware of such activities. In such cases, Qwest should have a documented process to ensure that proper procedures are followed regarding notice, branding, and coordination with the CLEC to allow the CLEC to set end-user customer expectations and to avoid the types of problems described in Eschelon's Initial Comments. The documented process should be accessible to CLECs so that they can rely on it and know how to escalate when the process is not followed.

During an August 13, 2002 conference call,[2] Qwest claimed that it has an internal process in place to ensure that the customer of record (CLEC) is notified if a Qwest technician is going to work on a CLEC end-user premise. Qwest said that it is an internal process, so it will not share existing documentation about the process with CLECs. Instead, Qwest said it would create a matrix describing the process and distribute it to CLECs by the end of that week. Eschelon has still not received the information. A published, documented process upon which CLECs may rely is needed.

8. <u>DSL - DISCONNECT IN ERROR</u>: See E-9, pp. 10-11; E-D, pp. 37-38.

Should Qwest have a written obligation to escalate a disconnect in error for DSL to be ***due the same day***? Yes. *See* AZ 271 Tr., Vol. II, p. 458, lines 11 –20.[3]

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[2] *See* Qwest Document Number CMPR.08.07.02.F.01311.Co_Initiated_Act_Mtg.

[3] AZ 271 Tr., Vol. II, p. 458, lines 11 –20 (Susan Bliss, Qwest): "When I say we made a process improvements for the disconnect in error and the escalation process, I'm taking a step back and taking a broader picture. It's not selective what type of order scenario it falls in. It's disconnect in error on DSL, whether it be from your UNE-Star project or a new order or whatever. It's a broad process improvement. The same with the escalation process. And, Hagood, you are correct, it was – we escalated it due the same day." *See also id.* Vol. II, p. 453, line 20 – p. 454, line 1 (Workshop Facilitator Hagood Bellinger asked what the interval is for DSL restoral with escalation, and Ms. Bliss of Qwest responded: "It depends on the unique situation. If they need it that day, we try and escalate it and get it to the customer that day. If they needed it in five days – ***it depends on when the customer's ready***.") (emphasis added). If the customer is

Qwest should not, as a matter of policy, be able to make CLECs wait the standard interval when the disconnect is due to a Qwest error, as it had been doing.

9. <u>DSL – DISCONNECT DSL EARLY (BEFORE VOICE)</u>: *See* E-9, p. 11; E-D, pp. 38-39.

Should Qwest be required to leave DSL functional until the time of cut requested by CLEC (and not early)? Yes.

Should Qwest have to show a track record of doing so before gaining 271 approval? Yes.

Since the July workshop, Eschelon has experienced this situation again. Qwest disconnected the DSL at 5:30am even though the cut was not scheduled until 11:30am. The end-user customer lost critical functionality before the cut time. The customer was upset and asked Eschelon to push out the cut. Qwest then took the position that this was a customer not ready situation. This was not the case, because Qwest caused the disruption and adverse end-user experience. Eschelon asked its service manager to bring this example to the appropriate personnel at Qwest to attempt to avoid another problem.

10. <u>MAINTENANCE AND REPAIR – DISCRIMINATION</u>: See E-9, pp. 12-13; E-D, pp. 40-42.

Should Qwest be required to provide a statement of time and materials and applicable charges to CLECs at the time maintenance and repair work is completed (as it does with retail customers)? Yes.

11. **<u>MAINTENANCE AND REPAIR – UNTIMELINESS OF BILLS: See E-9, p. 14, Tr. Vol. I, p. 211 line 13 – p. 212, line 5.</u>**

Should Qwest be required to make a written commitment to CLECs to provide timely bills or, if untimely, not apply the charges? Yes.

Qwest has stated in sworn testimony provided to the FCC that "bills are not issued on maintenance charges that are over 45 days old." Notarianni & Doherty Checklist Item 2 OSS Reply Declaration, ¶ 238 (July 26, 2002). This policy should be documented and applied uniformly.

12. **<u>MAINTENANCE AND REPAIR – INSUFFICIENT INFORMATION ON BILLS: See E-9, pp. 14-15; E-D, pp.44-45.</u>**

Should Qwest be required to provide the circuit identification number on unbundled loop bills for maintenance and repair charges? Yes.

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ready on the same day, therefore, Qwest has a same day interval for escalated DSL restoration. This should be in documentation available to CLECs.

Eschelon has had to request the circuit identification numbers separately from Qwest and engage in a manual process to go back and review the bills to attempt to verify them. For April 2002, Eschelon found that, once it received the circuit identification information, it needed to dispute 8 out of 32 charges (in Arizona). That is 25%. For May 2002, Eschelon found that, once it received the circuit identification information, it needed to dispute 15 out of 32 charges (in Arizona). That is 46.8%.[4] Qwest has not yet provided more recent circuit identification information needed to verify more recent bills. Receipt of timely circuit identification information is needed for verifying bills.

13. **<u>MAINTENANCE AND REPAIR – AUTHORIZATION AND ACCURACY FOR CLOSING TICKETS: See E-9, p. 15; E-D, pp. 45-46.</u>**

Should Qwest be required to show a track record of obtaining CLEC authorization before closing tickets and of applying the accurate closing codes? Yes.

As discussed with respect to Issue Number 12, a review of the bills has been made possible recently after more information was obtained from Qwest. That review shows that Qwest is not properly obtaining authorization for and applying accurate codes when closing tickets. *See* Issue 12.

14. <u>MAINTENANCE AND REPAIR – PAIR GAIN</u>: See Ex. E-9, pp. 15-16; E-D, pp. 47-48.

Should Qwest should be allowed to impose upon CLECs dispatch charges before it has ensured that the loop is working from its equipment to the pair gain? No.

Should Qwest be allowed to impose unnecessary maintenance and repair charges on CLECs that are due to Qwest's use of pair gain? No.

15. **<u>MAINTENANCE AND REPAIR – RECIPROCITY: See Ex. E-9, p. 16 & E-D, p. 47.</u>**

Should Qwest be required to accept charges from CLECs for testing that CLECs conduct for Qwest in the same types of circumstances under which Qwest charges CLECs? Yes

Although the SGAT does refer to charges by carriers to each other in other contexts (*see*, *e.g.*, SGAT § 7.6.3 regarding Category 11 records), it does not do so for this issue. This should be changed so that Qwest does not have a competitive advantage over every other carrier that must pay charges in these situations, per Qwest's policy.

16. <u>LOSS AND COMPLETION REPORTS</u>: See Ex. E-9, p. 17; Ex. E-D, pp. 48-49.

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[4] A process should be in place to ensure that, once found, these errors are then captured in the billing accuracy measure.

Should Qwest be required to provide to CLECs with a single report that lists the customers that have left the CLEC to go to another carrier? Yes.

> Eschelon has obtained substantial improvements in the Loss and Completion Reports. The reports, however, continue to fail to differentiate customers that are going to another provider without a CLEC's knowledge with those disconnected at the CLEC's request. Qwest defines both types of customers as "external" when in fact the loss report should show customers that the CLEC lost. The reports should be revised to help ensure that a CLEC does not continue to bill a customer that has left the CLEC.

17. <u>POLICY OF NOT APPLYING RATES IN INTERCONNECTION AGREEMENTS</u>: *See* Ex. E-9, pp. 20-21; E-D, pp. 50-51; *see also* Ex. E-C (collocation section 6b); Tr. Vol. I, pp. 221-23.

May Qwest unilaterally impose on a CLEC that has not opted in to an SGAT a rate that has not been approved in a commission cost docket or using the commission approved cost model? No.

May Qwest impose SGAT rates on a CLEC that has not opted into an SGAT? No.

Should the Commission establish a process under which, if a charge is due and really is not in the interconnection agreement, Qwest must negotiate a rate, obtain commission approval for a rate, or at least reach agreement on using the commission approved cost models and processes to calculate the rate before charging the rate? Yes.

18. <u>BILLING ACCURACY</u>: *See* Ex. 17; Tr. Vol. I, pp. 223-28; Vol. II, pp. 340-45; Ex. E-9 pp. 22-24; Ex. E-D, pp. 51-59; *see also* Ex. 9, pp. 18-19.

Does the current billing accuracy measure accurately reflect Eschelon's experience? No.

Should the billing measure be revised and expanded? Yes.

Should Qwest be required to correct the inaccuracies in Eschelon's bills? Yes.

Must Qwest provide adequate notice, including detail to substantiate the changes and time for objection if Eschelon disagrees with the proposed changes, before making rate and profile changes? Yes.

Once issues (including long-disputed issues) are resolved in a CLEC's favor, should the performance results be adjusted to reflect the resolution? Yes.

19. <u>SWITCHED ACCESS</u>: *See* Ex. E-9, pp. 25-26; E-D, pp. 60-62; Tr. Vol. I, pp. 230-31.

Should the Commission further investigate whether Qwest is providing complete and accurate records from which CLECs may bill interexchange carriers access charges (and whether Qwest's performance in this regard is accurately measured)? Yes.

Results of a recent audit show that, for direct dialed originating and terminating and 800 origination calls, Eschelon did not receive approximately 16% of the test calls from Qwest.[5] The missing calls percentages rise for specialty calls, such as directory assistance access calls, operator handled and 1010XXX calls. So, the total percentage is approximately 18%. Sufficient basis exists for re-examining this issue.

20. <u>COLLOCATION</u>: *See* Ex. E-C; *see also* Exs. E-14, E-18, E-19.

Should the Commission recommend 271 approval for Qwest before Qwest has demonstrated that its documented processes for ensuring that CLEC collocation equipment is protected during construction activities have been tested and proven successful? No.

Should Qwest be required to provide CLEC collocation personnel with Qwest's written processes and procedures for protecting CLEC collocation equipment during construction and to incorporate those procedures on its wholesale web site? Yes.

Should language be added to the SGAT to require Qwest to pay for clean up costs when Qwest construction results in dust contamination to CLEC equipment? Yes.

Should Qwest be required to provide CLECs final Alternative Point of Termination (APOT) information at least 15 days before a collocation ready for service (RFS) date so that CLECs are able to place orders early enough to enable them to use their collocations on the RFS date? Yes.

Should Qwest be permitted to charge CLECs a maximum price of $345 for all collocation augment quote preparations? Yes.

Should Qwest be permitted to charge CLECs the entire augment quote preparation fee of $345 for the minor activity of terminating unused power? No.

Should Qwest provide an objective and reasonable definition of what constitutes a "material change" to a collocation order so that Qwest cannot unilaterally delay a

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[5] In addition, the most recent test call audit did not include intraLATA originating and terminating minutes that are carried by Qwest (IntraLATA toll calling that Qwest continues to provide). Some former Qwest customers choose to maintain Qwest as their intraLATA toll provider when switching local carriers. Also, many current Qwest retail customers have Qwest as their intraLATA toll provider. When their calls terminate to an Eschelon customer, Qwest is required to provide a terminating access record to Eschelon to allow Eschelon to bill Qwest. In 2001, Qwest told Eschelon it does not provide these call records, and Eschelon can not bill Qwest for this intraLATA toll access.

CLEC's collocation order when a minor, non-material change is requested by a CLEC? Yes.

Should the Commission recommend 271 approval for Qwest before it has demonstrated that it has a process in place to provide CLECs with timely and accurate information informing them when a collocation space becomes available at a Qwest premises? No.

Should Qwest be required to charge CLECs the rates contained in the parties' interconnection agreement for collocation space? Yes.

Should Qwest be required to provide CLECs with adjacent off-site collocation, a form of collocation offered by another CLEC, Southwestern Bell Telephone (SWBT)? Yes.

Should Qwest be required to permit CLECs to interconnect at the ICDF? Yes.

21. <u>INTERCONNECTION</u>: *See* Ex. E-C; *see also* Ex. E-18.

Should Qwest be permitted to charge transit charges in addition to access charges on intraLATA toll calls? No.

Should Qwest be permitted to charge CLECs for incomplete or old Category 11 billing records? No.

Should Qwest be permitted to charge CLECs an assumed tandem switching and tandem transmission mileage rate for which Qwest has provided no evidence as to the validity of the assumption? No.

Should CLECs have the right to be charged a tandem switching and tandem transmission rate based on actual miles rather than on assumed miles? Yes.

22. <u>TANDEM FAILURE EVENTS</u>: *See* Ex. E-9, pp. 28-30; E-D, pp. 72-74.

When Qwest representatives that receive calls from CLEC customers lead them to believe that problems resulting from a tandem failure event were the fault of the CLEC, should Qwest be required to provide non-confidential documentation to show that there was a tandem failure event? Yes.

> Qwest's refusal to provide such documentation to date (including when requested through an informal complaint to Utah commission staff) shows that the alleged "existing" process described in Qwest Exhibit D is not a trained or adhered to process for this purpose. Qwest's commitment to provide a non-confidential statement of a tandem failure event should be documented in standard materials available to CLECs who can then rely on that commitment and the process.

UNANSWERED TAKE BACK: Qwest committed to provide a copy of its documented process (including the described notification within 30 minutes, *see* Tr. Vol. I, p. 246) as an exhibit. *See* Tr. Vol. I, p.247, lines 6-10. Qwest's second-hand description is not the documented process that Qwest committed to provide as an exhibit, and it does not provide the detail suggested by Mr. Craig.

23. STAND ALONE TEST ENVIRONMENT (SATE): *See* Ex. E-E; Tr. Vol. I, p. 11, line 12 – p. 12, line 7 & p. 27, lines 11-13; Tr. Vol. II, pp. 487-97.

The impasse relates to those products that are in Qwest's production environment but not in SATE. The specific disagreement is whether it is proper to add those products to SATE employing the CMP prioritization process, or Qwest is obligated to add those products outside of the CMP prioritization process and by a date certain.

24. SGAT LANGUAGE: *See* Tr. Vol. I, pp. 240-41.

Does SGAT language need to be modified to ensure that the resolution of the above issues is reflected in the language? Yes.

25. 271 RECOMMENDATION

Should Qwest have to show compliance with the resolutions of the above issues before obtaining a recommendation for 271 approval? Yes.

ESCHELON LATE FILED EXHIBIT E-C
IMPASSE: COLLOCATION AND INTERCONNECTION

COLLOCATION

IMPASSE ISSUES

Should the Commission recommend 271 approval for Qwest before Qwest has demonstrated that its processes for ensuring that CLEC collocation equipment is protected during construction activities have been tested and proven successful? No.

Should Qwest be required to provide CLEC collocation personnel with Qwest's written processes and procedures for protecting CLEC collocation equipment during construction and to incorporate those procedures on its wholesale web site? Yes.

Should language be added to the SGAT to require Qwest to pay for clean up costs when Qwest construction results in dust contamination to CLEC equipment? Yes.

Should Qwest be required to provide CLECs final Alternative Point of Termination (APOT) information at least 15 days before a collocation ready for service (RFS) date so that CLECs are able to place orders early enough to enable them to use their collocations on the RFS date? Yes.

Should Qwest be permitted to charge CLECs a maximum price of $345 for all collocation augment quote preparations? Yes.

Should Qwest be permitted to charge CLECs the entire augment quote preparation fee of $345 for the minor activity of terminating unused power? No.

Should Qwest provide an objective and reasonable definition of what constitutes a "material change" to a collocation order so that Qwest cannot unilaterally delay a CLEC's collocation order when a minor, non-material change is requested by a CLEC? Yes.

Should the Commission recommend 271 approval for Qwest before it has demonstrated that it has a process in place to provide CLECs with timely and accurate information informing them when a collocation space becomes available at a Qwest premises? No.

Should Qwest be required to charge CLECs the rates contained in the parties' interconnection agreement for collocation space? Yes.

Should Qwest be required to provide CLECs with adjacent off-site collocation, a form of collocation offered by another CLEC, Southwestern Bell Telephone (SWBT)? Yes.

Should Qwest be required to permit CLECs to interconnect at the ICDF? Yes.

DISCUSSION

1. Collocation Dust Contamination/Dangers to Equipment
See Exs. E-18 and E-19; *see also* E-D, pp. 64-66.

Qwest has exposed Eschelon's collocation equipment to serious adverse conditions while Qwest conducted construction activities in buildings housing the collocations. As seen in Exhibit E-19, the dust on Eschelon's equipment has been so thick that the words "dust" and "new dust" could be written in the dust. This presents an operational issue with Eschelon's hardware and its ability to operate properly. Qwest responded to this problem by stating that the issue was resolved through the Change Management Process (CMP) process. Eschelon went through the entire Change Request (CR) process and obtained many assurances that proper processes were in place and proper training had been conducted. Qwest provided one process, applicable to all states including Arizona, through CMP. That process was completed in May 2002. Despite those paper promises, in June of 2002, another incident of collocation dust contamination occurred, this time in a central office in Arizona. The process was not followed. Although fortunately Eschelon is now alert to this issue and caught it before the damage became as serious as in the other instances,[1]

[1] Tr. Vol. II, p. 351, lines 19-25.

the fact remains that the procedures were not followed and severe dust contamination was avoided by chance.

In the June 2002 incident, Qwest did not comply with its own methods of procedures ("MOPs"). In response to the recent Minnesota collocation dust situation, Qwest provided some of those MOPs to Eschelon. It said:

> "Qwest has specific instructions and guidelines to follow to protect equipment. These include but are not limited to:
> 1. The installation of dust and fire protection walls to isolate the construction areas form [sic] existing space. These barriers are typically constructed of steel studs and 2 layers of gypsum board but also can use fire resistant wood framing and Poly."

See Attachment 1, p. 2.

These steps were not followed with respect to the June 2002 construction. Qwest did not install any dust and fire protection wall. There was no wood framing and no Poly. In June 2002, after the CMP process was completed and all protections and training were supposed to have been in place, Qwest performed construction near Eschelon's equipment without taking the simple step of putting up plastic to protect the equipment. Qwest asserts that, despite this noncompliance, the dust was not that bad. In fact, Qwest claims that "there was no dust contamination problem in the Thunderbird central office as alleged in Eschelon's comments." Qwest Ex. E, p. 7. For this assertion, Qwest quotes one sentence from an email by an Eschelon employee. Qwest omits the immediately preceding sentence in the same email. *See id.* In the omitted sentence, the Eschelon employee states: "Hello Bill, per our discussion, The Scottsdale Thunderbird issue is ***no longer*** an issue." *See* Att. 3 to Qwest Ex. E (emphasis added). There was a developing problem. By the time the email was sent, the problem was ***no longer*** an issue.

Qwest credits itself with quick resolution of the problem, pointing out that it was resolved the same day. Qwest neglects to mention that the timing was due to Eschelon's chance discovery of the problem. Eschelon happened to have workers at the site who called Eschelon to alert Eschelon to the developing situation. If Eschelon had not had workers there, the problem could have been much worse before it was discovered, as in the previous situations. The resolution, therefore, was due more to chance than to proper procedures. Qwest retail does not have to rely on chance and CLECs should not have to do so either. Qwest has MOPs, and they should be followed. Moreover, documentation should be available to CLECs so that CLECs may plan accordingly and verify compliance with procedures.

Qwest's processes should be more fully documented and accessible to CLECs, and those processes should be tested and proven successful before 271 approval is granted. Specifically, Qwest should document these processes in the materials that CLECs use in day to day business so that CLECs have ready access to the procedures Qwest has agreed to use to protect CLEC equipment. Since Qwest has demonstrated it does not follow its stated procedures, this issue should not be considered resolved until Qwest has a track record of actually following its procedures. Moreover, Qwest should be required to pay the costs of clean up when these situations occur. This commitment should be incorporated into the SGAT.

2. Providing Timely APOT Information

Eschelon has requested that Qwest provide final Alternative Point of Termination (APOT) information at least 15 days before the collocation ready for service (RFS) date so that Eschelon can utilize the cage on the RFS date. In order for the collocation cage to actually be ready for service a CLEC must be able to provide service to customers. CLECs cannot do so until their service orders for Unbundled Network Elements (UNEs), transport services and CLEC to CLEC routing have been processed by Qwest. Since Qwest will not process these orders without an APOT, Qwest's provision of the APOT to CLEC is a necessary antecedent to making the collocation cage functional.

Qwest's response is that if it were to provide APOTs 15 days before RFS it would be providing the collocation in a reduced time frame. This is simply not true. Providing the APOTs does not mean the cage is ready for service. Indeed if APOTs are provided 15 days **before** the RFS date, by definition they will be provided before the cage is completed.

Qwest has provided no technical or other reason for withholding the final APOT information from Eschelon and other CLECs. It appears that

Qwest is withholding the APOT information to delay CLECs from providing service to their customers.

3. Collocation Quote Preparation Fee

Qwest charges Eschelon $1,381.54 as a quote preparation fee when Eschelon orders a collocation cage. Qwest charges this same high fee when Eschelon requests an augment to the collocation despite the fact that changes do not require the same amount of work as an initial application.

In its response Qwest indicated that it will charge a reduced fee for two kinds of augments, a power augment or an additional cable pair termination. However, Qwest's June 12, 2002 Compliance filing does not reflect Qwest's contention that the lower augment fee of $345 only applies to power augments and additional cable pair terminations. It appears from this filing that the lower augment fee of $345 should apply to all augmentations. Qwest should clarify when the lower augment fee is available to CLECs.

Eschelon continues to maintain that all augments should have a reduced quote preparation fee. Augmentations do not involve the same amount of work as initial collocations.

4. Reduction in Power

Eschelon is pleased that Qwest agrees that Eschelon's request to terminate unused power in its collocation cage does not require a contract amendment. However, Eschelon disagrees that it should be required to pay the full reduced augment fee for a data base change. Qwest is not required to remove the disconnected DC power cable between the Battery Distribution Fuse Board (BDFB) and Eschelon's collocation equipment and it is unlikely that it would do so. If it does choose to do so, it is most likely to be done as part of a bigger project of mining cable. But if Qwest chooses to remove the cable on a stand alone basis, it is a small job and there should only be a small fee associated with it. Moreover, if Qwest does remove the cable (which Eschelon has paid for) it can resell the cable and recover the cost of the copper. Eschelon should not be charged the full reduced quote preparation fee for this minor activity.

5. Material Changes to a Collocation Order

Eschelon asked Qwest to agree to an objective definition of what constitutes a "material change" to a collocation order. Without such a definition Qwest can needlessly delay the collocation orders of CLECs based upon a minor change to an order. Qwest's response indicates that the subjective definition in the SGAT was agreed to in state 271 workshops. However, Eschelon was not able to participate in those workshops so its input was not considered in the agreement.

Qwest's statement about the amount of work associated with a DC Power Reduction indicates that an objective definition of what is "material" is necessary. Qwest asserts that there is major work involved in such a change. Qwest states that at a minimum it will need to "re-fuse the power". What this entails is changing a fuse which should take about one minute. Qwest states that a request could also involve physical movement of the power cable. This scenario is most unlikely. Many of the cables Qwest provides today have excess capacity and are not being reengineered. If Qwest should choose to replace the cable, it involves pulling two or three power cables. Such activity does not warrant a long extended time interval.

Qwest should provide an objective and reasonable definition of what constitutes a "material change" so that CLECs' collocations are not delayed when minor, non-material changes are requested.

6. a. Timely Assignment of Collocation Space

Recently, Qwest failed to notify Eschelon when collocation space became available in Arizona. Eschelon requested that Qwest establish a process to ensure of timely notification of collocation space. Qwest responded that it "expects" to begin posting available previously provisioned collocation space on a web site "in the September time frame." Qwest's response does not guarantee when the information will be available on the web site. Also, it does not state that the information will be posted in a timely manner. Therefore, we continue to have no guarantees that CLECs will receive accurate information from Qwest in a timely manner.

6. b. Collocation Charges

Eschelon raised the issue of being charged SGAT rather than interconnection agreement rates for a recent Arizona cageless collocation.

Eschelon also noted that the cageless space required little preparation beyond running power and providing APOTs since it had already been in use by another CLEC. In Qwest's initial response it did not address either of these issues raised by Eschelon. Qwest did not provide the source of each specific rate element it charged or explain if it took into account the work that would not have to be done since the space had been used previously by another CLEC. Qwest's subsequent response provided some information on the first issue, but still did not provide an explanation of why the price was not reduced to recognize the reduction of preparation necessary due to the fact that the space had already been in use by another CLEC.

In its response on this issue Qwest states: "Two years have gone by since the first quote BAN# C01LC01 was prepared. In that time Qwest has conducted various cost studies for Wholesale Services offered to the CLEC community." This statement implies that Qwest believes costs to have increased during this period. This statement should be contrasted with Qwest's statements in the recent Minnesota Cost case where it alleged that collocation costs have not significantly changed since 1999. In that case the report of the Administrative Law Judge states: "...Qwest maintains that its study, based on jobs completed before May 1999, is nonetheless a reliable estimate of forward-looking TELRIC because there is no new technology for collocation elements that would significantly change costs between 1999 and 2002: "power cables installed in 2002 look like power cables installed in 1999." MPUC Docket No. P-421/C1-01-1375, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION dated August 2, 2002, paragraph 171. Eschelon is unaware of why collocation costs would increase in Arizona during this period when according to Qwest's own testimony they did not increase in Minnesota.

Qwest goes on to state in its response: "At the time the quote for the second request BAN#C21LC20 was prepared the customer's Interconnection Agreement (ICA) did not include pricing for all of the collocation services being ordered, so the pricing strategy in the SGAT was used." Eschelon ordered the same type of cageless collocation the second time in Arizona that it ordered the first time. Therefore, the same pricing should be used by Qwest. Qwest states it instead used SGAT prices. Eschelon has not adopted the SGAT and so should not be charged prices from it.

Attachment 2 compares the maximum rates Eschelon should be charged under the parties' Interconnection Agreement with the SGAT rates

Qwest has instead charged us. The maximum rates under the parties' interconnection agreement do not account for the work that would not have to be done since the space had previously been used by another CLEC.

7. Adjacent-Off Site Collocation

Eschelon has requested that Qwest provide it with adjacent off-site collocation so that Eschelon can collocate on property next to Qwest and thereby not be required to use an entrance facility to gain access to Qwest's premises. The Southwestern Bell Telephone (SWBT) Local Access Service Tariff provides for an offering of adjacent off-site collocation. The FCC Collocation Order states that any collocation offering made by one ILEC should be offered by another ILEC upon request, unless the ILEC can show that the offering is not technically feasible. (47 C.F.R. 51.321(c)).

Qwest's response is that this type of collocation is not required by the FCC. However, as noted above the FCC does require Qwest to provide a new type of collocation provided by another ILEC if technically feasible. Therefore, stating that adjacent off-site collocation does not fit within the FCC's definition of "Adjacent space collocation" establishes nothing. Eschelon is not claiming that adjacent off-site collocation is included in the FCC definition of "Adjacent space collocation". Eschelon acknowledges that what it is requesting is a different form of collocation. Eschelon is requesting a form of collocation offered by SWBT. And the FCC requires Qwest to provide this collocation if requested and technically feasible. Eschelon has requested it and Qwest does not claim it is not technically feasible.

The SWBT tariff states: "When the Collocator elects to utilize an Adjacent Off-site Arrangement, the Collocator shall provide both the AC and DC power required to operate such facility. The Collocator may provide its own facilities to SWBT's premises or to a mutually agreeable meet point from its Adjacent Off-site location for interconnection purposes." *See* Section 6.6.1 E. of SWBT's Kansas Tariff. Qwest should permit Eschelon this same type of collocation arrangement as required by the FCC's Collocation Order.

Qwest criticizes the SWBT offering of adjacent off-site collocation as not being collocation at all. Apparently, SWBT disagrees. And, once

SWBT has shown that this form of collocation is technically feasible, it should be available in other ILEC territories as well. Qwest's resistance to this issue is puzzling. After years of ILEC complaints about space constraints and security issues when CLECs enter the ILEC premises, an opportunity to collocate without confronting those issues should be an attractive one. The amount of resistance, however, suggests that perhaps the other alleged problems with allowing CLECs into ILEC space were not such significant issues after all. Off-site adjacent collocation is a practical, technically feasible solution that should be a viable alternative when the occasion arises to use it.

8. ICDF Collocation

Qwest's SGAT does not provide for interconnection at the ICDF. Qwest indicates in its response that it has initiated a change request through CMP to allow for termination of Local Interconnection Services (LIS) at the ICDF. If Qwest implements this change, this issue should then be resolved.

INTERCONNECTION

IMPASSE ISSUES

Should Qwest be permitted to charge transit charges in addition to access charges on intraLATA toll calls? No.

Should Qwest be permitted to charge CLECs for incomplete or old Category 11 billing records? No.

Should Qwest be permitted to charge CLECs an assumed tandem switching and tandem transmission mileage rate for which Qwest has provided no evidence as to the validity of the assumption? No.

Should CLECs have the right to be charged a tandem switching and tandem transmission rate based on actual miles rather than on assumed miles? Yes.

DISCUSSION

1. Paying Transit Charges on Qwest's IntraLATA Toll Calls and on other IntraLATA Toll Calls

At the workshop the issue of whether CLECs should pay transit charges on intraLATA toll calls was not resolved. Qwest subsequently filed a confusing response on this issue.

Qwest seems to be arguing that intraLATA toll traffic is local traffic and so is subject to local transit charges. Qwest states: No interexchange (interLATA) carrier is involved in the intercarrier collaboration to complete this type of call." However, "interexchange carrier" is defined in the SGAT as "a Carrier that provides InterLata or IntraLATA Toll services." So an interexchange carrier **is** involved in completing an intraLATA toll call—the type of call at issue here.

IntraLATA toll traffic is not local. It is toll and it is subject to access charges in the same manner as interLATA toll (called interexchange traffic by Qwest in its response.) Qwest would receive double compensation if it is permitted to charge Eschelon for transit and also charge the intraLATA toll provider access charges. Eschelon has attached a chart at Attachment 3 that provides two scenarios explaining the charges that should be associated with Intra-LATA toll calls.

Qwest makes some particularly curious statements in the last paragraph of its response. Qwest states: "It seems likely that each [Qwest and Eschelon] is billing the other and neither is billing the end user for these intraLATA toll calls." The issue being considered here is whether Qwest can bill Eschelon transit for intraLATA toll calls in addition to Qwest billing access charges to the intraLATA provider. The issue has nothing to do with how the end user is billed. Qwest then concludes by stating: "The intraLATA toll market is already competitive and is not relevant to checklist satisfaction." If intraLATA toll is not relevant to checklist satisfaction why does Qwest attempt to charge Eschelon transit for these calls in its local SGAT? Qwest should modify its SGAT to state that transit traffic does not include traffic carried by interLATA carriers or by intraLATA toll carriers. Neither of these types of calls is a local call.

Qwest's response indicates that it is trying to confuse the issue. But the facts are these: IntraLATA toll is not local traffic and is subject to access charges just as interLATA toll is subject to access charges. Transit charges only apply to local traffic- not long distance, whether it be intraLATA toll (short haul long distance) or interLATA toll (long haul long distance) and regardless of whether Qwest is the intraLATA toll provider. Qwest should not charge Eschelon transit rates on this traffic when it is collecting access charges. To do so would be double collecting. Eschelon maintains that SGAT Section 7.2.2.3.1 should be modified as recommended in our initial comments and that Section 7.3.7.2 should be deleted.

2. Paying for Category 11 Records

Qwest proposes to charge CLECs for Category 11 billing records. CLECs should not be charged for these records unless the charges have been approved by the Commission and the requested records are accurate and timely.

It is Eschelon's understanding that at the Workshop Qwest indicated that it agreed with Eschelon's proposal to add the word "billable" before the word record in Sections 7.5.4 and 7.6.3. Qwest also agreed to add the definition of "Billable Record" proposed by Eschelon to Section 4 of the SGAT. This would ensure that if Qwest bills Eschelon for a record the record 1) only contains charges less than 90 days old, 2) contains accurate information in each field and 3) is filled out completely and according to OBF standards. Qwest has not confirmed this agreement in writing in its late-filed exhibits.

In a recent interconnection agreement negotiation session with Qwest, the Qwest negotiator indicated that Qwest would accept the "Billable Record" changes for the Arizona Agreement but not for agreements in the other Qwest states. However, the Qwest witness at the recent Arizona workshop did not indicate that Qwest had a concern about the language in any of its states. Indeed, Mr. Freeberg testified: "...I think that is reasonable language. I don't think there is any reason why, in fact, parties should have to pay for either old records or those that are incomplete." Tr. V. II, p. 522. Qwest's refusal to agree to bill Eschelon only for records that are accurate and timely in all states other than Arizona leads Eschelon to question whether Qwest is acting in good faith in its promise to bill in an accurate and timely manner in Arizona.

This issue remains at impasse until Qwest clarifies its intent and explains why other states should be treated differently from Arizona.

3. Actual v. Assumed Mileage

Qwest proposes to charge CLECs the applicable LIS tandem switching and tandem transmission rates at assumed mileage rates contained in Exhibit A of the SGAT. CLECs should have the right to be charged actual mileage rates rather than assumed mileage rates.

This issue also remains at impasse. Eschelon disagrees with Qwest's assertion at the Workshop that in general it lacks the V&H coordinates to determine actual mileage for LIS tandem switching and tandem transmission rates.

Qwest's mechanized transit and UDIT charges it bills to Eschelon at present do not contain assumed mileage. Also, Qwest's access tariffs do not contain assumed mileage. The only assumed mileage Qwest bills to Eschelon is for traffic terminating to a Type 1 wireless provider. Type 1 wireless providers do not have a switch and piggyback off the LEC's local switch to provide cellular service. The NPANXXs used by the cellular provider belong to the terminating LEC. The V&H coordinates of the terminating LEC's switch should be in the LERG (regardless of whether Qwest has an interconnection agreement with the company) and be measurable by Qwest. Qwest's SGAT should not require CLECs to pay assumed mileage charges when Qwest can measure the mileage as it is currently doing for all but Type 1 wireless provider calls. Since calls terminating to a Type 1 wireless provider terminate to a LEC switch that has a V&H coordinate, that type of mileage can also be measured.

Even if it were appropriate for Qwest to charge assumed mileage, Qwest has not shown that the assumption it has made is accurate. In its response on this issue it goes on at length giving an opinion about why Eschelon's actual mileage may be in line with Qwest's nine mile assumption. Qwest also makes an unsupported assertion that Eschelon's "traffic is not atypical compared to other carriers."[2] However, Qwest does not provide any facts to support this conclusion. Qwest does not state what Eschelon's average mileage is, nor does it state what other carriers' average mileage is. More to the point, it does not matter whether Eschelon's mileage is atypical. Qwest must show that its assumed mileage is accurate. Yet, **Qwest never states the basis for using an assumed mileage rate of nine miles.** All of Qwest's opinions about how far traffic may travel mean nothing. Qwest needs to support its assumed mileage rate and demonstrate

[2] Qwest also makes the unsupported assertion that Eschelon knows the mileage to be charged for its calls. Eschelon responded to this issue in an e-mail to staff dated August 7, 2002. See, Attachment 4.

that it is accurate for Eschelon's business. It has not demonstrated it is accurate for any CLEC and certainly not for Eschelon.

Eschelon's suggested SGAT language should be adopted for Section 7.3.7.1.

Attachment 1 to Exh. E-C

Summary of Dust Contamination at
Orchard Central Office
Minneapolis, MN.

The Orchard C.O. is presently under construction for a new addition. That addition includes modification to the existing mechanical system as well as additional floor space During the transition from old to new mechanical systems in the project, Qwest contractors placed a portable "barrel" fan near the collocation cages facing the door between the existing and new spaces. Airflow was directed into the new space. This maintains a positive pressure in the space and prevents construction dust migration to the telco equipment. The door leaf itself had not arrived and the opening was covered with a double layer of -construction plastic to isolate the construction the space. Construction activity in the collocation area was limited to the assembly and installation of prefabricated ductwork and had been completed for several months.

1-2-2002 An installer for Eschelon called Qwest with concerns about all the dust on their equipment located at the Orchard Central Office. Upon arrival, it was discovered that the barrel fan had been turned toward the cages and accordingly, could draw dust toward the cages and equipment rather than direct it away.

1-3-2002 A permanent door was placed on the South opening replacing the plastic. A portable cooling unit was brought into the collocation area and the barrel fan removed. Discussion with the general contractor and Qwest personnel locally indicated neither had moved the barrel fan. While not admitting responsibility, and in an effort to expedite clean up, the general contractor, Shingobee Builders, agreed to fund a cleanup of the Eschelon cage using a professional cleaning vendor of their choice.

1-4-2002 Qwest contacted Restoration Technologies Inc. This professional cleaning service has been used in previous locations by both Qwest and Eschelon and would provide skilled and careful cleaning of both the space and the telco equipment. Cleaning began on Monday Jan 7 at 6:00 PM. Cleaning of actual telco equipment would require powering down that equipment and would begin each evening at 10:00 PM. An Eschelon representative would be present during the work.

1-9-2002 Before the telco equipment cleaning process began, a. cooling fan in the Eschelon equipment needed to be shut off. Normally Eschelon notified its alarm center that work was in progress and to ignore the alarms received. No one called this evening and it alarmed Eschelon that there was a heating problem, in that area. Kay Daugaard from Qwest, notified Nancy Loudon, the Qwest construction project manager, who immediately called the Qwest Work Environment Center. A Qwest technician was dispatched to the office. Upon arrival, the technician noted the space temperature was at the set point of the thermostat and found the Eschelon representative and the cleaning contractor working in the. collocation cage. The equipment alarm had not been disarmed causing a false reading.

1-10-2002 As a part of the new construction in progress, a new Building Alarm Terminal (BAT) box is being installed in this collocation to serve the entire facility. The alarm box was in place however final connections to the telco equipment were not yet scheduled. Existing alarms did not serve this location. As a precautionary measure, final connections from the BAT were immediately completed and as of 1-11-2002 the collocation spaces are alarmed for High/Low temp.

1-11-2002 RTI has completed cleaning the Eschelon cage. We are reviewed the cleaning contractors findings regarding the type of materials and debris found in all three spaces. There have been no findings of metal shavings or other foreign objects in the adjacent CLEC spaces.

Throughout the life of this construction project, Qwest has insured that all methods of procedures (MOP'S) were followed and that dust protection was appropriate and in place.

MOP's are complete and posted on the job site. Owest has specific instructions and guidelines to follow to protect equipment. These include but are not limited to:

1 The installation of dust and fire protection walls to isolate the construction areas form existing space. These barders are typically constructed of steel studs and 2 layers of gypsum board but also can use fire resistant wood framing and Poly.

~ Qwest also insures that existing mechanical systems are operated to provide positive pressures in equipment spaces forcing dust away form the equipment areas.
Specific construction conditions at each project govern design decisions. Frequently the site conditions require modifications of the dust *barrier*.

~ At the beginning of each project, a pre-construction meeting is conducted by the Project managers with the General contractor, local CO supervisor and associated sub contractors to review and agree upon the specific precautions and the application of our specification as well as the review and approval of any MOP's. It is my understanding that the CO supervisor represents the concerns and requirements of all tenants in the building. MOP's are prepared by project management and routed to the CO supervisors for approval. These procedures are then posted at the job site to insure understanding and concurrence.

~ The local CO supervisor with the project manager monitors the day to day working conditions to insure a safe and functioning switch environment.

Since the incident at Orchard, Qwest has reviewed with all of its locations the MOP's outfined above to ensure that all spaces are properly alarmed and monitored during and after construction at a Central Office.

SCOTTSDALE THUNDERBIRD Cost Comparison

	Quantity	Collocation Amendment - Attachment B dated 5/30/00	TOTAL (B*C)	5/30/00 Collocation Amendment - Attachment B	6/28/02 SGAT Pricing (pre-Compliance filing for Decision 64922)	6/12/02 Compliance Filing (Decision 64922)
Cageless Bays (listed as ICB in Collocation Amendment - Attachment 2) **Formerly priced at $4,368.92/bay*	3	$4,368.92 Taken from BAN# C01LC01	$13,106.76	Reflected as space construction under the Caged & Cageless Physical Collocation section and is ICB in Attachment B of Collocation Amendment. There are no specific rates in collocation amendment - only ICB is reflected.	Under Cageless Physical Collocation section, $29,953.55 is the price reflected-- description reads "Space Construction for 2 bays and 1 - 40 A Power Feed". Footnote states "Rates proposed in AZ Cost Docket 6/27/01 & Phase II Docket Number T00000A-00-0194. (TELRIC)".	Under Cageless Collocation - Space Construction (Standard 40 Amp Power Feed) - 2 Bays and 1 - 40A Power Feed - Rate is $16,781.29
Additional Bay	*Not Applicable*			$6.41 MRC charge for each bay, but rate is reflected under Virtual Collocation, not cageless; there is no NRC for this.	Under Cageless Physical Collocation section, $3,038.06 for each additional bay. Footnote states "Rates proposed in AZ *Cost Docket 6/27/01 & Phase II Docket* Number T00000A-00-0194. (TELRIC)".	Under Cageless Collocation - each additional bay is $1,952.68.
40 Amp Power Feed (per l.foot) Average Power Run = 150'	150	$80.69	$12,104	Under category "All Collocations" - $80.69 for 48 Volt DC Power Cable, per foot, Per A & B Feeder, 40 Amp Feed	Under Cageless Physical Collocation section, included in Space Construction. Footnote states "Rates proposed in AZ Cost Docket 6/27/01 & Phase II Docket Number T00000A-00-0194. (TELRIC)".	Rate included in Cageless Collocation - Space Construction (Standard 40 Amp Power Feed) - 2 Bays and 1 - 40A Power Feed
DS0 Terminations (per 100 Block)	10	$636.68	$6,367	Under category "All Collocations" rate is $636.68 for Collocation Terminations - Block Terminations - DSO	Can't find this rate element.	Under "All Collocations", rate for DSO Terminations per 100 (Knowles) is $622.24.
DS0 Cable Placement (per 100)	*Not Applicable*		$0	Under category "All Collocations", there is something called "Copper placement conduit and riser, per foot" with a MRC of $0.83 but no NRC and "Coax placement, per foot" with a MRC of $0.10 but no NRC.	Under "All Collocations - Collocation Terminations - DSO Cable Placement per 100 Pair Blocks" rate is $244.42 with Footnote that states: "Rates proposed in AZ Cost Docket 6/27/01 & Phase II Docket Number T00000A-00-0194. (TELRIC)".	Phase III - subject to to true-up
DS0 Cable (per 100 Block)	*Not Applicable*		$0	If we provide the cable equipment, there is no charge. I cannot find a rate associated with this charge. I believe it is a subcategory of the DSO Terminations and the cost is included in the $636.68 charge per the language of the amendment.	Under "All Collocations - Collocation Terminations - DSO Cable per 100 Pair Block" rate is $314.40 with Footnote that states: "Rates proposed in AZ Cost Docket 6/27/01 & Phase II Docket Number T00000A-00-0194. (TELRIC)".	Phase III - subject to to true-up. Current rate is reflected as $0.00 in 6/12 compliance filing.
DS0 Block (Per 100)	*Not Applicable*		$0	I cannot find a rate associated with this charge. I believe it is a subcategory of the DSO Terminations and the cost is included in the 636.68 rate per the language of the amendment.	Under "All Collocations - Collocation Terminations - DSO Block per 100 Pair Block" rate is $548.18 with Footnote that states: "Rates proposed in AZ Cost *Docket 6/27/01 & Phase II Docket Number* T00000A-00-0194. (TELRIC)".	Rates are blank in 6/12 compliance filing. Phase III Is noted in ROO Deicision column.
DS0 Block Placement (per 100)	*Not Applicable*		$0	I cannot find a rate associated with this charge. I believe it is a subcategory of the DSO Terminations and the cost is included in the 636.68 rate per the language of the amendment.	Under "All Collocations - Collocation Terminations - DSO Blocks per 100 pair Block"" rate is $253.50 with Footnote that states: "Rates proposed in AZ Cost Docket 6/27/01 & Phase II Docket Number T00000A-00-0194. (TELRIC)".	Rates are blank in 6/12 compliance filing. Phase III is noted in ROO Deicision column.
QPF Fee	1	$1,381.54	$1,382	$1,381.54 rate element under "All Collocations"	$1,381.54 rate element under 8.3 Cageless Physical Collocation - no footnote meaning ordered by ACC (Order Number 60635) in Cost Docket U-3021-96-448, effective 1/30/98.	$1,381.54 reflected in section 8.3 Cageless Collocation section of compliance filing. There is also an augment price of $345.00.

Total 2000 Price Quoted $32,958.60

	Quantity	2002 Qwest Rates Quoted	TOTAL (B*C)	6/28/02 SGAT Pricing (pre-Compliance filing for Decision 64922)	6/12/02 Compliance Filing (Decision 64922)
Cageless Bays (listed as ICB in Exhibit A) **Formerly priced at $4,368.92/bay*	1 **Sold as Package (2 Bays + (1) 40 Amp Feed*	$29,953.55	$29,953.55	See note above.	See note above.
Additional Bay	1	$3,038.06	$3,038.06	See note above.	See note above.
20 Amp Power Feed (per lineal foot)	1	$5,552.65	$5,552.65	Reflected in Section 8.3.3 Additional DC Power Feed - Does not apply to Initial Feed - Each Additional 20A Power Feed rate is $5,552.65.	6/12 compliance filing rate of $2,990.13 is reflected.
DS0 Terminations (per 100 Block)	*SEE BELOW (NEW PRICE STRUCTURE FOR DS0s)*				
DS0 Cable Placement (per 100)	10	$244.42	$2,444.20	See note above.	See note above.
DS0 Cable (per 100 Block)	10	$314.40	$3,144.00	See note above.	See note above.
DS0 Block (Per 100)	10	$548.18	$5,481.80	See note above.	See note above.
DS0 Block Placement (per 100)	10	$253.50	$2,535.00	See note above.	See note above.
QPF Fee	1	$0.00	$0.00	See note above.	See note above.

Total 2002 Qwest Rates Quoted $52,149.26

Examples of IntraLATA Toll Calls **ATTACHMENT B** Attachment 3 to Exhibit E-C

Scenario 1

IntraLATA toll call
Originating switch - Eschelon
Access Tandem Provider - Qwest
IntraLATA Toll Provider - Worldcom
Terminating Switch - Century Telephone (it could be a wireless switch or wireline switch)

Eschelon's local customer is presubscribed to Worldcom's intraLATA long distance service.

<u>Call routing description</u>	<u>Who charges who?</u>
1. IntraLATA toll call originates from Eschelon customer on Eschelon's switch. The call's CIC code is Worldcom.	Eschelon bills Worldcom originating access charge (local switching)
2. Eschelon buys LIS trunking to Qwest's access tandem to route intraLATA toll call.	Eschelon pays LIS trunking charges to Qwest to get calls to Qwest access tandem.
3. Call routes through Qwest's access tandem, the access tandem identifies that the call contains Worldcom's CIC code, and routes the call to Worldcom's POP.	Qwest bills Worldcom tandem transport and tandem switching rate elements
4. Worldcom terminates the call.	Worldcom would pay terminating access charges to Century.

Qwest would not bill Eschelon because transit charges do not apply to intraLATA toll calls
and Qwest would bill the intraLATA toll provider tandem rate element access charges.

Scenario 2

IntraLATA toll call
Originating switch - Eschelon
Tandem Provider - Qwest
IntraLATA Toll Provider - Qwest
Terminating Switch - Century Telephone (it could be a wireline switch or wireless switch)

Eschelon's local customer is presubscribed to Qwest's intraLATA long distance service.

Call routing description	Who charges who?
1. IntraLATA toll call originates from Eschelon customer on Eschelon's switch. The call's CIC code is Qwest.	Eschelon bills Qwest originating access charge (local switching)
2. Eschelon buys LIS trunking to Qwest's tandems to route intraLATA toll call.	Eschelon pays LIS trunking charges to Qwest to get calls to Qwest tandems.
3. Call routes through Qwest's tandem, the tandem identifies that the call contains Qwest's CIC code.	Qwest either bills itself tandem charges or doesn't bill these rate elements to itself.
4. Qwest terminates the call.	Qwest would pay terminating access charges to Century.

Qwest would not bill Eschelon because transit charges do not apply to intraLATA toll calls and Qwest would bill the intraLATA toll provider (Qwest itself) tandem rate element access charges.

ATTACHMENT 4

> > -----Original Message-----
> > From: Clauson, Karen L.
> > Sent: Wednesday, August 07, 2002 5:56 PM
> > To: 'Maureen Scott'
> > Cc: andrea.harris@allegiancetelecom.com; rwolters@att.com;
> > marta@az-reporting.com; michael.grant@azbar.org; dpozefsky@azruco.com;
> > lfunkhouser@azruco.com; rhip@bellatlantic.net; hagoodb@bellsouth.net;
> > GHorton@CC.STATE.AZ.US; MAD@CC.STATE.AZ.US; MGK@CC.STATE.AZ.US;
> > MJR@CC.STATE.AZ.US; RLB@CC.STATE.AZ.US; mdoberne@Covad.COM;
> > connolly@csusa.net; Clauson, Karen L.; TBERG@FCLAW.com;
> > bill_koerner@hp.com; james_oconnell@hp.com; john_rubino@hp.com;
> > thc@lrlaw.com; eric.s.heath@mail.sprint.com; dconn@mcleodusa.com;
> > jsburke@omlaw.com; woode@perkinscoie.com; mjarnol@qwest.com;
> > twahler@qwest.com; mpatten@Rhd-law.com; rsh@Rhd-law.com;
> > csteese@steeselaw.com; jcrockett@swlaw.com; dmcelroy@usa.capgemini.com;
> > rdryzgul@usa.capgemini.com; SHayslip@usa.capgemini.com; acrain@uswest.com;
> > csteese@uswest.com; dbuhler@uswest.com; mluckri@uswest.com;
> > mrchri2@uswest.com; liz.balvin@wcom.com; thomas.f.dixon@wcom.com;
> > EWynn@winston.com
> > Subject: Interconnection Issue #5 in Exhibit E-18, p. 7
> >
> > At the workshop last week, you asked Eschelon to follow up with
> > respect to Interconnection Issue #5 in Exhibit E-18, p. 7. Specifically,
> > you asked for additional information regarding Eschelon's position that
> > Qwest should use actual instead of assumed mileage and, if assumed mileage
> > is nonetheless used, why 9 miles is too long with respect to Eschelon.
> > By definition, transit traffic goes through the local tandem. Only
> > Qwest knows all of the connecting circuits to its tandem switches.
> > Because Eschelon does not have this information and does not know all of
> > the other trunks to which traffic may transit, Eschelon cannot calculate
> > what the mileage should be. Logic dictates, however, that the same amount
> > of miles (i.e., 9 miles for entire state) does not apply to every carrier
> > regardless of whether the carrier serves that entire area or not.
> > Eschelon believes (and has been told by Qwest), for example, that much, if
> > not most, of its transit traffic is associated with wireless carriers &
> > other metro area CLECs. Generally, wireless carriers & major CLECs have
> > their switches in downtown areas or carrier hotels, close to Eschelon's
> > switches. The distance, therefore, would be shorter than 9 miles for such
> > transit traffic. (It appears that 9 miles is not only a statewide number
> > but also the same number for several states. Therefore, it may even be a
> > region-wide average, which would be even less applicable to Eschelon.)
> > In any event, to be cost-based, the rate should be based on actual,
> > rather than assumed, mileage. Qwest has the capability to use actual
> > mileage. In contrast to CLECs, Qwest does have information about all of
> > the connecting circuits to its tandem switches. Qwest has the Common
> > Language Location Identified ("CLLI") codes for the other end of every
> > circuit. All CLLI codes have Vertical and Horizontal ("V and H")
> > coordinates on them. Therefore, Qwest can calculate actual usage and does
> > not need to rely on an unproven assumption.
> > Please let me know if this answers your question (and whether you
> > would like this information filed formally).
> > Thank you,
> >
> > Karen L. Clauson

> > Director of Interconnection
> > Eschelon Telecom, Inc.
> > 730 2nd Ave. South, Suite 1200
> > Minneapolis, MN 55402
> > Phone: 612-436-6026
> > Fax: 612-436-6126

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Qwest Communications International, Inc.	)	**WC Docket No. 02-148**
	)	
Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota	)	

To: The Commission

EX PARTE COMMENTS OF ESCHELON TELECOM, INC. IN OPPOSITION TO THE CONSOLIDATED APPLICATION OF QWEST COMMUNICATIONS INTERNATIONAL INC FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN COLORADO, IDAHO, IOWA, NEBRASKA AND NORTH DAKOTA

Karen L. Clauson

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Minneapolis, MN 55402-2456
(612) 436-6084

August 15, 2002

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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EX PARTE COMMENTS OF
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I. INTRODUCTION

Eschelon Telecom, Inc. ("Eschelon") submits these written Ex Parte Comments regarding the application of Qwest Communications International, Inc. ("Qwest") for authorization under Section 271 of the Communications Act to provide in-region, interlata service in the states of Colorado, Idaho, Iowa, Nebraska, and North Dakota ("Qwest I"). Although Qwest has provided additional information and additional paper promises, Qwest has not demonstrated compliance with the 14-point checklist. A promise is not enough to show 271 compliance. In some cases, Qwest has said it will make changes but has not done so. In others, Qwest indicated that it has recently made changes (such as in the last week or two), but those changes have not yet been verified or tested. Also, Qwest has not provided sufficient documentation to CLECs for some of the proposed or recently implemented changes. As the current examples provided in these Comments show, problems remain.

Approval to provide in-region, interLATA service should be based upon Qwest's demonstrated compliance with the 14 point checklist, not upon promises to comply in the future, nor upon mere statements that it has changed processes and systems to allegedly bring it into compliance. Although Qwest claims to be working on future measures to address the problems of excessive manual handling of orders and service order errors, for example, those measures are undeveloped, untried, untested, and unaudited, and in the meantime problems continue to occur. The same is true for many of the "fixes" that Qwest is now proposing or claiming to have implemented in response to Competitive Local Exchange Carrier "(CLEC") comments on Qwest's 271 application (Qwest I). Some of the concerns that Qwest is now addressing with last-minute changes were raised by Eschelon in September of 2000. *See* Exhibit 7.[1] Until Qwest has taken actions that can be measured and evaluated and has shown adequate performance with respect to such measures, Qwest has not demonstrated that it has sufficiently opened its markets to competition as required under Section 271 of the Act.

A. Inadequate Manual Handling and Service Order Inaccuracy

Two significant omissions in Qwest's performance reporting add up to a situation in which a tremendous amount of Eschelon's adverse experiences in its commercial interactions with Qwest are not accounted for when Qwest reports its performance. Together, these omissions help explain why Eschelon's view that Qwest's commercial performance falls far short of the mark is so at odds with Qwest's claims of exemplary performance. The U.S. Department of Justice has recognized these two omissions in Qwest's performance data: (1) **manual handling**: "Qwest does not have any regularly reported commercial performance data on the accuracy of its manual order processing"; and (2) **service order accuracy**: "Qwest's regularly reported installation quality measure does not include troubles that are submitted for missing features as Qwest considers those as raising an order processing rather than a provisioning issue." *See* DOJ Eval. (Qwest I), p. 19 & note 83.[2] Performance problems relating to Qwest's inadequate manual handling of orders and its service order inaccuracies, however, are at the root of many problems. Qwest's performance cannot be accurately measured, however, without fully accounting for these issues.

The extent of manual handling of orders at Qwest is very significant. In many situations, Qwest instructs CLECs to select "manual handling" and insert remarks as part of the process for placing an order.[3] Although some of these instructions can be found in Qwest's product catalog ("PCAT"), *see id.*, many of the situations in which Qwest has told Eschelon that it must use manually handling are not documented on Qwest's wholesale web page. *See, e.g.,* Exhibit 8.[4] Therefore, the documentation does not reflect

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[1] Exhibits 1-6 were filed with Eschelon's initial Comments in this matter on July 3, 2002.

[2] Evaluation of the United States Department of Justice, *In the Matter of Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, FCC Docket No. 02-148 (July 23, 2002) ("DOJ Eval. (Qwest I)").

[3] *See, e.g.*, http://www.qwest.com/wholesale/clecs/migrateconvert.html (instructions for CLEC-to-CLEC conversions state: "The Manual Indicator, field 108a of the LSR form, must equal 'Y'"); http://www.qwest.com/wholesale/ima/gui/faq.html (instructions for how a CLEC issues a change order on a newly converted account when the CSR has not yet been updated state: "Select 'Yes' from the Manual Indicator drop down list on the Remarks Tab in the LSR window"). Although Qwest chose to address only these two examples in its OSS Reply Declaration (¶¶ 151-152), Qwest is or should be aware of all of the other instances in which its personnel instruct CLECs to mark manual handling, *see e.g.*, Exhibit 8, and it has the burden of addressing those issues.

[4] Qwest claims that it distributed a communicator to the CLEC community on October 4, 2001, to clarify the situations in which CLECs must check manual handling. *See* Notarianni & Doherty Reply Decl. ¶ 150. Eschelon has searched Qwest's web site and cannot locate the communicator. Several other posted mailouts

the extent of the problem.[5] In fact, Qwest's relies heavily on manual handling, and manual handling results in many errors that either adversely affect Eschelon's end user customers or increase Eschelon's costs, or both. As long as Qwest continues to rely on extensive manual handling, at a minimum, an adequate performance measure should be in place, tested for a sufficient period of time, and associated with penalties for inadequate performance. This should occur ***before*** 271 approval is granted.[6]

Another huge gap between reality and Qwest's current performance results exists because Qwest's regularly reported installation quality measure does not include troubles that are submitted for missing features or other service order accuracy errors. Feature problems can be as significant of a problem for customers as a loss of dial tone. If hunting is missing from the main line, for example, a business will be able to receive only one call at a time, and other customers calling the business will receive a busy signal. Even worse for many businesses, if the call forwarding/don't answer feature is missing or not working properly, customers of the business will not even get a busy signal; the line will ring with no answer. This makes the business look very bad, as though no one is working during business hours. If a feature that is significant to a customer is missing or does not work properly when that customer switches to a CLEC, the customer will view

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were sent that date, but none dealing with manual handling. (If the exhibit was provided to Eschelon, Eschelon cannot find it. In any event, the business units do not rely on FCC filings for information on how to do business with Qwest.) If the information is not readily available to CLEC users, it has little value. (One of the CMP gaps identified by Eschelon is that the information in Qwest's communicators and mailouts does not get incorporated into the appropriate documents used by CLECs. For example, a CLEC should be able to go to the manual handling sections of the PCAT and other CLEC facing documents to find all of the appropriate information without having to search for separate "communicators" that might also relate to the subject.).

[5] Although Qwest claims that "Qwest was receiving many LSRs with the manual handling indicator marked unnecessarily," *see* Notarianni & Doherty Reply Decl. ¶ 150, Qwest often instructs CLECs to do so when that process is not documented. The communicator should be compared to Exhibit 8 to determine whether it at least captured all of these examples.

the transition to a competitive carrier as an adverse experience. The damage to the CLEC goes beyond the one transaction and harms the CLEC's reputation and ability to compete.

Qwest claims that it does not measure this type of trouble because it considers the problem to be "an order processing error rather than a provisioning issue." *See* DOJ Eval. (Qwest I), p. 19, note 83. The business customer that is effectively out of business because its features are not working, however, does not care about this fine distinction. To the end-user customer, this is a service affecting trouble. When that end user customer calls Eschelon with the trouble, Eschelon -- unlike Qwest -- records it as a trouble reported within 30 days.[7] Eschelon's practice is more consistent with the spirit of OP-5 than Qwest's own practice, because the OP-5 applies to "service affecting" problems. The description for OP-5 specifically requires Qwest to include "***All*** trouble reports (for both out-of-service and ***service affecting*** conditions)." *See* PID Description OP-5 (emphasis added). By its own admission, Qwest nonetheless omits service affecting troubles that it deems to be order processing errors.[8]

In contrast, Eschelon has been including service affecting troubles (including feature problems) in its performance measure for Qwest's new service installation quality. As shown in Exhibit 9, when this key information is included in the measure, the

[6] Six months, or however long development of additional measures and commencement of PID measures will take, is an eternity for a small carrier, particularly in the current market. Actions need to be taken to ensure that competitors are still viable by the time backsliding relief is available.

[7] As described in Eschelon's initial Comments, Eschelon has provided Report Cards to Qwest since January of 2001. Although Qwest regulatory criticizes Eschelon for deviating from the PID measures, Qwest operational and CMP personnel are constantly asking Eschelon for "examples." Eschelon spends an inordinate amount of time complying with these requests. Eschelon's Report Cards (which include detailed back up data) are well organized, detailed examples of the very nature that Qwest continually requests.

[8] This issue also has implications for OP-3. If there is a service order error, Qwest did not meet its commitment ***to provision the order as written*** by the due date.

results show the true state of Qwest's performance. For Off-Net orders,[9] for example, Qwest's performance has been above 60% only once in the last 6 months. From December of 2001 through May of 2002, Qwest's performance for new service installation quality for Off-Net orders averaged 49.3%, and the trend is downward. *See id.* This means that, ***more than 50% of the time***, these customers experienced service affecting troubles within 30 days of installation.

As this figure shows, including "all" troubles that are "service affecting" in this measure makes a significant difference. Qwest's results show a more positive, but not a true, picture of Qwest's performance. This is ***not*** simply a case of dueling data. It is a situation in which Eschelon does measure service affecting troubles that Qwest has conceded it omits from this measure. Eschelon's regularly reported data including these service affecting issues shows that Qwest has an average of more than 50% troubles within 30 days for Off-Net orders for the last six months. Qwest's retail customers do not regularly experience more than 50% of orders having troubles within 30 days of installation, and Qwest's wholesale customers should not be subjected to this experience either.

Although Qwest claims to be working on measures to address this significant omission in its reporting, those measures are not finalized. They are undeveloped, untried, untested, and unaudited. They are also not associated with any Performance Assurance Plan ("PAP"). For Qwest's proposed OP-20, Qwest has said that it plans to

[9] Eschelon has its own switches for providing voice service. When using its switches to serve its customers, Eschelon orders collocation, loops, *etc.*, from Qwest. In some cases (particularly when a customer is outside of the area served by Eschelon's switch), Eschelon also orders UNE-E, UNE-P, or resale from Qwest to serve customers. Eschelon often refers to customers and lines served through Eschelon's own switching facilities as "On-Net" or "On-Switch" and customers and lines served through UNE-E, UNE-P, or resale as "Off-Net."

rely upon a sampling of data (instead of complete data) and that it will not include Universal Service Ordering Codes ("USOCs") in its service orders field comparison. USOCs are a primary driver of accuracy; they dictate the features for the line. Without the inclusion of USOCs, the measure will significantly underestimate the problem, and it will have little value. For Qwest's proposed "augment" to OP-5, Qwest has suggested tracking instances of escalation tickets coming to repair from orders not written properly. If Qwest does not track the number of service orders revised or re-created due to errors, however, the number of errors will be underestimated. Also, Qwest proposes to include all orders in the denominator, instead of manual orders only, while using the number of service order mismatches for the numerator. This will lead to a misleading result. For both of these measures, Qwest has not provided any date by which the measures will be fully developed, and Qwest has not committed to including the measures in any PAP. Qwest's 271 application should not be approved before adequate measures have been established and tested and are associated with a PAP.

In addition, the Commission should ensure that additional charges are not assessed to CLECs as a result of the service order errors. If there is an error is a service order (such as a missing feature), Qwest has said recently that it will not bill any separate or additional charge for the second and any subsequent service orders to correct the error. *See* Transcript, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Corporation Commission Docket No. T-00000A-97-0238, Vol. II, p. 425, lines 5 – 12 (July 31, 2002) ["AZ 271 Tr."] (Volumes I and II of the Transcript are attached as Exhibits 10 and 11).[10] This commitment should

[10] AZ 271 Tr., Vol. II, p. 425, lines 5 – 12 (Chris Viveros of Qwest): "There is not a separate service order charge. The question that was asked was whether or not there was a subsequent or a second service order

be documented and a process should be in place to ensure that such charges are not billed.

B. UNE-P Provisioning, Documentation, and Ordering Problems

As described in the Affidavit of F. Lynne Powers, Eschelon moved to another Qwest platform product (UNE-Star) in 2000 after Eschelon found that the problems with Qwest's UNE-P product were too numerous to support a product offering using UNE-P at that time. *See* Exhibit 4. At approximately the same time, McLeodUSA also moved to the UNE-Star product. Therefore, for the bulk of the time since 2000, Qwest does not have commercial performance experience in providing UNE-P to these two reportedly largest CLEC wholesale Qwest customers.[11] In the past few months, however, Eschelon has started to place UNE-P orders with Qwest again. Qwest UNE-P conversions and migrations are still resulting in the same types of customer-affecting problems that occurred when Eschelon first tried to launch UNE-P in 2000.[12] *See* Exhibit 7.

1. UNE-P Provisioning (Troubles Within 30 Days)

In May 2002, for example, more than 17%[13] of Eschelon's UNE-P orders (excluding UNE-E/UNE-Star) provisioned by Qwest had Qwest-related trouble reports

charge that would be billed in a scenario where a feature was omitted on a first order and we had to write a second order. There is not a separate charge. There would be no additional charge. There's no charge."

[11] Qwest never completed the physical conversion to UNE-E/UNE-Star, and the UNE-E/UNE-Star product suffers from many problems. *See* Exhibit 4. Eschelon has had to begin the process of placing individual LSRs to convert customers to UNE-P, due to billing, provisioning, and pricing issues with UNE-E/UNE-Star. *See id.*

[12] Qwest is aware of these problems. Eschelon described them in 55-page comments filed with the Arizona Corporation Commission on September 21, 2000. *See* Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000) ("Arizona UNE-P Comments"); Verification of Garth Morrisette (same); *see also* Exhibit 7 (comparing problems raised in 2000 with those experienced in 2002).

[13] This is a conservative number. Because of the number of disputes usually associated with No Trouble Founds ("NTF"), Eschelon excluded the NTF troubles when calculating this percentage, to be conservative.

within 30 days of order completion.[14] The majority of these troubles were Qwest order writer errors or errors on line side translations. As a result of these errors, end-user customers are experiencing outages and feature problems.[15] Recent examples of Qwest-caused customer-affecting problems on new UNE-P orders include:[16]

> **Loss of Dial Tone**: A Colorado customer was without dial tone from at least 11am until 3:30pm on July 9, 2002 due to a Qwest UNE-P conversion (Escalation ticket # 1409440).
>
> **Loss of Features**: Another new UNE-P customer in Colorado lost the hunting capability from May 25, 2002 to May 29, 2002 when converting to Eschelon on UNE-P because Qwest programmed it in the switch incorrectly (Qwest order # N83766414). As discussed, hunting capability is very important to customers.
>
> **Loss of Features**: Another Colorado customer had no stutter dial tone from June 21, 2001 to June 24, 2002 as a result of a faulty UNE-P migration (Qwest Order # C86202822). Therefore, the customer had no indication when its customers and other callers had left messages for the business due to a Qwest error in the UNE-P migration.

The volume of UNE-P orders that Eschelon submits to Qwest is not great. Nonetheless, these service affecting problems continue to occur.

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[14] Qwest's reported performance for "UNE-P" cannot be compared to this figure because Qwest has chosen to include the different product of UNE-E/UNE-Star in its UNE-P reporting. *See* below. The more comparable figure is the total percentage of Off-Net (UNE-P and UNE-Star) order installations that have trouble reports within 30 days. In April and May of 2002, for example, ***more than 50%*** of Off-Net order installations had trouble reports within 30 days.

[15] The problems are increased due to inadequate support for resolving issues. The Qwest service managers are so busy that they cannot reasonably handle all of a CLEC's issues. If any one person goes on vacation, the problem becomes more severe. Recently, for example, the Qwest senior service manager for Eschelon went on vacation while a pressing issue involving customer outages was pending. Qwest did not communicate to Eschelon how the issue would be handled in the person's absence. When Eschelon asked the Qwest service manager whether she would handle the issue in her supervisor's absence, she provided a one-word response: "No." *See* Exhibit 12. Only when Eschelon pressed the issue did she agree to research the issue, and even then she did not commit to a timeframe (such as before her supervisor returns from vacation). *See id.*

[16] The customer affecting UNE-P problems occur across states. For Arizona examples, *see* Exhibit 7. On August 1, 2002, for example, an Arizona UNE-P migration customer lost DSL service for hours. It appears that Qwest added a USOC to attempt to resolve problems of loss of DSL service on order activity (*see* DSL – Migration of Customers) but Qwest personnel were inadequately trained in the new process, so a different department at Qwest removed the USOC. (PON # UNEPAZ5JPR205312.)

In addition to submitting new UNE-P orders, Eschelon is currently in the process of migrating some of its customer lines on UNE-Star to UNE-P. Qwest is handling this migration on a project basis, which means that the orders are hand-held in the sense that they are being monitored and handled separately. Despite the project handling of these orders, the migration orders have also resulted in Qwest-caused customer affecting issues. Although the problems occur less frequently for migrations than for new conversions (as would be expected due to the special handling of the migration orders), Eschelon expends substantial resources escalating and resolving these issues. An example of a customer affecting issue for a migration customer follows:

> **Loss of Dial Tone and Feature**: A Colorado UNE-P migration customer had no service from at least 8 am until noon during the business day on July 3, 2002. Although service was restored, the customer did not have the message waiting indicator until the end of business day due to a Qwest error in migration. (PON # NEPCO2KLH190002.)

The customer affecting issues associated with UNE-P harm Eschelon's business and ability to compete.

2. <u>UNE-P Ordering</u>

Ordering of UNE-P is also unnecessarily difficult, which also harms Eschelon's business by increasing the expense of doing business and increasing the likelihood of errors. In September of 2000, Eschelon described the problems associated with Qwest's process that forces CLECs to individually address every USOC and its status on each UNE-P-POTS order (*see* Exhibit 7). A year and a half later, Qwest has not yet resolved this issue. Qwest continues to require CLECs to address every USOC and its status on each UNE-P order. Although Qwest described its ordering process to Eschelon as

"Conversion as Specified" ordering,[17] Z-Tel and WorldCom have recently pointed out in Change Management Process ("CMP") Change Request number SCR060702-1 that this type of ordering is commonly referred to in the industry as "Migrate as is with Changes."[18] In the Change Request, Z-Tel asks Qwest to add the capability to convert customers as specified without having to list and map changes, adds or removes. Z-Tel points out that SBC, Verizon, and BellSouth all provide this pure migrate as specified capability for UNE-P customers. As this Change Request shows, Qwest has not yet resolved the issue raised by Eschelon in 2000.

Instead, Qwest claims that it initially implemented this capability in 1997 and then withdrew it because of "significant issues" created for CLECs. *See* Notarianni/Doherty Reply Decl. p. 74 ¶ 146. If that occurred, Qwest should have addressed the problems by ensuring that true Conversion as Specified ordering did not create "significant issues" (as other RBOCs have done), instead of shifting the burden to CLECs to place orders in a onerous manner so that Qwest would not have to correct the underlying problem. Qwest has known for a long time that any 1997 approach to the problem was unsatisfactory. In September of 2000, Eschelon complained to Qwest about the problems associated with Qwest's process that forces CLECs to individually address every USOC and its status on each UNE-P-POTS order. *See* Exhibit 7. Qwest did nothing to correct the problem. Although Qwest points out that the Z-Tel Change Request relating to this issue is now under consideration in CMP, Qwest has had since September of 2000 to correct the problem. Given its delay, Qwest should not be given 271 approval on a promise to work on this Change Request in CMP in the future. Qwest

[17] For its conversion as specified activity, Qwest processes multiple service orders (*i.e.*, not one change order).

should have to demonstrate successful completion of the change (in a manner that, as in other RBOC territories, does not create "significant issues" for CLECs) before obtaining 271 approval.

3. UNE-P Documentation and Feature Information

In addition to customer-affecting service and ordering issues, availability and documentation of the features and functions of UNE-P are issues with Qwest's UNE-P product. As compared to the almost non-existent UNE-P documentation on feature availability in 2000, Qwest has added much more information to its web page regarding features and UNE-P. Issues remain, however. For example, Qwest continues to deny access to Remote Access Forwarding with UNE-P, even though it is a switch feature and Qwest previously testified that switch features would be available with UNE-P, regardless of whether Qwest moved the feature to an Advanced Intelligent Network ("AIN") platform for its own use (*see* below). Nortel Technical Publication (NTP) 297-8021-350, Standard 13.02, clearly shows that Remote Access Forwarding is a standard switch feature for the DMS switch.

In March of 2002, Eschelon again pointed out to Qwest that Remote Access Forwarding is a switch feature so the capability should be available with UNE-P. Qwest again refused Eschelon's request and confirmed that it will not make Remote Access Forwarding available with UNE-P because Qwest categorizes it as an AIN feature. Qwest currently includes Remote Access Forwarding (AFD/AFM) on its list of "Features, Products, & Services Unavailable with UNE-P Products."[19] On this issue,

[18] *See* http://www.qwest.com/wholesale/cmp/changerequest.html (Qwest Reply Exhibit CLD-21).
[19] *See* http://www.qwest.com/wholesale/pcat/unep.html (click on "UNE-P Features Not Available" under "Optional Features" for UNE-P general information; no link to document by specific UNE-P product).

Karen Stewart of Qwest previously responded to a comment by Michael Beach of WorldCom in testimony as follows:

> MR. BEACH: You see my concern. I assume that to the extent that you have features available to retail customers using AIN and they become more available on AIN but less available on the switch then they become less available to competitors.
>
> MS. STEWART: No, they would be available to you on the switch because you can still get any technically feasible functionality at the switch.
> So, let's just take an extreme. If Qwest was to decide to do no call forwarding with its local switch, none, and moved all call forwarding to an AIN platform, a CLEC purchaser could still choose to use all the call forwarding capability of that central office switch. It's not going to take anything away from you and your options to use the switch because you still get all of that feature functionality that that switch is capable of.[20]

Despite Qwest's paper commitment to provide the capabilities of the switch even when Qwest also moves such functionality to an AIN platform for itself, Qwest continues to deny access to the Remote Access Forwarding switch feature with UNE-P.

Although Eschelon started raising this issue with Qwest more than a year and a half ago, Qwest could not tell Eschelon at the July 30-31, 2002 Arizona 271 workshop whether this feature is activated in any of its switches. It claimed that it has a process in place to make switch feature capability available and added that there may be some costs associated with it. If so, none of the many individuals at Qwest with whom Eschelon has dealt on this matter for a long period of time are trained on the process. They have not made it available to Eschelon. It appears that Qwest's position now is that Eschelon must, at this late date, use the Special Request Process to receive a response as to the availability of Remote Access Forwarding capability in the switch. Several months ago, Eschelon referred specifically to the Nortel documentation showing that the feature is in the switch when requesting the feature to be clear that Eschelon was requesting the capability of the switch. As indicated, no one at Qwest directed Eschelon to this process. Instead, they indicated that the capability is simply unavailable, making completion of any such a process a futile effort.

Qwest may now claim there are right to use fees associated with using the feature that Qwest would pass on to Eschelon. If that is the case, Qwest could have informed Eschelon of the charges when Eschelon first inquired about the remote access forwarding feature, so that Eschelon could have either paid or challenged them. Particularly if any such fees are large, the issue raised in October of 2000 by Mr. Beach of WorldCom (quoted above) becomes relevant once again. If there are no proprietary or other restrictions on an incumbent's ability to choose between providing a feature through the switch or through an AIN platform, the incumbent has an incentive to use the AIN platform to prevent competitors from winning customers who desire those features. If Qwest pays a right to use fee, it both has economies of scale that justify the cost and has the ability to recover the costs through recurring rates. In fact, some of those costs may already be acccounted for in the recurring switch port rate. If, however, Qwest may choose to provide that same feature through an AIN platform, regardless of whether it is proprietary, small carriers without those same economies of scale are effectively precluded from providing through UNE-P the same feature that is available to Qwest retail customers.

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[20] Transcript, Vol. I, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Corporation Commission Docket No. T-00000A-97-0238 (Workshop 4, Checklist Items 2, 5, and 6), p. 82 line 12 – p. 83 line 4 (Oct. 10, 2000).

With respect to feature availability generally, Qwest now has documentation on its web page but there are still gaps and inconsistencies. Clearly documented feature information is critical to developing and marketing a product. Eschelon requested a complete list of AIN features from Qwest. Qwest now provides a list of "UNE-P Features Not Available," but that list does not identify which features are unavailable because Qwest claims they are AIN features. The Qwest "UNE-P Features Not Available" List states that it includes Voice Messaging and AIN services that are not available with UNE-P. The list also includes features that do not fall in to either of these categories (such as feature packages).[21] The only feature on Qwest's list that is specifically identified as "AIN" is "No Solicitation" (SB5).[22] For other features, the basis for unavailability is not provided. It is important to know the basis for Qwest's claim of unavailability. As the example of Remote Access Forwarding shows, a CLEC familiar with the functionalities of a switch cannot plan its product based on that knowledge, because Qwest may refuse to provide such functionality on the grounds that Qwest claims it is an AIN feature. Qwest needs to identify when this is the basis for its refusal to provide access.

Although Qwest now posts feature information on its web site in its product catalog (PCAT), inconsistencies and gaps remain. For example, Eschelon had to point out to Qwest that Qwest's "UNE-P Features Not Available" List showed that message waiting was not available with UNE-P when it should be available, and this prompted

[21] Although some packages are listed, others (such as PGOCL) are not. The title of the document ("Features, Products & Services Unavailable with UNE-P Products") suggests that the list is more comprehensive than it is, which has led to confusion.
[22] *See* http://www.qwest.com/wholesale/pcat/unep.html (click on "UNE-P Features Not Available") (*compare* Remote Access Forwarding, which has no designation, *with* No Solicitation (SB5), which is designated as "AIN" on the list).

Qwest to change the documentation. With respect to Universal Service Ordering Codes ("USOCs"), Qwest instructs CLEC UNE-P providers to use IMA GUI to verify if a feature is available in each market. Without the correct USOC, however, the CLEC cannot do so. Eschelon asked Qwest on several occasions for a list of the available USOCs by market. Qwest provided a list to Eschelon on May 17, 2002. When Eschelon compares that list to Qwest's "UNE-P Features Not Available" List on Qwest's website, the two Qwest documents do not reflect the same information. For example, Qwest's May 17, 2002 USOC list states that ENT, FLT, and NL1 are available with UNE-P, but Qwest's "UNE-P Features Not Available" List shows that they are unavailable. Also, although Qwest has provided conflicting information with respect to Scan Alert, Qwest has most recently indicated that Scan Alert is available with UNE-P-POTS. Scan Alert is not listed, however, on Qwest's web site as a feature available with UNE-P-POTS. Conversely, Qwest has told Eschelon that Market Expansion Line (RCFVF, RCFVE) is unavailable with UNE-P, but Market Expansion Line is not included in Qwest's list of "Features, Products & Services Unavailable with UNE-P Products."

After Eschelon raised these issues in the July 30-31, 2002 Arizona 271 workshop, Qwest reduced the issue to one of updating documentation as to "5 USOCs." The issue is broader, however. In 2000, Eschelon asked Qwest to create a more comprehensive list of USOCs and state the status of each (since Qwest knows which USOCs it offers), so that CLECs did not have to get an answer one USOC at a time as to availability. The effort to track down and verify information USOC by USOC is resource intensive and it adversely affects the CLEC's ability to efficiently design and offer a full range of products. If Qwest does not review its own USOCs, these issues will continue to arise.

Already, since the Arizona workshop, another issue has arisen. Eschelon attempted to order international blocking (RBVXC) with UNE-P. Qwest had provided to Eschelon a spreadsheet which indicated that the USOC RBVXC is available with UNE-P POTS, UNE-P CTX 21 and UNE-P CTX+/Centron in all of the states in which Eschelon does business. (Eschelon needed the spreadsheet because of the problems with the information on the web.) After the order was placed, Qwest informed Eschelon that RBVXC is not available on UNE-P POTS. This is contrary both to the documentation provided by Qwest that expressly said it was available and to the list on Qwest's web page of unavailable USOCs (which does not include RBVXC). Qwest needs to provide clear, consistent, complete documentation.

C. Unannounced CLEC Affecting System Changes

In Section II(C) of Eschelon's Comments (commencing at page 4), Eschelon described a situation that occurred after the 10.0 Release on June 17, 2002, when CLECs could not submit electronically CLEC-to-CLEC orders following the documented process, or at all when the circuit identification numbers were not populated in IMA. Although the change was CLEC-affecting, Qwest did not inform CLECs in advance of any change in the Release that would have caused this impact on CLECs. Since then, Qwest has apparently made another systems change without notifying CLECs, because GUI users are experiencing a problem with the Directory Listing form that did not occur until recently. As discussed below, Eschelon is waiting for a status update from Qwest on this issue.

1. Release 10.0 Change Preventing CLEC-to-CLEC Orders

With respect to the Release 10.0 situation, Qwest failed to follow its processes in several respects:

> Although the change was CLEC-affecting, Qwest did not inform CLECs in advance of any change in the Release that would have caused this impact on CLECs.
>
> Qwest assigned the incorrect ticket severity level to this notice (giving it only a 3), which underestimates the severity of the problem and also affects the timing of status updates.
>
> Although both Eschelon and Allegiance[23] submitted tickets regarding this issue on June 21, 2002, Qwest waited until July 2, 2002 to issue an event notification.
>
> Qwest did not communicate with Eschelon the status of this issue for several days after Eschelon submitted its tickets.
>
> Qwest identified a workaround in the event notification, when it was finally sent, without first attempting to reach consensus with CLECs on the workaround.

Although the particular change preventing CLEC-to-CLEC orders has been corrected, these process non-compliance issues remain a concern. This is particularly true because, in its filing, Qwest denies the problem rather than committing to correcting it. Eschelon also raised these process non-compliance issues with Qwest CMP personnel. Eschelon has not received any information that would indicate such problems will be avoided in the future. Qwest has no documented intervals or other procedures for dealing with issues of non-compliance with established CMP processes.

Instead of recognizing in its filing that Qwest did not comply with the process and indicating steps to avoid a similar problem in the future, Qwest provides a version of events that does not fit with the facts, as will be shown here. This is another example of

[23] Although Qwest claims that Allegiance did not submit a ticket until June 25, 2002, *see* Notarianni/Doherty Reply Decl. p. 76 ¶ 149, Eschelon has since confirmed with Allegiance that Allegiance submitted its ***first*** ticket on this issue (ticket #5967837) on June 21, 2002. Allegiance filed a second ticket on this issue on June 24 or 25, 2002 (ticket #5970408).

why paper explanations and promises do not substitute for proven performance. Such unfounded assurances should not be the basis for 271 approval.

The key fact that Qwest needed to establish to counter Eschelon's assertion that it did not comply with its own process is to explain why it did not send an Event Notification until July 2, 2002, when Eschelon and Allegiance had complained about the problem on June 21, 2002 – ten days earlier.[24] Qwest's documented process states that an Event Notification will be sent to CLECs "for tickets that relate to more than one CLEC or for reported troubles that Qwest believes will impact more than one CLEC."[25] Qwest suggests that it did not know that the issue related to more than one CLEC until July 1st or 2nd and then it immediately sent out an Event Notification per the process. *See* Notarianni/Doherty Reply Decl. p. 76 ¶ 149. Specifically, Qwest states:

> The generic nature of the error condition and the varying CLEC descriptions did not allow the two tickets to be correlated. . . .[26] When Qwest recognized that the cause impacted this specific type of CLEC-to-CLEC migration, and affected more than one CLEC, Qwest communicated the system issue and the temporary work around to all CLECs via notification on July 2, 2002.

Id. ¶ 149. Qwest's representations about the events, which Qwest has submitted to the FCC in sworn testimony, directly contradict the facts as they actually occurred and were documented by Qwest at the time. As Exhibit 13 shows, Qwest knew by no later than June 25th both that the tickets of Eschelon and Allegiance were related ("correlated") and that the problem involved CLEC-to-CLEC migrations. By then, Eschelon had been

[24] *See* earlier note (regarding the two tickets filed by Allegiance, with the first being on June 21, 2002). Even if the date of the second ticket is used, the Event Notification and status updates were untimely.
[25] *See* http://www.qwest.com/wholesale/cmp/redesign.html (CMP Master document, Section 12.6).
[26] Qwest states that "Qwest identified the root cause of one of these reports on July 1, 2002. Once the root cause has been determined, Qwest found the cause applied to the second ticket as well." *See* Notarianni/Doherty Reply Decl. p. 76 ¶ 149. Section 12.6 of the CMP document requires only that the two issues be "related," not that Qwest wait until root cause is determined, before sending out an Event Notification. Section 12.7 contains a separate status interval for notifying CLECs of resolution of issues

pressing Qwest for more information about this issue since the previous Friday. On June 25th, Eschelon re-iterated to Qwest as a "Hot Issue" that "We are at a standstill for these ***CLEC to CLEC conversions when we want to reuse facilities***." *See* Exhibit 13 (emphasis added). Qwest's Senior Service Manager for Eschelon responded as follows – ***on June 25th***:

> "We also had ***been notified by another CLEC***, so we have had focus on this." *See id.* (emphasis added).

Despite Qwest's representations to the contrary, Qwest clearly knew the tickets were related and that the issue dealt with CLEC-to-CLEC migrations ***at least seven days before*** it issued an Event Notification. Under any reading of Qwest's Production Support process, at any severity level, the notification was untimely and the process violated.

While this may not be the greatest breach of process by Qwest, this example nonetheless goes to the veracity of Qwest's assurances and the need for proven performance rather than paper representations. While Qwest can now probably devise some response to these facts after Eschelon has taken the time to track down evidence contrary to Qwest's previous assertions, a standard should be enforced to require a carrier, before representing facts in sworn testimony, to investigate and accurately describe those facts at the outset.

Qwest's description of the events varied from the facts in other respects as well. Qwest disputes Eschelon's statement that the Qwest senior service manager and Qwest process specialist "'became unavailable while the issue remained unresolved.'" Notarianni/Doherty Reply Decl. p. 76 ¶ 149, note 190 (quoting Eschelon's initial

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(and even has intervals for "no change" in status). CLECs need status updates while root cause analysis is proceeding so they are aware of the status in the meantime.

Comments, p. 5). If Qwest produces vacation schedules for Jean Novak and Russ Urevig of Qwest, however, they will show that both of these individuals went on vacation after starting to assist Eschelon with this issue but before it was resolved. Eschelon had difficulty obtaining information on the status of this issue after they left for vacation. Although Qwest states that "two Qwest service managers communicated daily via email and phone with an Eschelon employee," *see* Notarianni/Doherty Reply Decl. p. 76 ¶ 149, note 190, one of Eschelon's two service managers is Jean Novak, and she went on vacation. Qwest did not assign an additional person to substitute for her while she was away (but simply told the existing service manager to cover for her). As indicated by Exhibit 12 and explained in footnote 15, inadequate account support, particularly when vacations are taken, is a problem. Eschelon did not receive regular status updates.

Also, contrary to Qwest's claims, Qwest was not communicating with Eschelon about finding "a suitable workaround while the issue was being worked out." *See* Notarianni/Doherty Reply Decl. p. 76 ¶ 149, note 190. Qwest dictated, in its Event Notification on July 2, 2002, that the workaround would be to submit orders by facsimile. Eschelon informed Qwest that the work around identified in the event notification is unacceptable to Eschelon. Manually faxing orders to Qwest introduces the increased likelihood of error and all of the other problems associated with faxes.

When Qwest finally sent the Event Notification, Qwest assigned a severity level of 3 to the problem. Qwest claims that the CLEC-to-CLEC issue was not significant because "CLEC-to-CLEC LSRs of this type account for approximately 0.23% of all LSRs." *See* Notarianni/Doherty Reply Decl. p. 76 ¶ 149. The documented CMP production support process does not contain any such numerical test, and with good reason. If a carrier is finding that every one of a particular type of order is being prevented, this is a significant issue to the carrier. When more than one carrier is impacted, the seriousness of the problem is increased. The numerical test suggested by Qwest would not account for such issues. Using "all LSRs" as a measure would effectively eliminate many issues faced by smaller CLECs and CLECs ordering only certain products or serving niche markets. Those CLECs, however, may be seriously impacted by a trouble. The documented definition of severity level of 2, therefore, does not include the numerical test suggested by Qwest but instead includes "serious loss of functionality" and "limited use of product or component."[27] CLECs could not order the CLEC-to-CLEC migration product. Qwest should have assigned a severity level of at least 2. The severity level, notice, and updates given in this case were inadequate under the existing process, and Qwest has not committed to take any steps to avoid a similar problem in the future. If it makes that commitment now (after denying the problem even existed), its statements should carry as much weight as those it made in its Reply Declaration, as discussed above.

2. Change Orders for Centrex 21 Requiring Directory Listing Form Use

In August 2002, Eschelon opened ticket number 6002237 with the IMA helpdesk because, when submitting a change order on a CTX21 account, IMA suddenly began to require a directory listings form in error. Previously, such orders could be completed without completing a directory listings form, and Eschelon received no notice that the process would change. In response to Eschelon's escalation Sue at Qwest said that Qwest is aware of the problem and has submitted CR 42854. She also said, however, that there is a strong possibility the correction may not go in until the 11.0 Release. She

[27] See http://www.qwest.com/wholesale/cmp/redesign.html (CMP master redlined document), section 12.5.

indicated the only work around for this is to fill out the directory listings form and check manual handling, asking the listing form not be worked.

Eschelon informed its service managers at Qwest that this is not a workable solution. Completing a directory listings form is time-consuming, and relying on manual handling increases the likelihood of error. It is possible that directory listing requests will be worked when no directory listings work is desired. Waiting for Release 11.0 to correct a change that should not have occurred without notice to CLECs is an unacceptable delay and inconsistent with production support intervals. Even now, after Eschelon has escalated the issue, and Qwest has indicated that it was aware of the problem before Eschelon called, Qwest has still distributed no event or status notifications to CLECs about this issue. Therefore, like the CLEC-to-CLEC Release 10.0 example, this situation shows non-compliance with several CMP processes:

-- no notice of CLEC affecting work by Qwest
-- no severity level noticed
-- no event notification, even though more than 1 CLEC affected
-- no status updates per production support intervals
-- no collaborative approach to workaround

Eschelon has provided requested examples to Qwest and is waiting for an indication of the status and when the problem will be corrected.

D. <u>OSS – Lack of Flow Through</u>

On June 26, 2002, Qwest told Eschelon that any telephone number coming from[28] a 1FB with CCMS, Centrex 21, Centrex or Centron for conversion to UNE-P or Resale POTS will not flow through. The orders fall out of IMA for manual handling. In addition, the orders do not flow through the switch. They fall out for manual handling of

Qwest switch translations. While the "disconnect" portion of the order flows through, the "new translation" falls out, which places the customer out of service. Eschelon end-user customers have been out of service for several hours until translations is worked or Eschelon opens a ticket to have the translations worked.

Since filing Eschelon's Comments in this proceeding, Eschelon raised this issue in the July 30-31, 2002 Arizona 271 workshop. Qwest responded after the workshop by providing to Eschelon a document that confirms that some of these orders do not flow through and claims for others that they are designed to flow through. *See* Exhibit 14.[29] According to the information provided by Qwest on August 9, 2002, any telephone number coming from Centrex Plus/Centron or Centrex 21[30] for conversion to UNE-P or Resale POTS will not flow through. Regarding 1FB with CCMS conversions to UNE-P, the Qwest document appears to indicate that this type of request is designed to flow through, except with Speed Calling features. *See id.* In footnote 2 to Table 3, however, Qwest states that "because in all these scenarios the CCMS entries on the account must be removed, the resulting flow through service orders must be corrected before completion." *See id.* Although no more explanation is provided, this appears to refer to manual intervention, which leads to the types of problems described.

For example, on July 30, 2002, a Colorado customer was scheduled to convert from Centrex 21 to UNE-P-POTS (PON #CO204677DFS, LSR #4866326). Instead, all of the customer's lines were busy to incoming callers for approximately two hours. The

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[28] Because this issue relates to the product the customer is ***coming from***, it will continue to be an issue as long as there are customers with these products in the embedded base of customers (such as long term customers of US West/Qwest).

[29] Eschelon does not know if Qwest plans to update its web documentation to include this information. If substantively different, Qwest did not explain why the information it provided on August 9, 2002, was different from the information Qwest provided on July 26, 2002. As Qwest is the source of both responses, the test will be in Qwest's performance and whether these orders flow through.

customer was open for business before the lines were restored, but its callers received busy signals instead of reaching the business, so the customer called Eschelon to complain.

In another example, on July 2, 2002, Eschelon migrated a Colorado customer from a 1FB with CCMS to UNE-P-POTS (#UNEPCOLJ189562-1). At first, it appeared the conversion had gone smoothly. Later, however, the customer lost call forwarding features, which are very important to the customer. As it turns out, the order did not flow through. This is one of the order types (1FB with CCMS to UNE-P-POTS) that Qwest represents is designed to flow through. *See* Exhibit 14 (Table 3). Nonetheless, a Qwest representative manually typed the service order and made an error when doing so. When Eschelon submitted a change order on this account, Qwest issued an "out" action to remove the call forwarding features because the Customer Service Record was inaccurate due to the Qwest service order writing error. Neither Eschelon nor the end user customer had any reason to anticipate trouble at the time. The customer called repair, and Eschelon had to expend resources to identify the problem and get it resolved. In the end, Eschelon was forced to submit an additional order to correct the Qwest error.[31]

When a customer switches to a CLEC and encounters such problems, the customer will view the transition to a competitive carrier as an adverse experience. The damage to the CLEC goes beyond the one transaction and harms the CLEC's reputation and ability to compete.

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[30] Qwest indicates that the Centrex 21 orders will be designed to flow through beginning with IMA 10.1.
[31] Because the final, correcting order was not submitted until August 19, 2002, Eschelon has not yet received a bill. Eschelon cannot confirm, therefore, whether Qwest will assess no charge, as promised by Qwest's witness in Arizona. *See* note 10.

E. OSS – Cumbersome GUI

In September of 2000 (and since then), Eschelon complained to Qwest that its GUI was "cumbersome" to use.[32] Although Qwest contends that Eschelon is the only CLEC to make this complaint (*see* Qwest Reply Comments, p. 46), both WCOM and Z-Tel have recently requested changes to Qwest's ordering process to make ordering less cumbersome for GUI and EDI users.[33] Moreover, when Eschelon participated in the Qwest-initiated conference call regarding Qwest's GUI described in Eschelon's initial Comments (p. 6), Qwest said that it had received feedback that its GUI was cumbersome. Eschelon was not alone, therefore, in this opinion, as it was Qwest that was prompted by others to organize a call to address this issue. At Qwest's request, Eschelon submitted eight Change Requests to the Qwest CMP relating to these changes.[34] A couple of examples of the changes requested shows the cumbersomeness of Qwest's GUI.

First, when a CLEC needs to supplement an LSR, the CLEC can see in the appointment scheduler that the new date and time are available. The GUI does not allow the CLEC to complete the LSR with the new date and time, however, without an escalation ticket. Therefore, the CLEC must call Qwest and manually open an escalation

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[32] *See* Eschelon's Comments Addressing UNE Combinations, *In re. U S WEST Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Arizona Docket No. T-00000A-97-0238 (Sept. 21, 2000), p. 25 ("AZ 2000 Comments") (describing GUI ordering as "time-consuming and cumbersome"); *see also* Exhibit 7.

[33] *See* Qwest Reply, p. 45 (referring to WorldCom and Z-Tel Change Requests relating to migration by name and telephone number and conversion as specified). Eschelon prioritized both of these changes very high. (Although Qwest sometimes refers to situations in which CLECs prioritize items "low," that is a relative term. Qwest unilaterally dictates the capacity of the release, as well as the length of time it claims each change requires as part of a release. A request that appears to have been prioritized "low" is actually a high priority issue, but there are so many issues and so little release capacity.) In the case of these two Change Requests, Eschelon prioritized them "high" even as Qwest uses that term. Given that Qwest rebuffed Eschelon's early attempts to improve ordering, submitting a Change Request was futile.

[34] *See* http://www.qwest.com/wholesale/cmp/changerequest.html (SCR062702-02, SCR062702-03, SCR062702-04, SCR062702-05, SCR062702-07, SCR062702-08, SCR062702-09, SCR062702-10).

ticket to cancel the first ticket and obtain the new date and time. This is unnecessary and time-consuming manual work.

Another example that has a significant impact on productivity relates to situations in which a CLEC submits an LSR to either disconnect or change features. Because Qwest requires CLECs to map all changes to the CSR (*see* UNE-P Ordering, Conversion as Specified, discussion above), IMA forces a CLEC (through an edit) to correct the FID, even when disconnecting a feature (so the FID is no longer needed). For example, this happens in situations in which the CSR shows only 7 digits for a telephone number when 10 digits are required. When Qwest went to 10-digit dialing, it made changes to the switch but not CSRs. If a CLEC is submitting an order for a customer with 10 lines, and the customer has call forwarding for voice mail, the CLEC will not even know which area code to apply. The CLEC would have to call the customer to obtain this information. This is not sensible, because the customer no longer wants the disconnet feature. When the CLEC is disconnecting a USOC or changing a call forward number, the GUI forces the CLEC to correct the data for the ***disconnected*** feature that will not be used anyway.

Eschelon will not know whether Qwest will make these or the other requested changes until the Change Requests are processed. Even assuming all of those changes are made, the GUI process will remain burdensome as long as it continues to rely on so many manual processes. In many situations, Qwest instructs CLECs to select "manual handling" and insert remarks as part of the process for placing an order, as discussed above.

F. Unannounced Dispatches and Other CLEC Affecting Activities

When Qwest engages in activities that it initiates but affect CLECs or their end user customers -- including dispatches, network changes -- and service order activity, Qwest needs procedures that are documented and available to CLECs for notice and handling of these activities and for escalating issues when the process breaks down.

1. Unannounced Dispatches

Eschelon asked Qwest to investigate potential non-compliance with CMP procedures with respect to a project first described by Qwest to Eschelon as a project to increase copper availability and to report the results of that investigation to CLECs. *See* Exhibit 15. Eschelon described how Qwest has failed to coordinate its project adequately with CLECs to avoid service disruptions. This problem, and a recent Colorado example, were described in Eschelon's Initial Comments (pp. 7-8).

Qwest claimed at the 271 workshop in Arizona on July 30-31, 2002 that Qwest has addressed this problem. *See also* Qwest's Reply Comments in Qwest I, p. 47 (July 29, 2002). Before Eschelon and other CLECs can be assured that the problem is resolved, however, Qwest must demonstrate through performance that the problem is corrected. The fact that a promise is no substitute for results is shown by the conflicting information Qwest provided to Eschelon on this issue, consisting of at least three versions of events:

> Version 1: Initially (before Eschelon's Qwest I FCC Comments) Qwest service management told Eschelon that Qwest was working on a Qwest copper availability project that required Qwest technicians to go to Eschelon's end-user premises. When Eschelon indicated that it appeared that Qwest was dispatching technicians on Eschelon orders that were supposed to require no dispatch, Qwest denied a relationship between Eschelon's orders and the dispatches.

Version 2: At the Arizona 271 workshop on July 30-31, 2002, Qwest states that there is no copper availability project. Qwest testifies that it was able to confirm at least 5 erroneous dispatches, and they were associated with Eschelon's orders. It indicated that, because it was able to so identify the issue, it was also able to institute changes to correct the problem.

Version 3: After the workshop, Eschelon reads in Qwest's July 29, 2002 Qwest I Reply Comments (p. 47) that "Qwest's research shows that a technician was not dispatched on the five occasions Eschelon cites." Nonetheless, Qwest instituted modifications that are supposed to eliminate unnecessary dispatches. *See id.*

During an August 13, 2002, conference call to discuss this issue,[35] Qwest said that it had given Eschelon inaccurate information about the copper availability project. Qwest said that, since then, it has made a systems change (which it claims was not CLEC impacting so required no notice to CLECs) to change the service order processor so that it would no longer go into the 11-step process to assign facilities when it should not do so.[36] While Eschelon hopes that Qwest has resolved the particular dispatch problems involved in these examples, the conflicting and confusing information provided by Qwest on this issue has not inspired confidence.

In addition to addressing the particular unnecessary dispatches that occurred in this scenario (under any of the versions), the issue of unannounced dispatches generally should be addressed. In the particular examples addressed by Qwest, the dispatches may have been erroneous. In some cases, Qwest may claim that it needs to make legitimate visits to a CLEC's end-user customer premises for routine maintenance or other non-

[35] *See* Qwest Document Number CMPR.08.07.02.F.01311.Co_Initiated_Act_Mtg. The notices for this meeting were so vague that emails and telephone conversations were held in advance to try to determine the nature of the call, and the first approximately 15-20 minutes of the call were also spent on the scope of the call. Once the issue was clarified, Covad's representative had to be contacted to ask him to join the call, so he was not omitted from the conversation about the process.

[36] Qwest repeatedly refers to the fact that there were "only" five examples of this. (Or, in Arizona, it was "five to seven." AZ 271 Tr., Vol. I, p. 261, line 6.) First, Eschelon may not learn of every example, for the very reason that Qwest had provided no notice. Second, Eschelon does not wait until hundreds of its customers are adversely affected before requested that a problem be corrected. Five is five too many and is certainly sufficient evidence of a problem.

emergency reason. The CLEC is the owner of such facilities, and it needs to be aware of such activities. In such cases, Qwest should have a documented process to ensure that proper procedures are followed regarding notice, branding, and coordination with the CLEC to allow the CLEC to set end-user customer expectations and to avoid the types of problems described in Eschelon's Initial Comments. The documented process should be accessible to CLECs so that they can rely on it and know how to escalate when the process is not followed.

During the August 13, 2002 conference call, Qwest claimed that it has an internal process in place to ensure that the customer of record (CLEC) is notified if a Qwest technician is going to work on a CLEC end-user premise. Qwest said that it is an internal process, so it will not share existing documentation about the process with CLECs. Instead, Qwest said it would create a matrix describing the process and distribute it to CLECs by the end of this week. When describing the "existing" process on the call, Qwest provided conflicting information about the steps in that process for contacting the CLEC to inform the CLEC of a dispatch. Initially, Qwest said that it calls the CLEC contact number on the service order. When CLECs pointed out that there would not be a related service order in these instances because the activity is Qwest-initiated, Qwest said that its existing process is to call the CLEC contact number on the CSR. When CLECs suggested that there is either no CLEC contact number or a billing contact on the CSR, Qwest said that it calls the billing contact number and CLECs should train its employees to transfer the calls to the appropriate personnel.[37] Given the obvious problems with this

[37] For its own purposes, Qwest has other occasions on which it must contact a third party other than the end user customer (such as for alarm circuits, data circuits, and hi-cap circuits that are managed and monitored by a third party). In such situations, Qwest likely has a "call for release" number that it calls before doing any work on a line that could cause service disruption. If so, it is unclear why Qwest would not have

approach, CLECs suggested that perhaps Qwest could adopt a more collaborative approach to solving the problems raised by CLECs with this alleged existing process.

2. Unannounced Activities Affecting CLEC Circuits

Qwest also needs to provide notice for activities that will affect equipment that is leased by the CLEC. Covad has described a recent example of this:

> What it deals with is Qwest's decision to place some new test equipment on our UNE or stand-alone DSL circuits in central offices in the Qwest region. The notice came out to us in late June that they wanted to have a conference call to discuss it. I believe that was on June 28th, and the conference call was on July 12th. And they explained that they were deploying this new test capability to give them remote test capability. And that it was going to be placed on all of the stand-alone UNE-type DSL loops that are installed beginning on August 1st and that the installation was going to be done through cross-connects on the ICDF. And that it was not an optional thing for any of the providers of stand-alone DSL services. They also indicated that they would be deploying the same test capability on their stand-alone business DSL loops that they're going to be deploying in the future and that those would be hard-wired or permanently wired into those circuits. After the conference call, I was able to discuss this issue with my engineering team and with my operations team, and we still had many concerns about the deployment of this particular test capability. Qwest was unable to answer all of the questions on that conference call on July 12th but agreed to provide us with technical documentation and other supporting information that would hopefully respond to a lot of the questions that I raised at that time. After the call, which was on a Friday, I sent out an e-mail on Saturday, asking to be put from my engineering team and operations team, and received that on Monday and all of them voiced many concerns, and so I sent the e-mail, which I believe you have as an exhibit,[38] asking that this deployment, at least with respect to Covad circuits, be deferred until we had an opportunity to review all of the information and discuss any technical concerns and service concerns with Qwest prior to them placing this equipment on our services. The request was denied. It was denied again yesterday on escalation conference call within Qwest. And I still have not received any of the technical information that I requested on July 12th so still have no ability to completely assess the impact, but every indication is that there could very well be some very serious impacts to our customer service should this go forward. And it's Qwest's position that they will start deployment on any circuit that Covad requests to be installed beginning tomorrow. So that's kind of in a nutshell where it's at. I really feel strongly that this is something that should have been shared with the CLEC community probably six to eight months ago when I'm sure it was being initially planned -- or it was probably

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adopted a similar process for its CLEC wholesale customers. If Qwest had consulted CLECs, CLECs could have worked with Qwest to suggest ways in which such a solution could be used here.

[38] *See* Exhibit 15.

> being planned even before that -- so that we could work cooperatively. And I think that's one of the reasons that we came up with the process that we did in change management is just exactly for this reason, to provide us with an opportunity to work collaboratively on issues that have potential impact for both companies.

See AZ 271 Tr., Vol. II, p. 281, line 13 – p. 283, line 24 (Michael Zulevic of Covad). WorldCom and Eschelon supported Covad's position on this issue. *See id.* p. 284, line 2 – p. 285, line 13.

Although Qwest had denied Covad's request to postpone its unilateral decision to deploy this project only the day before, Qwest finally relented after CLECs raised this issue before a state commission in a 271 proceeding. If Qwest had acted in the collaborative manner promised during the CMP Re-design meetings, Qwest could have avoided this delay, and CLECs would not have had to invoke commission assistance to get a last minute reprieve. While CLECs managed to postpone Qwest's unilaterally imposed effective date in this instance, a documented, proven process is needed to avoid this problem in the future. Once CLECs indicate that they disagree with a unilateral Qwest determination that an activity is not CLEC affecting, some mechanism needs to be in place to resolve the dispute before implementation of the disputed activity. After all, CLECs are in the best position to know whether they are affected by an activity. Qwest should be acting more collaboratively and seeking that input instead of placing its wholesale customers in the kind of situation created here.

3. <u>Unannounced Service Order Activity</u>

During the CMP call held on August 13, 2002, to discuss "Company Initiated Activity" such as the unannounced Qwest dispatches discussed above,[39] Eschelon asked

[39] *See* Qwest Document Number CMPR.08.07.02.F.01311.Co_Initiated_Act_Mtg.

Qwest whether Qwest had a process in place to ensure that CLECs were aware of other Qwest-initiated activities (in addition to dispatches) that would affect a CLEC end user customer, including specifically service order activity. Qwest claimed that it had such processes in place. Eschelon asked where it could find documentation of the process and the related escalation procedure if the process was not followed. Qwest indicated that it had only internal documentation of its processes, which it does not share with CLECs. Qwest said that, instead, this would be included in the matrix to be provided by the end of this week.

In the meantime, Eschelon's concerns about the lack of an adequate process were again confirmed. On August 13, 2002, an existing Eschelon Colorado customer called Eschelon to report that the customer could not connect to long distance on one of its lines. Eschelon had requested no order or other activity on this line. Therefore, Eschelon had no reason to anticipate trouble on the line and, of course, had not set customer expectations with respect to any potential work on the line. Eschelon called Qwest on August 13, 2002 and escalated the issue (ticket #1446744). On August 14, 2002, Sue from the Qwest CSIE told Eschelon that Qwest had conducted an "internal clean up project" to stop double billing of USOCs left on converted accounts. Qwest provided no notice of any kind to Eschelon of this "clean up project" or of the work on this particular account. Qwest's activity, however, adversely affected Eschelon's end-user customer. And, because Qwest did not notify Eschelon of its activity, Eschelon appeared unknowledgeable about the issue when its customer contacted Eschelon.

Ironically, this problem arose on the same day that Qwest assured CLECs that it had existing, internal processes in place to prevent such problems. This is another example of why assurances are insufficient and proven results are needed before 271 authority is granted.

G. DSL – Repair

As indicated in Eschelon's initial Comments (pp. 9-10), Qwest has said it does not have back end system records containing the DSL technical information needed for repair of Centron/Centrex Plus lines with DSL in the Qwest's Eastern and Central billing regions (which include Colorado). This issue is of particular concern to Eschelon in Colorado and Minnesota, because of Eschelon's significant number of existing Centrex Plus/Centron lines in those states. Qwest confirmed this problem again at the July 30-31 Arizona 271 workshop. *See*, *e.g.*, AZ 271 Tr., Vol. I, p. 458, lines 23-25. Qwest also confirmed that Qwest retail does not suffer from this problem. *Id.* p. 460, lines 2-6. Therefore, Qwest is discriminating against CLECs.

Qwest has asserted that it will implement a manual solution to this problem by the end of August. *See* Simpson Reply Declaration, p. 3, ¶ 5. Eschelon will provide a beta test order to Qwest to help solve the problem. At present, the solution is untested. Even when implemented, it will be a manual solution and thus inferior to Qwest retail's ability to repair issues. *See id.* (recognizing mechanized solution is needed).

H. DSL – Delay When Qwest Disconnects in Error

When Eschelon converts a customer from Qwest to Eschelon, Qwest at times has disconnected the customer's DSL in error. For example, the Customer Service Record ("CSR") may be inaccurate and show the DSL on the wrong line. Although the error is Qwest's error, Qwest has said that its policy is to provide the CLEC the standard interval before Qwest will restore the DSL to the end-user customer.[40] Therefore, the CLEC's end-user customers have had to wait days for their DSL service to be restored, when it never should have been disrupted. Qwest recently said, during the Arizona 271 workshop, that Qwest will now (for wholesale as well as retail) escalate a disconnect in error for DSL ***due the same day***. *See* AZ 271 Tr., Vol. II, p. 458, lines 11 –20.[41] Qwest testified that this is a "broad process improvement." *Id.* at p. 458, lines 17-18. Qwest needs to incorporate this process improvement in documentation available to CLECs.

I. <u>DSL – Qwest Disconnects DSL Early (Before Voice)</u>

Eschelon indicated in its initial Comments (p. 11) that, when Eschelon converts a customer from Qwest to Eschelon, Qwest disconnects the customer's DSL early. To date, this has happened in virtually every case. Qwest has acknowledged this problem and indicated that its internal procedures "were modified to eliminate disconnects in error based on order entries." Simpson Reply Decl., p. 4, ¶ 7. The reference to "order entries" suggests that these are examples of manual handling errors. Qwest also indicated that "the existing escalation and expedite procedures have been refined," but does not indicate how they were changed. *See id.* Because Qwest has not disclosed its "internal" changes,

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[40] Qwest's service management for Eschelon told Eschelon that this was Qwest's policy, which is consistent with Eschelon's experience. Very recently, Qwest has now indicated that this is not Qwest's policy. Although the time to restore in these cases is decreasing and may be less than the full interval, it still has taken days to restore when Qwest disconnects in error.

[41] AZ 271 Tr., Vol. II, p. 458, lines 11 –20 (Susan Bliss, Qwest): "When I say we made a process improvements for the disconnect in error and the escalation process, I'm taking a step back and taking a broader picture. It's not selective what type of order scenario it falls in. It's disconnect in error on DSL, whether it be from your UNE-Star project or a new order or whatever. It's a broad process improvement. The same with the escalation process. And, Hagood, you are correct, it was – we escalated it due the same day." *See also id.* Vol. II, p. 453, line 20 – p. 454, line 1 (Workshop Facilitator Hagood Bellinger asked what the interval is for DSL restoral with escalation, and Ms. Bliss of Qwest responded: "It depends on the unique situation. If they need it that day, we try and escalate it and get it to the customer that day. If they needed it in five days – ***it depends on when the customer's ready***.") (emphasis added). If the customer is ready on the same day, therefore, Qwest has a same day interval for escalated DSL restoration. This should be in documentation available to CLECs.

see id., Eschelon cannot comment on whether they appear adequate. The process is new and unproven.

J. <u>DSL - Migration of Customers</u>

Eschelon indicated previously that Qwest has no process to migrate an existing CLEC customer (*e.g.*, on resale or UNE-Star) with DSL to UNE-P without bringing the DSL service down.

Qwest responded: "Contrary to Eschelon's claim, Qwest does have processes, methods, and procedures for conversions of existing services with Qwest DSL service to UNE-P service with Qwest DSL service. Two examples of internal Qwest methods and procedures are attached as Confidential Reply Exhibit LAS-2 and Confidential Reply Exhibit LAS-3 to this Reply Declaration." *See* Simpson Reply Decl. p. 5, ¶ 9. Eschelon does not have access to the confidential documents referred to by Qwest. Although Eschelon has been complaining of this issue to Qwest, Qwest did not mention the documents or the process to Eschelon. Instead, Qwest told Eschelon that it had to create a process to correct the problem identified by Eschelon. Very recently, after Qwest indicated that a new process was in place, Qwest did migrate some existing CLEC customers with DSL to UNE-P without bringing the DSL service down. The process involves hand-holding each order. Qwest instructed Eschelon to mark the orders for manual handling and to provide to Qwest, on a daily basis, a list of the DSL Local Service Request ("LSR") identification numbers (*i.e.*, the confirmation number obtained when using IMA). Qwest then monitors the orders with respect to this issue.

Apparently, the new process involved adding a USOC to attempt to resolve the problems of loss of DSL service on order activity. The new process is the same across states. After the process was supposed to be in place, on August 1, 2002, an Arizona UNE-P migration customer lost DSL service for hours (PON # UNEPAZ5JPR205312). It appears that a different department at Qwest removed the USOC that had been added to address the problem, because that department was unfamiliar with the new process. Qwest needs to train all of the personnel affected by a process change.

K. Maintenance & Repair –Significance of M&R Charges and Discrimination

In its earlier Comments (pp. 25-30), Eschelon raised several issues regarding maintenance and repair ("M & R") and associated charges (as discussed below). Qwest responded generally that "less than 0.1% of Qwest's Wholesale billing is associated with M&R charges." *See* Notarianni/Doherty Reply Decl. ¶ 238. Qwest suggests that this is an immaterial issue for Qwest. Unfortunately, Qwest does not adopt the customer-friendly approach of viewing an issue through the eyes of its customer. Eschelon is a $100 million CLEC with 900 employees, whereas Qwest is a $19 billion RBOC with 60,000 employees. For Eschelon, maintenance and repair charges account for approximately 1% or more of gross margin. This is material to Eschelon, particularly in this economic climate. Moreover, another factor that makes this issue significant is the amount of time and resources expended to track, verify, and dispute these charges. Qwest's statistic does not account for these costs, which Qwest imposes on Eschelon.

Qwest describes this onerous process as "opportunities" to verify and dispute charges. *See id.* ¶ 164. These "opportunities," however, are another example of Qwest shifting the burden to CLECs to do additional work to account for weaknesses in Qwest's processes. Eschelon has a contractual right to accurate, complete, and current bills and nondiscriminatory processes. *See, e.g.,* Qwest-Eschelon Interconnection Agreement, CO

Att. 8, Section 3. Instead of complying with these contractual provisions, Qwest suggests that Eschelon take many steps to get around the fact that Qwest does not provide needed information in a nondiscriminatory fashion. For example, Qwest suggests that CLECs use the CEMR electronic interface to identify charges and, when necessary, dispute them. *See* Notarianni/Doherty Reply Decl. ¶ 163. Qwest fails to mention that CEMR has no sort capability that would allow a CLEC to easily find such charges. To use CEMR in the manner suggested, CLECs would literally have to manually review hundreds of CEMR emails to find those that may, or may not, indicate charges and then somehow relate them to the information necessary to verify the charges. Moreover, contrary to Qwest's claim that the information in CEMR is the same as that available to retail (*see id.*), CEMR does not identify the amount of the charge or the hourly increments charged. It simply states whether there will be some, unidentified charge, or not. This is not an acceptable alternative to receiving timely charge, time, and material information, as do Qwest's retail customers.

When Qwest provides repair services to its retail customers, Qwest provides a statement of time and materials and applicable charges to the customer at the time the work is completed. Qwest does not simply tell the customer that a charge in some undetermined amount will apply (like the information available in CEMR), nor does Qwest tell retail customers to wait for the bill. Qwest provides the actual time, materials, and charges to the retail customer at the time of the repair. If the retail customer wants to dispute a charge, that customer has all of the information needed to do so at that time.

When Qwest provides repair services to its CLEC wholesale customers, however, that is not the case. Despite Eschelon's requests that Qwest provide the same charge, time, and materials information to CLECs, Qwest does not provide needed information until the monthly wholesale invoices arrive at a much later point in time. Although Qwest points to a pending Eschelon Change Request relating to this issue to suggest that it may be resolved in the future, *see* Notarianni/Doherty Reply Decl. ¶ 167,[42] that Change Request is just one in a long line of Eschelon attempts to get Qwest to address this issue of discrimination. As indicated in Eschelon's initial Comments (p. 12, note 14), Eschelon raised this issue, for example, in the escalation of a previous Change Request in December of 2001,[43] and Qwest rejected it. Qwest has had ample opportunity to correct its discriminatory practice of providing timely information to retail customers but not wholesale customers. It should have to show that it has corrected this disparity before obtaining 271 approval.

L. Maintenance & Repair – Branding and Customer Confusion

As indicated in Eschelon's initial Comments (pp. 25-26), although Qwest has refused to provide CLECs with a statement when work is completed, Qwest nonetheless has left such Qwest statements with Eschelon's end-user customers and even asked Eschelon's customers to sign them. Qwest states that there "were no similar instances with Eschelon end user customers in June 2002." Notarianni & Doherty Reply Decl.

[42] Although Qwest cites to CR #CR-053002-1 (note 211), the relevant CR is PC070202-1. *See* http://www.qwest.com/wholesale/cmp/changerequest.html.

[43] *See, e.g.*, http://www.qwest.com/wholesale/downloads/2001/011221/122101email.pdf, p. 13 of 21 ("More information on the bill is only a part of the request made by Allegiance, Covad, and Eschelon in their joint Escalation. With respect to billing, we also asked Qwest to 'Ensure that CLECs receive notification, at the time of the activity, if a charge will be applied, because CLECs should not have to wait until the bill arrives to discover that Qwest charged for an activity.' (Joint Suppl. Escalation, p. 9.) As Eschelon said at the most recent CMP meeting, the CLEC needs to know at the time of the event that a charge will apply. Immediately after the work is completed, Qwest needs to send CLEC a statement of services performed, testing results, and applicable charges (by telephone number) that will appear on CLEC's next invoice. If Qwest is claiming that a charge was authorized, a process should also be in place to provide timely documentation as to who authorized the charge. If CLECs must wait until the bill is received, it will be a huge task to go back and analyze what happened in each situation and whether a

¶ 173. Qwest neglects to mention that another example of this practice occurred on ***July*** 23, 2002 (regarding ticket #0183491). The most recent example occurred after Qwest instituted its process and took corrective actions. Eschelon escalated this to its Qwest service manager on July 26, 2002. Although Qwest suggests that escalation is the solution, Eschelon has been escalating these issues, and it has not prevented re-occurrence of the problem.

M. Maintenance & Repair – Untimeliness of Bills

Eschelon pointed out in its initial Comments (p. 14) that bill verification becomes virtually impossible when dealing with outdated information. Qwest responded that it made changes in February of 2002 that should help address the problem of untimely bills. *See* Notarianni/Doherty Reply Decl. ¶ 238. If that is the case, Qwest neglected to train its billing representatives assigned to Eschelon on this change. Eschelon meets regularly with its billing representatives and reviews billing issues and disputes. Qwest's billing representatives did not mention this change in any meeting since February 2002. Moreover, Qwest's statement that "bills are not issued on maintenance charges that are over 45 days old" is still not the case. *See id.* The July 25, 2002, bill for Colorado contains, for example, several repair charges dated January 4th and June 10th 2002. Eschelon hopes that this will be the exception and not the rule going forward, but as it has just learned of this change it will have to monitor the issue. Also, Eschelon believes Qwest should address the past maintenance charges that were over 45 days old but Qwest

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charge should have been applied. All of these kinds of issues should be discussed and reviewed jointly before implementation.").

nonetheless billed.[44] Those charges were too old to verify and should not have been billed. Qwest's response is silent as to these overcharges.

N. Maintenance & Repair – Insufficient Information on Bills

In its earlier Comments (pp. 27-28), Eschelon described the problems arising from lack of sufficient information on Qwest's invoices. The first, and one of the most significant, issues that Eschelon discussed was Qwest's failure to include circuit identification information in Eschelon's bills for maintenance and repair charges for unbundled loops. As Eschelon pointed out, Qwest does not provide the circuit information in the bills, even though Qwest requires Eschelon to submit the repair ticket containing the circuit identification. Although Qwest addressed other issues raised by Eschelon in its Reply filings, Eschelon could not find any response to this issue. Instead, Qwest claims generally that Qwest has made changes so that CLECs "can more easily audit these charges on its bill" and that Eschelon has "several opportunities to dispute repair charges before they appear on the CLEC bill." *See* Notarianni/Doherty Reply Decl. ¶¶ 239 & 164. Qwest neglects to mention that CLECs need the circuit identification information to readily take advantage of these changes and "opportunities" to verify information for unbundled loops, and Qwest does not provide that information.

Eschelon also indicated in its earlier Comments (p. 14) that: "The bill also does not include the date of the dispatch or trouble repair. Instead, Qwest provides the date on which Qwest writes the order to initiate the charge on the bill, which could even occur in a different month." Qwest responded that, since March 2002, "the bill displays the date

[44] As Eschelon indicated in its initial Comments (p. 14), Eschelon's Colorado bill for November 2001 contained charges going back to August and September of 2001. Eschelon's Colorado bill for December 2001 contained charges going back to September of 2001. Eschelon's Colorado bill for January 2002

the M&R charge was incurred, not the date the charge was added to the bill." Notarianni/Doherty Reply Decl. ¶ 239. If that is the case, Qwest neglected to train its billing representatives assigned to Eschelon on this change. Qwest's billing representatives did not mention this change in any meeting since March 2002. In any event, as discussed above, Qwest needs to also provide the circuit identification information in the bill before this alleged change will be useful.

In its earlier Comments (p. 14), Eschelon pointed out: "If Eschelon has multiple tickets for the same circuit identification number, the bill does not provide sufficient information from which Eschelon may identify the ticket to which the charge applies." Qwest responded that "there is never more than one unbundled loop per sub-account, so it's obvious to which loop the charges apply." *See* Notarianni/Doherty Reply Decl. ¶ 239. This is not the case. Qwest provides information to Eschelon by BAN, and there can be multiple circuits per BAN. Therefore, it is not obvious to which of the circuits for one BAN a charge may apply.

Eschelon believes that circumstances exist when Qwest charges Eschelon although it should not do so, but the insufficient and untimely information provided by Qwest prevents Eschelon from being able to establish this in many cases.

O. Maintenance & Repair – Authorization and Accuracy for Closing Tickets

Qwest at times closes tickets without calling Eschelon for authorization. In situations in Colorado in which this has occurred, Eschelon has had to re-open tickets because, although Qwest closed the ticket (without authorization), the trouble was not resolved. The initial tickets should have remained open until the trouble was resolved.

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contained charges going back to September, October, and December of 2001. Eschelon's Colorado bill for February 2002 contained maintenance charges going back to October and November of 2001.

Eschelon has also pointed out that Qwest closes tickets in some cases with the incorrect cause and disposition codes. This not only affects repair but may also affect billing.

Qwest responds to Eschelon's comments on this issue as follows: "Eschelon provides no specifics. Its entire claim consists of a mere three lines in its comments." Notarianni/Doherty Reply Decl. p. 83 ¶ 159, note 206. Reading Qwest's filing, one would think that the burden is on Eschelon and that Qwest had never heard of this issue (or other issues) from Eschelon before. This is not the case.[45] As indicated in Eschelon's initial comments (at p. 15), "Eschelon has complained to Qwest that Qwest at times closes tickets without calling Eschelon for authorization." Therefore, Qwest's operational and service personnel are familiar with this issue, because Eschelon has raised it with them over time.

For example, during a recent weekly call with Qwest's service manager for Eschelon, Eschelon provided another example to Qwest of this kind of problem. As Eschelon told its service manager, on August 6, 2002, Eschelon reported to Qwest a situation in which a Colorado customer had trouble on its line. Qwest told Eschelon on August 7, 2002, that the trouble was fixed but refused to leave to leave the ticket open to allow Eschelon to test or confirm the information. When Eschelon contacted the end-user customer, Eschelon learned that the customer's second line went dead when the first line was repaired. This confirms that Qwest should not have closed the ticket without authorization from Eschelon. Although Eschelon has been raising this issue with Qwest

[45] Qwest bears the burden of proof as to its commercial performance on all checklist items even if "no party files comments challenging compliance with a particular requirement." Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, at ¶ 47, FCC 99-404 (rel. December 22, 1999) ["FCC BANY Order"].

over a long period of time as the issues arise, Qwest has not provided a satisfactory response and, as the example this month in Colorado shows, the problem persists.

P. Maintenance and Repair – Pair Gain/Testing

In Eschelon's initial Comments (pp. 15-16), Eschelon describes the problems and over-charges created by Qwest's "Optional Testing" policy when pair gain is involved. In response, Qwest takes the position that Eschelon should incur the time and expense of dispatching in every case to test from the end user's premises toward the customer and the Qwest's side of the demarcation. *See* Notarianni & Doherty Reply Decl. ¶ 169. Qwest has an obligation, however, to provision a loop that is functioning properly, including from its equipment to the pair gain. Particularly because Qwest has chosen to use pair gain extensively, Qwest should not also be able to impose upon CLECs unnecessary dispatch charges before it has even ensured that the loop is working from its equipment to the pair gain. This is particularly true because, as discussed in the next Section, if the CLEC does incur the expense of such a dispatch and finds that the trouble is in the Qwest network, Qwest refuses to pay any charge for the CLEC dispatch.

Q. Maintenance and Repair – Reciprocity

Qwest told Eschelon that, although Qwest will charge Eschelon for testing-related charges, Qwest will not accept charges from Eschelon for testing that Eschelon conducts for Qwest in the same circumstances. Although the SGAT does refer to charges by carriers to each other in other contexts (*see, e.g.*, SGAT § 7.6.3 regarding Category 11 records), it does not do so for this issue. Qwest's policy in this regard gives Qwest an advantage over every other carrier that must pay charges in these situations.

R. Loss and Completion Reports

In Eschelon's initial Comments (p. 17), Eschelon pointed out the issues with Qwest's Loss and Completion Reports and the problems this creates for CLECs. As a result, Qwest retail has a competitive advantage over wholesale customers, because Qwest retail and not Qwest wholesale receives accurate customer loss information. In response, Qwest suggests that Qwest retail does not have an advantage because "Qwest does not issue Loss and Completion Reports in the Qwest Retail environment and designed these reports specifically for CLECs." Notarianni & Doherty Reply Decl. ¶ 153. This argument simply underscores the discriminatory differences between Qwest's retail and wholesale processes. Qwest retail does not need such Loss and Completion Reports because it has a better method of obtaining the information that it is the purpose of the reports to provide. CLECs need to know when a customer has left the CLEC for another carrier to terminate billing and avoid customer confusion. When a Qwest retail customer calls Qwest and questions why Qwest is still billing the customer even though the customer has switched to another carrier, Qwest has the ability to locate the information necessary to respond to the request at that time. As Qwest does not issue Loss and Completion Reports for Qwest retail, it is not relying on such reports for this information. This is very different from the CLEC experience previously described by Eschelon.

Although Qwest provides a paper assurance that it has "implemented a change to its Loss and Completion Reports on July 14, 2002 to provide CLECs with the identities of customers who have terminated service with them," *see* Notarianni & Doherty Reply

Decl. ¶ 153, that change has been ineffective. Eschelon has already provided examples of the inaccuracies to Qwest (Connie Winston).

Qwest provides no basis for its sworn statement that this "claim is specific to Eschelon." *See id.* Qwest has held working sessions for the express purpose of attempting to rectify the problems with the Loss and Completion Reports over a series of many months. Other CLECs, including AT&T, have participated actively in these meetings, as is well known to Qwest. The time and resources they have spent on these issues, in addition to those spent by Eschelon, show that other CLECs are invested in this issue and it is not specific to Eschelon. Eschelon is also aware of another CLEC that has requested and is receiving these reports. If more CLECs have not requested them yet, this is not surprising, given all the problems with the reports to date. Lack of demand for an ineffective tool does not support a claim that an effective tool is not needed. Quite the opposite is true.

S. Inadequate Notice of Rate and Profile Changes

Qwest denied Eschelon's escalation regarding advance notice of rate and profile changes, although it incorporated some of Eschelon's proposals.[46] Eschelon was able to obtain some additional information regarding rate changes, but the information provided by Qwest is still inadequate. Eschelon described this issue in its initial Comments (pp. 18-19). In addition to the issues identified in those Comments that led Eschelon to raise this issue with Qwest in CMP, another issue created serious concern as well. As discussed in CMP, Qwest conducted a project that it described as a rate "validation" exercise to examine its bills and "correct" them. Qwest did not notify CLECs in advance

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[46] *See* http://www.qwest.com/wholesale/downloads/2002/020214/CLEC_Response013102.pdf and Qwest responses on same web page.

of the validation effort. Therefore, if CLECs disagreed with any of the "corrections," they were left to dispute them after the fact. Eschelon's President personally objected to the practice at a CMP meeting and asked Qwest to stop the validation project until a more collaborative process could be developed to ensure that changes were not made to Eschelon's bills, rates, or profile without Eschelon's knowledge. Qwest refused to stop that validation project but claimed that it would provide advance notice to CLECs of any such future activity. As discussed above (*see* Unannounced Service Order Activity), however, Qwest has recently engaged in an "internal clean up project" to stop double billing of USOCs left on converted accounts – with no notice to CLECs. A Colorado Eschelon end-user customer was adversely affected by this activity. This additional example demonstrates the inadequacy of Qwest's current processes.

T. <u>Policy of Applying Rates not in Eschelon's Interconnection Agreements</u>

Qwest continues to apply its policy of applying rates from Qwest's Statement of Generally Available Terms ("SGATs") even when those rates have not been approved by a state commission (as opposed to simply being allowed to go into effect) and a CLEC has not opted in to the SGAT. Eschelon has not opted in to any SGAT. In some cases, Qwest also applies the SGAT rates even when the rates are in the interconnection agreement. In the July 30-31, 2002 Arizona 271 workshop, Eschelon provided Qwest with an example of collocation charges for which Qwest did so. Qwest responded, in a take back, only that it "appears" that some of the rates in the interconnection agreement were not in Eschelon's interconnection agreement, so Qwest charged the SGAT rates (without even identifying which charges "appeared" not to be in the contract). Qwest unilaterally interprets the contract and applying its proposed rate and methodology, instead of cost-based rates. The SGAT rates are not approved except possibly for those CLECs that have opted in to the SGAT. If a charge is due and really is not in the interconnection agreement, Qwest should negotiate a rate, obtain commission approval for a rate, or at least reach agreement on using the commission approved cost models and processes to calculate the rate. As Qwest will not adjust its position on this issue, the Commission should state whether an ILEC may unilaterally impose on a CLEC that has not opted in to an SGAT a rate that has not been approved in a commission cost docket or using the commission approved cost model.

U. <u>Billing Accuracy</u>

As many of the above issues demonstrate, and as indicated in Eschelon's initial Comments (pp. 22-24), Eschelon's bills are not accurate.[47] With respect to the May 2002 Colorado bill, Eschelon believes that approximately 18% of the amount billed by Qwest represents inaccuracies leading to over-charges.[48] Specific examples of problems with a recent Colorado bill are also described in Exhibit 16. Although Eschelon is unable to dispute all inaccurate charges due to insufficient information for doing so, Eschelon does dispute some of the charges. Such bill disputes often go unresolved for many months. It does not appear that, once long-disputed issues are resolved in a CLEC's favor, the performance results are adjusted to reflect the resolution.

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[47] As indicated in Eschelon's initial Comments, Eschelon does not receive all information according to Qwest's Customer Guide to Billmate (Qwest's electronic version of its CRIS bill). Eschelon submitted a Change Request to Qwest's CMP in September of 2000 to ask Qwest to populate all fields of the billmate file. Although some corrections were made, some states, such as Washington and Oregon, do not yet have USOCs populated in all Billmate files. In the UNE-P invoices that Eschelon is now currently receiving, multiple columns in Billmate are not populated with information that is supposed to be reflected according to Qwest's Billmate Guide. Although Qwest claims the fields are populated, it provided no evidence in support of its claim. Eschelon has the Billmate files provided by Qwest, and the fields are not populated. In addition, Qwest's Billmate product does not break out usage for shared transport and local switching, which precludes validation of rates and usage. Validating zone prices is also affected because Qwest does

In its filing, Qwest represents: "Of note, if a CLEC is late in its bill payment, since January 2002, Qwest has not charged CLECs any late payment charges." Notarianni & Doherty Reply Decl. ¶ 224. This is not the case. Qwest has billed Eschelon for late payment charges. Just as an example, on the June 7, 2002, Qwest bill to Eschelon for EELs, Qwest applied late charges (invoice number R080029029-021158). If Qwest searches its bills to Eschelon, it will find other late charges. Qwest also states: "If a CLEC has made payment for the charges in dispute, Qwest will issue a credit, including interest, for the dispute if resolved in the CLEC's favor." *Id.* ¶ 222. Eschelon would like to know where to sign up for this. Qwest should apply these policies uniformly and include Eschelon in its application of them.

1. **UNE-E/UNE-Star Bills**

One hundred percent of the bills for UNE-Eschelon/UNE-Star are inaccurate. [*See* Exhibits 4 & 5 (Affidavits of Lynne Powers and Ellen Copley) to Eschelon's Comments.] Unlike UNE-P, UNE-Star is ordered, provisioned, and billed as resale. Therefore, an interim credit/true-up process (to calculate the amount due instead of the billed resale rate) is used instead of accurate billing. In March 2002 alone, Qwest eventually agreed that its credit calculation was almost $50,000 too low.[49] Therefore, even the interim process results in inaccurate charges. The bills for the UNE-Star product cannot be described as accurate. McLeodUSA agrees and recently said:

> I guess I wanted to by way of background take everybody back to the time frame before the year 2000. And McLeod at that time and I'm sure Eschelon and others

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not provide the CLLI code on the invoice. Eschelon could not find a response to these issues in Qwest's lengthy reply materials.

[48] This excludes collocation, LIS trunking charges and UDIT charges.

[49] Although the amount of the difference varies, each month Qwest and Eschelon have different views as to the correct number, and the number has to be adjusted. The rate paid, therefore, is an approximation of the correct rate and not an accurate rate.

were trying to get UNE Platform product with the pricing and -- that you get with that product. And, unfortunately, we were told by U S WEST at the time and then subsequently Qwest after the merger that to get a UNE-P product we would have to do a whole assortment of conversions and establish all sorts of processes that would be time consuming and ultimately lead to the disconnection temporarily of some of your customers or perhaps a lot of our customers. And so ultimately, that problem led to discussions and negotiations with Qwest through which we came up with this UNE-Star product that Qwest offered to us as an alternative to UNE-P. And we call it UNE-M, as in UNE McLeod, and I know Eschelon calls it UNE-E, as in UNE Eschelon. We negotiated that UNE-Star as our fourth amendment to our interconnection contract in October of 2000. And we negotiated that agreement in conjunction with a number of other agreements. And I think it's important to see all those agreements together in context. Two of those agreements help explain why McLeod has not been before this Commission or other commissions on these sorts of matters before today. One of those agreements requires McLeod to remain neutral in all 271 proceedings so long as Qwest complies with all of its agreements that it has with McLeod and complies with all applicable law. Another agreement that we reached with Qwest in that October time frame was an agreement to escalate all disputes with Qwest internally up a chain of command before we bring those disputes to any regulatory or judicial forum. And I think it's fair to say we're here today because Qwest, in fact, has not been meeting all of its agreements and obligations to McLeod. And it's really come to a head more recently within the last five months. And so we're here to talk about some of the issues we really would have rather talked about much earlier. And I'm going to focus on the UNE-Star product although there are other agreements and issues we have with Qwest. Now, I think our product's essentially negotiated as an alternative to UNE-P. And there's a price for that product that's advised in our fourth amendment to our interconnection contract. We entered into that agreement for that contract because of provisioning barriers out there with respect to UNE-P. So we negotiated that agreement back in October of 2000. Eschelon explained and our situation is almost identical. Qwest has provisioned and billed this UNE-Star product really as basic resale, either Centrex or 1FB. It's really never become the platform product we bargained for. So even though the UNE-Star product includes a negotiated contract rate, Qwest has from the outset billed the product at the resale discount rate, not the agreed-to UNE-Star rate. In fact, Qwest has never in the nearly two years since the agreement was reached rendered an accurate bill for the UNE-Star. We understood at the outset in October that Qwest would not be able to render accurate bills initially. Therefore, Qwest and McLeod initiated a monthly true-up process where Qwest would show us a spreadsheet showing the amount billed under the resale rate and the amount owed under the UNE-M rate. We review internally those spreadsheets, compare those spreadsheets to our own internal data, and then we submit an invoice to Qwest for the final true-up amount that Qwest would then pay us. Now, McLeod always viewed this true-up process as an interim billing process. When we negotiated a UNE-M product as an amendment to our existing interconnection contract, we expected that it would eventually be billed accurately as required under the interconnection agreement on which this UNE-Star product was amended.

> However, we never expected to continue to incur the additional staff costs and delay associated with implementing this true-up process. But now, almost two years later, we still rely on the true-up process to get paid an amount that's consistent with the rate agreed to in our UNE-Star amendment. In other words, Qwest still fails to render accurate bills for the UNE-Star product.

See AZ 271 Tr., Vol. II, p. 291, line 13 – p. 295, line 1.[50]

As of May of 2002, UNE-Star represents approximately 60% of Eschelon's total monthly invoice amount. This represents a substantial amount of inaccurate billing that is not reflected in the performance results reported by Qwest, in addition to the inaccurate billing to McLeodUSA. As discussed in the Powers Affidavit, Qwest's account manager for Eschelon described in an email to Eschelon the interim nature of the true-up process and the long-term plan to develop accurate billing for UNE-Star to bring it into compliance with the interconnection agreement amendment. *See* Exhibit 4 at ¶¶ 7 & 12. Despite this Qwest documentation of its commitment in 2000-2001 to mechanize UNE-Star billing and provide accurate bills, Qwest is now claiming that Eschelon orally agreed to amend the agreement so that it would not require accurate billing.[51] This is not the case. The issue need not be reached, however, because the UNE-Star agreement precludes such an oral amendment. The UNE-Star interconnection agreement amendment expressly provides that it "may not be further amended or altered except by written instrument executed by an authorized representative of both Parties." *See* Interconnection Agreement Amendment Terms, p. 2, ¶ 1.8 (Nov. 15, 2002). The UNE-

[50] *See also* Supplemental Testimony of W. Clay Deanhardt, *In the Matter of a Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Before the Minnesota Office of Administrative Hearings ("OAH"), MPUC Docket No. P-421/C-02-197; OAH Docket No. 6-2500-14782-2, p. 5, lines 12-16 (July 24, 2002) ("These additional payments refund to McLeod the difference between the amount it actually pays Qwest for UNE-Star and the amount it is supposed to pay under the Eighth Amendment to its interconnection agreement. These separate payments are necessary because Qwest's billing system is not able to bill McLeod the correct amount for UNE-Star.").

[51] Qwest made this claim in Arizona. Eschelon could not find Qwest's response to this issue in its lengthy reply filing in this matter.

Star agreement also expressly provides that, except as modified by the amendment, the underlying interconnection agreement "shall remain in full force and effect." *See id.* ¶ 1.8. The amendment does not modify the billing provisions of the underlying agreement, which require Qwest to accurately bill Eschelon for charges that Eschelon incurs as a result of purchasing products and services from Qwest. In Colorado, the Qwest-Eschelon interconnection agreement provides:

> USWC agrees that in order to ensure the proper performance and integrity of the entire Connectivity Billing process, USWC shall be responsible and accountable for transmitting to CO-PROVIDER an accurate and current bill. US WEST agrees to implement control mechanisms and procedures to render a bill that accurately reflects the services ordered and used by CO-PROVIDER.

See Qwest-Eschelon Interconnection Agreement, CO Att. 8, ¶ 3.3.6.

Qwest should be required to deliver on its Year 2000 commitment to deliver accurate UNE-Star bills before 271 approval is granted.[52]

2. UNE-P Bills

Eschelon has recently started to order new UNE-P lines again. *See* Exhibit 4. Because this process commenced only recently, Eschelon has only recently started to receive invoices from Qwest and has had insufficient time to fully review them. As volumes increase and more bills are received, Eschelon will have more information available for analysis. Already, Eschelon has found issues in the Qwest UNE-P bills for Colorado relating to Colorado BAN 303-B11-6766 997 (May 28, 2002) that were listed in Eschelon's Initial Comments.

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[52] Eschelon is still attempting to gain information from Qwest about how it plans to mechanize the UNE-Star billing. Qwest's proposals to date have been unsatisfactory because they, for example, involve shifting the burden to Eschelon to change its ordering or other procedures to solve Qwest's problem or to assume risks that were not part of the agreement under which Qwest was supposed to provide a seamless conversion to UNE-Star. Qwest assumed this obligation in 2000 and needs to deliver on it.

For Colorado, those issues by themselves account for a preliminary billing error rate of approximately 9.3%. Qwest attempts to dismiss these errors, however, by suggesting that the total dollar amount in dispute is not great. *See* Notarianni/Doherty Reply Decl. p. 124, ¶ 241. If the dollar amounts are small and were to remain that way, it appears that Qwest is suggesting that Eschelon should just eat these costs because it is more expensive to find, verify, and dispute the errors than the amount at stake. Eschelon is aware of no legal basis under which it must pay more than the amounts due to Qwest because Qwest chooses to render an inaccurate bill in violation of the interconnection agreement. Retail customers do not have to accept inaccuracy rates of more than 9%, and Eschelon should not have to do so either, irrespective of the dollar amounts. This is not a game of horseshoes, where close counts. Bills must be accurate. *See* Qwest-Eschelon Interconnection Agreement, CO Att. 8, ¶ 3.3.6.

In any event, Qwest's assumption is incorrect. In May, Eschelon had only begun to order and migrate lines to UNE-P. The dollar amount would be smaller, therefore, because only a handful of lines were UNE-P at that time. As the number of UNE-P lines grows, the dollar amount impacted by such errors will also grow.

Qwest also argues that it has either unilaterally rejected Eschelon's disputes or that its own "preliminary investigation suggests that many of these disputes will be resolved in Qwest's favor." *See* Notarianni/Doherty Reply Decl. p. 124, ¶ 241. Eschelon disagrees with Qwest's unilateral rejection and its preliminary investigation (*i.e.*, there is a dispute). Eschelon believes the disputes will be resolved in Eschelon's favor. If so, any billing accuracy measure that counts these bills as accurate should be revised to reflect the resolution in Eschelon's favor. In the meantime, Qwest has not demonstrated that its UNE-P bills are accurate.

3. Maintenance and Repair

Qwest's bills are not accurate, and cannot be verified, with respect to maintenance and repair charges. *See* above.

4. Auditability and Verifiability of Bills

Eschelon has identified several problems with verifying Qwest's bills. *See* above. Qwest's bills are not auditable in particular with respect to UNE-E/UNE-Star charges, maintenance and repair charges, non-recurring and fractional (pro-rated) charges, and wireless service provider transit charges (which are provided in a lump sum without any indication of the end office to which terminated). Also, because Qwest provides the recurring loop rate by Miscellaneous Account Number ("MAN") instead of by circuit identification number, the information is not auditable using software that requires circuit identification information for facility inventory comparison.

Qwest claims that it requires "minimal" information for billing disputes. *See* Notarianni/Doherty Reply Decl. ¶ 220. This has not been Eschelon's experience. Qwest has required data down to the charge by ANI level for disputes. The amount of information required has not been minimal.

Qwest suggests that, because CLECs are able to bring some disputes, the ability to verify charges is proven. *See, e.g.*, Notarianni/Doherty Reply Decl. ¶ 213. As indicated above, however, Eschelon believes that circumstances exist when Qwest charges Eschelon although it should not do so, but the insufficient and untimely information provided by Qwest prevents Eschelon from being able to establish this in many cases. In other words, the fact that Eschelon disputes a sub-set of charges does not mean that it would not dispute additional charges if the capability to do so existed. The number and dollar amount of disputes would be larger if sufficient information was provided in a timely, nondiscriminatory manner to allow such disputes.

If, taken together, all of the billing and rate issues raised by Eschelon do not change the result for billing accuracy under the PID measurement, Eschelon believes the measure is faulty and does not capture the CLEC experience. The definitions of the measures contain so many exclusions that their value is simply undermined. Regardless of what those measures indicate, the CLEC commercial experience shows that 271 approval at this time would be premature due to significant billing accuracy problems.

V. <u>Reporting and Documentation</u>

Although Eschelon's UNE-P ordering has only recently commenced, Qwest is already reporting Eschelon's UNE-E/UNE-Star lines as UNE-P lines for purposes of the Performance Indicator Definition (PID) data. *See* Exhibit 4 (Affidavit of Lynne Powers). Previously, Qwest reported these lines as business lines -- which is how the lines appear on the bill received by Eschelon. As discussed, UNE-Star is ordered, provisioned, and billed like resale.[53] Including both UNE-Star and UNE-P in the same category makes the number of UNE-P lines (which are not billed as resale) appear greater. Creating a separate category for UNE-Star, as Qwest could have done initially, would allow a better understanding of the performance results and to which product they apply.

In reviewing the PID data, Eschelon found that Qwest's reporting of the lines changed from business lines to UNE-P lines in approximately November of 2001.[54] At that time, Qwest changed its reporting not only on a going forward basis, but also retroactively to January of 2001 so that months previously reported as business lines were

[53] Although like resale, UNE-Star has additional problems because it is an attempt to place Centrex functionality on lines that were not designed to carry Centrex functionality. Therefore, UNE-Star has many provisioning problems, as described in the Powers Affidavit. *See* Exhibit 4.
[54] Although separate categories are used for other products (such as UNE-P-POTS), separate categories were not created for UNE-E products (such as UNE-E-POTS). If Qwest is claiming that it included UNE-E lines with UNE-P lines because there was not a separate category, Qwest could have simply created another category, as it did with UNE-P-POTS.

then reported as UNE-P lines. *See id.* Eschelon was not notified in advance of this change. Although Qwest claims in its Reply filing that it provided some general notice at the time of the change, it was not advance notice. Eschelon was given no opportunity to have input in to how the change was made, such as suggesting a separate category be used. Given that only Eschelon and McLeod were ordering the UNE-Star product, it would have been simple enough to contact the two impacted carriers directly to discuss the issue. Even with Eschelon's knowledge of UNE-Star, the information Qwest now says it provided in notes at the time is unclear. It had to be unclear to those unfamiliar with the product and the differences between UNE-Star and UNE-P.

Other than some job aids, Qwest has provided little documentation to describe and support the UNE-E/UNE-Star product. UNE-E, or UNE Star, is not identified as one of the available "UNE-P products" in the UNE-P Product Description in Qwest's Product Catalog on Qwest's wholesale website.[55] Because Qwest did not clarify the distinctions between the products in its materials, Qwest's UNE-P announcements have caused confusion. Apparently, Qwest is now indicating that UNE-Star will be available for residential. Neither the Eschelon nor the McLeodUSA UNE-Star amendments apply to residential, so CLECs cannot obtain that capability by opting in to existing agreements.

W. Switched Access

As described in Eschelon's initial Comments (pp. 25-26), over a period of time, Eschelon complained to Qwest that Qwest was not providing complete and accurate records from which Eschelon could bill interexchange carriers access charges for UNE-E/UNE-Star and On-switch customers. CLECs need an accurate report of switched

[55] *See* http://www.qwest.com/wholesale/pcat/unep./html.

access minutes of use ("MOU"), so that they may properly bill interexchange carriers for access.

Because of the significance of this issue, Eschelon has expended substantial resources on outside audits to examine the problem, in addition to the internal resources devoted to it. Although Qwest and Eschelon settled with respect to the access charge issue through February 28, 2002, Eschelon remained concerned about the usage it was receiving from Qwest. Therefore, Eschelon embarked on another access audit, this time using two consulting firms. The test calls began in April and ended the last week of May, 2002, in each of Qwest's operating regions. The test calls were originated or terminated from Eschelon's UNE-E or UNE-P lines and some test calls were terminated to Eschelon's on-switch customers. For each test call, Qwest should have generated an access record to Eschelon so Eschelon could bill the interexchange carrier. Searching the daily usage files ("DUF") files for these test calls has shown that calls are still missing from the DUF.

Although the timing of this proceeding requires that these Comments be filed before a final report is fully ready,[56] generally results show that, for direct dialed originating and terminating and 800 origination calls, Eschelon did not receive approximately 16% of the test calls from Qwest.[57] The missing calls percentages rise for specialty calls, such as directory assistance access calls, operator handled and 1010XXX calls. So, the total percentage is approximately 18%. As Eschelon has maintained for

[56] Eschelon will provide the results to Qwest soon.
[57] In addition, the most recent test call audit did not include intraLATA originating and terminating minutes that are carried by Qwest (IntraLATA toll calling that Qwest continues to provide). Some former Qwest customers choose to maintain Qwest as their intraLATA toll provider when switching local carriers. Also, many current Qwest retail customers have Qwest as their intraLATA toll provider. When their calls terminate to an Eschelon customer, Qwest is required to provide a terminating access record to Eschelon to

approximately two years, Qwest is shorting Eschelon minutes. Although the percentage missing has improved from 2001 when the original audits were performed, a figure such as 18% is a concern. This also raises a question as to the basis for Qwest's claim that its DUF is 100% accurate, when an outside audit suggests that the percentage is closer to 82%.

X. Collocation and Interconnection

In its negotiation of interconnection agreements for all of the states in which Eschelon operates or is certified, Qwest and Eschelon have reached impasse with respect to certain collocation issues and have not reached resolution as to certain interconnection issues. *See* Exhibits 6 & 17. Qwest's representation that all of these issues have been resolved is not the case.

Qwest criticizes the SWBT offering of adjacent off-site collocation as not being collocation at all. *See* Bumgarner Reply Decl. ¶¶ 7-8. Apparently, SWBT disagrees. And, once SWBT has shown that this form of collocation is technically feasible, it should be available in other ILEC territories as well. Qwest's resistance to this issue is puzzling. After years of ILEC complaints about space constraints and security issues when CLECs enter the ILEC premises, an opportunity to collocate without confronting those issues should be an attractive one. The amount of resistance, however, suggests that perhaps the other alleged problems with allowing CLECs into ILEC space were not such significant issues after all. Off-site adjacent collocation is a practical, technically feasible solution that should be a viable alternative when the occasion arises to use it.

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allow Eschelon to bill Qwest. In 2001, Qwest told Eschelon it does not provide these call records, and Eschelon can not bill Qwest for this intraLATA toll access.

Qwest has used an alleged need for amendments to the interconnection agreements as a tool to delay competitors or attempt to extract an ability to charge unapproved rates from them. As an example, Qwest has taken the position that Eschelon needs to sign a contract amendment to simply terminate unwanted power to collocation space. Eschelon has identified nine collocations, including collocations in Colorado and Washington, for which Eschelon has asked Qwest to terminate power. Eschelon has pointed out to Qwest that Qwest merely needs to remove the charge from its database. No physical work is required, because Eschelon is not using the power. Qwest has caused delay – during which time Eschelon incurs this unnecessary expense – by trying to require an amendment to the interconnection agreement. No amendment is needed, however, in this situation. Eschelon is not asking Qwest to retroactively refund money paid for unused power; Eschelon is simply indicating that Eschelon is not ordering the power going forward. As this is a simple database change, it should not require either a contract amendment or a charge.

Reduction in power is just one of the examples of the collocation and interconnection issues raised by Eschelon that remain unresolved. Although Qwest criticizes Eschelon for raising the issues by attaching to its initial Comments discovery responses that happened to be filed in Minnesota and Washington, Eschelon does not have the resources available to Qwest. Qwest earns more revenue by the second day of January in each year than Eschelon earns in an entire year. Eschelon is struggling to raise issues that are significant to its livelihood in a manner that will allow the Commission to consider those issues. It may not be pretty, but hopefully it is useful. Because Qwest provides one position for all of its states for these issues, Qwest can hardly complain that information or examples come from various states (particularly when none of this information is being presented to Qwest for the first time). After all, if Qwest is applying its policy uniformly across states, as it claims it is doing in these cases, the result would be the same in any state.

As an example, serious problems have arisen with collocation dust contamination when Qwest and/or its vendors perform construction activities in buildings that house CLEC collocations. In March of 2001, an instance of collocation contamination occurred in the Denver Main Central Office. The conditions discovered at the site indicated a deliberate breach in security and potential damage to Eschelon equipment. Qwest had not notified Eschelon of its construction or the potential impact on Eschelon's collocation space. Eschelon's cage was accessed without Eschelon authorization or knowledge. A Qwest approved contractor removed the pins securing Eschelon's collocation cage to gain access and Qwest security failed to notify Eschelon of the intrusion. During the intrusion, the Qwest contractor installed water pipes directly above Eschelon's electronics equipment, which put the equipment at risk. Eschelon pays security charges on a monthly basis and expects Qwest to provide and maintain a secure environment. Eschelon told Qwest that this matter is of utmost importance as the integrity of Eschelon's collocation equipment was jeopardized. Qwest would not expose its own equipment to such conditions or allow CLECs to treat Qwest's space and equipment in this same manner. One can only imagine how Qwest would react if a CLEC removed the pins to a Qwest door to get around a lock securing access to the Qwest area of a building. Even after the Denver situation was resolved, and assurances were received that the problem would not occur again, the serious problems described above occurred again, twice, in the Orchard Central Office in Minneapolis in January and February of 2002. These are very serious problems that affect Eschelon's ability to compete.

Qwest responds simply by stating "Issue resolved" and refers to CMP documentation. Bumgarner Reply Decl. ¶ 7. Qwest also concludes that all of Eschelon's collocation and interconnection issues "merely" require "continued enhancements to products and processes in the normal course of work through the CMP." *Id.* ¶ 10. Eschelon has tried that approach, including specifically with respect to the serious collocation dust contamination issue. Eschelon went through the entire CR process and obtained many assurances that proper processes were in place and proper training had been conducted. That process was completed in May.

Despite those paper promises, in June of 2002, another incident of collocation dust contamination occurred, this time in a central office in Arizona. Qwest provided only one process, applicable to all states including Arizona, Colorado, Idaho, Nebraska, and North Dakota, through CMP. That process was not followed. Qwest represented that adequate protections would be in place to prevent dust contamination, and they were not. Although fortunately Eschelon is now alert to this issue and caught it before it the damage became as serious as in the other instances, the fact remains that the procedures were not followed and dust contamination resulted.

In response to the recent Minnesota collocation dust situation, Qwest provided specific information about its methods of procedures ("MOPs"). Qwest said: "Qwest has specific instructions and guidelines to follow to protect equipment. These include but are not limited to:

> 1. The installation of dust and fire protection walls to isolate the construction areas form [sic] existing space. These barriers are typically constructed of steel

studs and 2 layers of gypsum board but also can use fire resistant wood framing and Poly."

These steps were not followed with respect to the June 2002 construction. Qwest did not install any dust and fire protection wall. There was no wood framing and no Poly. In June 2002, after the CMP process was completed and all protections and training were supposed to have been in place, Qwest performed construction near Eschelon's equipment without taking the simple step of putting up plastic to protect the equipment. Qwest's proposed solution that CLECs simply trust Qwest and rely on CMP is no solution at all for this, or the other issues Eschelon has raised.

Qwest's processes should be more fully documented and accessible to CLECs, and those processes should be tested and proven successful before 271 approval is granted. With respect to the dust issue specifically, while it is preferable to avoid the problem altogether, Qwest should be required to pay the costs of clean up when these situations occur.

Y. Change Management Process

Qwest is not complying with CMP processes. This issue is discussed above with respect to Unannounced CLEC Affecting System Changes and Unannounced Dispatches and Other CLEC Affecting Activities. *See also* Exhibit 15 (Coppermax, copper availability project, Release 10.0, LSR reject and raw loop data inquiry update examples). More time is needed to ensure that the process is firmly in place and being complied with.

In Eschelon's initial Comments (p. 27), Eschelon commented specifically on ***the Re-design*** meetings and the manner in which they have been compressed near the end to make meaningful participation recently very difficult, in particular for smaller CLECs. In response, Qwest states: "This is not a credible argument." Schultz Repl. Decl. ¶ 12. To support this, Qwest first changes the proposition and then responds to its own revised version of Eschelon's position. Eschelon commented on the Re-Design meetings particularly of late, but Qwest's revision refers the "CMP redesign process and the monthly CMP forum." *Id.* Qwest goes on to throw out statistics relating to number of CRs and total number of meetings attended, *etc.,* to claim that Eschelon's attendance "belies its claim." *Id.* ¶¶12-13. Although in its initial Comments Eschelon discussed specifically pressures at the end of the Re-design process, Qwest in all of its statistics neglects to mention that Eschelon has missed recent meetings and also had to send substitute participants as the crush of deadlines became overwhelming. Eschelon is still trying to contribute, but the resource pressures have become greater and the time pressures more compressed.

Given that Qwest has made representations to the Commission about Eschelon's CMP participation, it is only fair to place that information in context. The outside pressures that Qwest exerted on that process, the 271 process, and on Eschelon in particular are described in Exhibits 18 and 19. Qwest's conduct goes directly to whether its entry into the in-region, interLATA market is in the public interest. The Commission should give this issue serious consideration.

Z. Cutovers

Over time, Eschelon has reported to Qwest technical loop problems, missed scheduled times, untimely lift and lays, cuts that appeared successful on day of cut but trouble occurred shortly afterward, and other cutover problems. Although many of these cutover problems have been reduced, the reduction in incidence of these problems has coincided with bi-weekly calls held between Eschelon and Qwest in which Eschelon proactively reviews the hot cuts and Qwest's processes. Eschelon does not know whether, once Qwest receives 271 approval, Qwest will continue to devote resources to these calls for cutover analysis and review. Already, Qwest has failed to participate in recent scheduled calls, without even calling in advance to indicate that Qwest would not join the calls. After Eschelon pointed this out in its FCC Comments in Qwest II (UT, WA, MT, WY 271 application), Qwest's senior service manager, who normally does not participate in these calls, joined the call and questioned the Eschelon business participants about the purpose of the call. The usual Qwest participants in the call said relatively little. Given that Qwest and Eschelon have been having these bi-weekly calls for at least a year, Qwest is well aware of their purpose.

In addition to the changes in the bi-weekly calls, Eschelon has experienced some recent instances in which Qwest did not notify Eschelon of no dial tone issues before the time of cut (a past frequent problem that seems to be re-surfacing). On August 1, 2002, a Colorado cutover was scheduled, and Eschelon was prepared to go forward because Qwest had not given any indication of any issues with the cut (PON #CO205568MJE). At the cut, however, Qwest first informed Eschelon that there was no dial tone. Qwest said that it had performed the required dial tone test 48 hours before due date and there was no dial tone, but it had not informed Eschelon of this fact. It turned out that the Qwest technician had connected the loop to the wrong CLEC bay. Qwest rewired it, and the cut, though delayed, was completed. This had to be done very quickly because Qwest has been particularly strict recently in enforcing its 30-minute readiness window for cutovers. In another no dial tone situation (PON #WA183968-1JAK) on July 29, 2002, Eschelon also had to act quickly because of Qwest's 30-minute policy, even though Qwest did not inform Eschelon of the no dial tone situation until eight minutes after the cut was scheduled to begin. Eschelon found the problem and did a same day pair change.

These examples raise at least three separate issues: (1) compliance with the 48-hour dial tone test policy; (2) timely notice to the CLEC of the results of the dial tone test; and (3) proper interpretation and application of the 30-minute policy. First, according to Qwest's written procedure,[58] "Qwest will verify the CLEC's Dial Tone at the CLEC's CFA 48 hours prior to the due date."[59] Because this is the written, announced policy at Qwest, CLECs ought to be able to rely on it. If a CLEC waits until the 48-hour time period to build its translations, however, the CLEC will likely run into a problem because Qwest is actually, in practice, performing the dial tone check earlier. In practice, it appears that Qwest is conducting the dial tone test 48 hours after the application date (on the design/verify/assign, or "DVA," date). Although Qwest gives assurances that it is also performing a check at 48 hours if there was no dial tone, Qwest does not necessarily do so. (In the illustrations described above, Qwest claimed that it did a 48-hour check, but because Qwest did not notify Eschelon of the no dial tone issue, Eschelon cannot verify if or when that check was performed, for example.) Qwest needs to comply with its process and provide immediate notification to CLECs of no dial tone

[58] Although the process is at least in writing, like many process changes, Qwest has not incorporated the policy into the mainstream documents accessible to CLECs (*i.e.*, where any business person would logically look to find the process). One has to search Qwest's notifications to find it, which will most likely occur if a person happened to be involved and recalls that there was a notice on the topic at one time. The failure to bring process changes into the logical CLEC-facing documentation is a gap in CMP that Eschelon and other CLECs identified during CMP Re-design.

[59] *See* Document #PROS.07.19.01.F.00012 (July 19, 2001); *see also* #GENL.07.26.01.F.00019. *See* www.qwest.com/wholesale/cnla/uploads (followed by document number).

issues.[60] CLECs need to know when to expect notification, so the process is reliable, and they need sufficient time to prepare for the cutover. The inconsistency between the written and actual processes will produce unpredictable results.

Second, although Qwest may be performing the test early (and thus has plenty of time for notification to CLEC), it is not notifying the CLEC immediately (or, in some cases, at all, as discussed above) of the dial tone test result when there is no dial tone. Qwest's written process, however, states: "If the COT [Central Office Technician] does not detect Dial Tone 48 hours prior to Due Date, then the (C/I) ***will contact the CLEC with the information***."[61] Obviously, this contact needs to be made immediately to provide the CLEC with adequate time before the cut to resolve the issue. The written process does not provide any time, other than immediately, within which this contact must take place. If Qwest argues that this written process means anything other than immediately, its process is flawed and should be revised to provide immediate notice to the CLEC (with this revision being documented appropriately for CLECs).

Finally, the SGAT language allowing Qwest to reschedule the installation by supplementing the order if CLEC is not ready within 30 minutes of the scheduled appointment time (SGAT § 9.2.2.9.4) should not be interpreted to apply in situations in which the CLEC is ready but for Qwest's failure to inform CLEC of no dial tone. Although Qwest provides assurances that it will not interpret the language in this manner, Eschelon's experience is that it does so. As discussed above, Qwest has been interpreting

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[60] Through CMP, Allegiance Telecom requested the ability to receive no dial tone notices by email (rather than by telephone) (Change Request #PC050302-1). Allegiance and Qwest are testing this process. *See id.* Eschelon would also like to receive email notices. After Allegiance has invested time in this trial and shown that email notices are feasible and a good alternative, Qwest said for the first time at a recent CMP meeting that it has an all or nothing approach to this issue. If a single CLEC indicates that it would prefer

the 30-minute policy particularly strictly recently. Another example occurred just yesterday (August 14, 2002) (PON # MN200535DDS). Qwest did not notify Eschelon of no dial tone until the cut time. More than 30 minutes was needed to resolve the unanticipated issue, so Qwest said that it would require Eschelon to reschedule for another day. Eschelon had to argue with Qwest to obtain a different result, which only resulted in more delay. In all of these examples, Eschelon was ready. Qwest was not ready in the sense that Qwest had not completed all of the requisite steps to prepare for the cut, including informing CLEC of no dial tone. If Qwest is not ready at the time of cut, Qwest is to set a new appointment time on the same day. CLECs should not be forced to supplement an order for another day when Qwest's failure to follow process is the reason that the cut cannot go forward at the scheduled time.

With respect to Qwest's reported performance on cutovers for Eschelon, Qwest cannot use those results to show that Qwest is meeting standard intervals (*e.g.*, for a parity comparison). Because of the numerous problems with Qwest's cutovers, Eschelon was forced to request longer intervals. For more than a year, Eschelon has been routinely requesting intervals longer than the standard interval to try to avoid the serious customer affecting cutover problems that occurred previously. Although Eschelon recently reduced its requested times from approximately 10 to 7 days, even the current practice is longer than the standard interval. Therefore, Qwest's improvement in its performance with respect to OP-3 is due to action on Eschelon's part, rather than proven ability to regularly meet the standard interval for Eschelon. In addition, because Eschelon has had to request a longer interval, Qwest's performance for OP-4 appears better, because orders

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telephone notification, Qwest will not provide email notices of no dial tone to any CLEC. CLECs have objected to this approach and are waiting to learn whether Qwest will reconsider this position.

for which the customer requests due dates greater than the standard interval are excluded from OP-4.

AA. Tandem Failure Events

In its initial Comments, Eschelon described six tandem failure events and a LiteSpan 2002 failure, all occurring within a period of months. Tandem failures should be rare. Qwest responds that this is not a 271 issue because it is not discriminatory. *See* Simpson Reply Decl. ¶ 17. The affect on CLECs, however, is discriminatory. Tandem failures are particularly harmful to small carriers, such as Eschelon, which do not have the volume to attract interexchange carriers to build trunking to them. It is common knowledge in the industry that major interexchange carriers will order Feature Group D ("FGD") trunks directly to Qwest end offices, bypassing the access tandem. This is typically a function of long distance traffic volumes. Long distance carriers do not typically place FGD trunk orders direct to CLEC end offices and prefer to accept CLEC equal access traffic at the tandem. By design, CLEC originated long distance traffic is almost totally dependent upon the access tandem, while a large portion of Qwest originated long distance traffic will bypass the access tandem. Therefore, a tandem failure event will impact a significantly greater percentage of CLEC customers versus Qwest customers.

Eschelon asked Qwest to provide non-confidential documentation confirming that the failures were at the Qwest tandem. Although Qwest has focused on an early request for a letter, Eschelon has been flexible in responding to Qwest's various objections and has tried to suggest letters, deletion of confidentiality designations, or any other type of non-confidential documentation to address the problem. Again, the need for this

[61] *See* Document #PROS.07.19.01.F.00012 (July 19, 2001) (emphasis added).

documentation was created by the conduct of Qwest representatives that received calls from Eschelon customers and led them to believe the problems were the fault of Eschelon. The proper procedure is for Qwest's representatives to refer calls from our customers to Eschelon. When Qwest representatives do not follow the process, Qwest needs to help correct the problem it has created between the CLEC and its customers. Although Qwest claims that "Eschelon's suggestion that Qwest provide a letter to Eschelon's end users is inconsistent with the standard practice," *see* Simpson Reply Decl. ¶ 19, this statement both mis-states Eschelon's position and ignores the fact that Qwest has already violated that "standard practice." Eschelon requested the non-confidential documentation so that ***Eschelon*** could provide it to customers when needed and has been very clear that Qwest should not contact the customers directly. While Eschelon would certainly prefer that the issue never arise again because either the tandem does not fail or Qwest's representatives do not suggest that the problems are Eschelon's fault, a process is needed for when the process breaks down, as it has numerous times in recent months.

It appeared during that July 30-31 Arizona 271 workshop that a relatively simple solution to the documentation issue had been identified, because Qwest's witness testified that the "original notification that is sent to the companies via the ANCR process is not confidential." AZ 271 Tr. Vol. I, p. 253, lines 18-20. (After all, if the outage reaches certain levels, the information must be filed publicly.) The notices received by Eschelon in the recent Qwest tandem failure situations, however, contained confidentiality designations. Eschelon thus asked whether Qwest would remove them, consistent with its witness's testimony. Since then, Qwest has not agreed to do so. Eschelon is not suggesting that removing the designation is the ideal or the only solution. Eschelon is searching for some means to repair the damage when a Qwest employee creates the impression that a tandem failure related problem is Eschelon's fault. At that point, the end-user customer does not want to be caught in a "he said, she said" battle. The customer wants to hear from the party that told the customer that it was Eschelon's fault that it was not. Eschelon has proposed various ways in which to do that which do not require onerous language and do not involve further interaction between a CLEC customer and Qwest. Eschelon is open to other suggestions for a means to deal with this problem. The status quo, however, offers no remedy.

BB. Costs

By Decision No. C00-968 and Decision No. C00-420 (in Docket No. 97I-198T), the Colorado Commission granted Qwest's motion to consider costing and pricing issues related to Qwest's SGAT in Docket No. 99A-577T. It does not appear that the Commission considered a number of significant costs that appear to be included in Qwest's Colorado SGAT. These costs include some thirty-seven miscellaneous charges, charges for SS7 services, and charges for Category 11 records and Daily Usage Feed records.[62]

An administrative law judge ("ALJ") for the Minnesota Public Utilities Commission recently issued Findings of Fact and Conclusions of Law in a similar proceeding. *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices,* OAH Docket No. 12-2500-14490-2; PUC

[62] These charges are found in Decision No. CO2-409; Docket Number 99A-577T at Attachment A, pages 2 (Category 11 Mechanized Record Charge, per Record) 10 (Common Channel Signaling/SS7), 11 (Miscellaneous Charges), and 13 (Daily Usage Record File, per record).

Docket No. P-421/C1-01-1375 (August 2, 2002) ("Minnesota Cost Order").[63] The ALJ denied recovery of all these charges because Qwest's SGAT did not adequately explain how they would be applied and because Qwest did not supply TELRIC cost principles. Eschelon respectfully requests this Commission consider the ALJ's findings when reviewing Qwest's SGAT because there is no state-specific or other cost-based reason that Qwest's Colorado SGAT and its Minnesota SGAT should differ with respect to their explanations of how these charges apply nor with respect to the costs involved.

The thirty-seven miscellaneous charges involve the labor of Qwest personnel. With respect to the thirty-seven miscellaneous charges, the ALJ found that:

> Qwest has identified a number of miscellaneous charges (in half-hour increments, as opposed to quarter-hour increments approved in the Generic Cost Case) relating to additional engineering, labor, testing, and maintenance. . . . Many of these charges relate to troubles on the line. Qwest's list is modeled on its FCC tariff charges, as opposed to any cost study based on TELRIC methodology. Qwest has failed to explain how these charges would be applied, such as how it would distinguish between situations when such costs are already included in element prices, or when "additional" engineering, labor, testing, or maintenance justifiably would be required. Qwest has clarified only that none of these charges would apply if trouble were found on Qwest's side of the network. Qwest has failed to adequately explain the application of these charges, and they should be deleted from its SGAT.[64]

Another set of charges that Qwest's SGAT does not adequately explain the application of are its SS7 charges. The complicating factor is that while some CLECs might depend entirely upon Qwest's SS7 network, other CLECs engage the services of a third party SS7 provider or have their own SS7 networks. Qwest's SGAT does not explain how its proposed SS7 charges apply in the two very different circumstances. For example, Eschelon uses a third party providers such Illuminet (now Verisign) to provide it with access to an SS7 signaling network that communicates with Qwest's SS7 network.

[63] http://www.oah.state.mn.us/cases/qwest271/250014490.rt.smm_kas.html.

Qwest's SGAT appears to indicate that Qwest will bill Eschelon's provider for SS7 signaling, which costs will be passed on to Eschelon, but says nothing about Eschelon's provider billing Qwest. The Minnesota ALJ found the following:

> After much equivocal and contradictory testimony, Qwest established, in contradiction to its SGAT, that the SS7 signaling charge would apply only when a CLEC call terminates to Qwest when Qwest's SS7 signaling is used. The record reflects, however, that Qwest's signaling system and a CLEC's signaling system must reciprocally transmit signals to set up, complete and tear down calls, regardless of whether a Qwest end user is calling a CLEC or vice versa. Qwest has not proposed a reciprocal compensation arrangement with carriers whose SS7 network Qwest must use in order to complete calls, even though the 1996 Act requires "reciprocal compensation arrangements for the transport and termination of telecommunications." Before Qwest may impose SS7 usage charges on any customer, Qwest should address whether reciprocal charges would be appropriate.[65]

Another charge that Eschelon requests this Commission consider are Qwest's Category 11 Record and Daily Usage Record File charges. CLECs require that Qwest provide them with Category 11 records to bill IXCs for originating and terminating access. Qwest's SGAT proposes to bill CLECs for providing such records. However, Qwest requires CLECs to provide Qwest with other records to use in Qwest's access billing, but Qwest does not propose to compensate CLECs for such records. Further, CLECs obtain Category 11 records from Qwest via an electronic Daily Usage File (DUF). From Qwest's SGAT, it appears that Qwest proposes to charge CLECs once for the Category 11 record and again for putting that record on the DUF. The ALJ ruled that Qwest failed to justify such charges:

> Category 11 records are records of calls made by the customers of IXCs that access and transit the local network. The records are used by CLECs and ILECs

[64] Minnesota Cost Order at ¶ 196 (footnotes omitted).
[65] *Id.* at ¶ 204-05 (footnotes omitted).

> to bill IXCs for access charges.[66] Although Qwest maintains that it is "optional" for CLECs to obtain these records from Qwest, there is no other practical source for them. Qwest's proposed alternative, that CLECs could, on a constantly recurring basis, seek these records from any IXC whose calls might transit the network, is anticompetitive and discriminatory. Qwest has the information and uses it to bill access charges for itself.
>
> Pursuant to Qwest's wholesale product catalog, Qwest and CLECs are to exchange these records using category 11-01 series access usage records and category 11-50 summary usage records. Qwest's SGAT also requires CLECs to exchange access records with Qwest (§§ 7.5 and 7.6), and its SGAT appears to contemplate that Qwest will provide its electronic Daily Usage Record file (DUF) for this purpose, with a per-record charge of $0.00110. In this docket, Qwest proposes a mechanized record charge of $0.001644.
>
> Qwest has failed to demonstrate how this charge would be applied and how it relates to other charges in its SGAT. Until Qwest files adequate application information, so that its cost study can be properly analyzed, the parties should each bear their own expenses of exchanging this data.[67]

Eschelon respectfully requests this Commission consider the ALJ's findings when reviewing Qwest's SGAT because there is no state-specific or other cost-based reason that Qwest's Colorado SGAT and its Minnesota SGAT should differ with respect to their explanations of how these charges apply nor with respect to the costs involved, and the ALJ has shown why the Minnesota approach should be adopted.

II. CONCLUSION

As this information regarding Qwest's commercial performance demonstrates, approving Qwest's Application at this time would be premature. Approval to provide in-region, interLATA service should be based upon Qwest's demonstrated compliance with the 14 point checklist, not upon promises to comply in the future, nor upon mere statements that it has changed processes and systems to allegedly bring it into compliance. Promises and statements do not equal action or positive results. Until

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[66] Ex. 279.
[67] *Id.* at ¶ 206-08 (footnotes omitted).

Qwest has taken actions that can be measured and evaluated and shows adequate performance with respect to such measures, Qwest has not demonstrated that it has sufficiently opened its markets to competition as required under Section 271 of the Act.

August 15, 2002 ESCHELON TELECOM, INC.

By: ______________________________

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SATE Impasse Issue

__Issue__: The impasse relates to those products that are in Qwest's production environment but not in SATE. The specific disagreement is whether it is proper to add those products to SATE employing the CMP prioritization process, or Qwest is obligated to add those products outside of the CMP prioritization process and by a date certain.

__WorldCom, AT&T, Eschelon, Covad and Allegiance position ("CLECs")__: In summary, CLECs present the following information regarding Qwest Stand Alone Test Environment (SATE):

1) Products exist in production today that cannot be tested in SATE (total of 24)

2) SATE CRs that request addition of products for CLEC testing are provided no implementation guarantee

3) Testing via the Interoperability Environment is not an adequate substitute for testing via the SATE

4) Special Change Request Process (SCRP) unfairly transfers the burden of ensuring production mirroring to CLECs when it is Qwest's burden to mirror production

5) Preferential treatment was provided to HPC during Qwest 271 test

__Specific comments__

Qwest has confirmed that their EDI production environment provides for the ability to order 24 products that currently cannot be tested via SATE. As an initial matter, going forward Qwest has committed to sync up SATE with all IMA enhancements beginning with their 12.0 release, which will serve to ensure that the 24 product mis-match will not become a larger problem than it currently is. CLECs request a process be established such that the synchronization of the 24 products that are not implemented in the SATE can be implemented in a timely manner. In order to establish a viable process, available options must be reviewed. CLECs are aware of the following options available today:

Option number 1: That SATE product addition change requests (CRs) be processed within the CMP. The practical consequences of selecting this option is that SATE product addition CRs would only be considered for implementation by Qwest if systems resources were available above and beyond what is required to implement the enhancements associated with each given IMA release. Specifically, the language that supports this option is stated in the Master Red-lined CLEC-Qwest CMP Redesign framework Interim Draft Document, Section 10.1 Test Environment Releases and it states:

> "When an OSS Interface release is prioritized, some of the prioritized OSS Interface CRs will cause a change in that OSS Interface's corresponding test environment. These changes will be included in the test environment release that is made available thirty (30) days prior to the OSS Interface Release Production Date, and will not be subject to prioritization. The business and systems requirements for these test environment changes will be developed in the same order as the prioritized OSS Interface CRs.
>
> Qwest's OSS Interface and test environment development efforts will not compete for resources. Qwest will ensure that the resources allocated to the test environment are sufficient to complete the corresponding OSS Interface Release changes described above."

CLECs do not support this option for several reasons. First, during the Arizona Qwest 271 OSS test, specifically HPC's evaluation of Qwest SATE, two products were added to SATE upon HPC's request without being subject to Qwest CMP. These were added by Qwest so that the HPC evaluation would be more positive than it would have been. CLECs should be provided the same treatment. Secondly, in that these CRs would only be considered in addition to what it will take to implement IMA enhancements, there is little chance that these CRs will ever make it into SATE. Lastly, if there is only a single CLEC that needs to add a particular product to SATE, it is highly unlikely that the product addition CR will be prioritized high enough for consideration.

Option number 2: That for any given product not supported in SATE, CLECs must test through the Qwest Interoperability Test Environment. CLECs do not support this option for the same reasons HPC identified during its evaluation of the Interoperability Environment and for the exact reasons Qwest initiated the SATE.

HPC's "SATE Summary Evaluation Report", version 3.0 published 12/21/01 stated:

"Prior to development ofthe SATE, CLECs in the Arizona local telecommunications market had to rely on Qwest's Interoperability Testing process for production certification and to prepare for new software releases. Interoperability Testing uses production systems. However, it requires that the CLECs use valid account data of live customers for testing purposes, since all transactions are edited against production and legacy systems. This practice is costly, time consuming, and inconvenient for both CLECs and their customers. HP also observed instances in which customer accounts were inadvertently changed."

Qwest recognized its Interoperability Test Environment limitations in its EDI White Paper document issued June 18, 2001, version 1.01. In that paper, Qwest stated:

- Paper versions of orders must always be sent to Qwest prior to testing. Co-Providers cannot attempt a function and get an immediate response. Therefore, the learning process can be time consuming, and both Qwest and the Co-Providers must have staff to fully review these paper transactions.
- Co-Providers must maintain production accounts for testing as real production systems are called upon during testing. Some providers do not have end-user accounts within Qwest's network. Others are hesitant to run tests on their end-user's accounts.
- Additionally, Interoperability testing has an impact on Qwest's production environment as well, such as the reservation of real telephone numbers and appointments during the testing process

The Interoperability Environment is a poor substitute for the necessary testing of CLEC interfaces, as diagnosed by HPC and as confirmed by Qwest. It cannot become a good substitute simply because of Qwest's failure to include all products in the SATE that it has provided for in its production environment.

Option number 3: CLECs can initiate Qwest Special Change Request Process (SCRP) to cause the missing products to be implemented into the SATE. In other words, CLECs wishing to have testing capabilities that mirror those of the production environment, must pay for the resources necessary to implement the requested change. This option is another burden-shifting scheme that places the burden on CLECs when it is Qwest's obligation to have its SATE mirror production.

Option number 4: That Qwest support the language provided in its *Ex Parte* filed at the FCC dated July 15th in the matter of "SATE Mirroring Production", page 2, last bullet, second sentence, Qwest states "Qwest will add to SATE any other error messages or TEST SCENARIOS that a CLEC requests, ten days or less after being approved." The CLECs understand that the means for such requests is the SATE Data Request process.

The *ex parte* language as written supports a process to have additional products added to SATE, a process the CLECs would support. Yet, according to Qwest at the 8/8/02 AZ TAG meeting, the intent of that statement was to only add test scenarios for products already support by SATE. CLECs believe Qwest has obligated itself to add test scenarios for product test scenarios not currently supported in SATE within 10 days.

While Qwest believes this issue has only recently surfaced, CLECs would like to provide the following to the contrary:

1) MTP/TSD has always called for FCC compliance to "mirror production"
2) CLECs have consistently emphasized the need to adhere to the FCC's mirror production requirement
3) CLECs have initiated SATE specific CRs that remain open and outstanding after 7 months (AT&T Line & Loop Splitting CRs opened 12/01)

CLECs firmly believe that a fair solution to this impasse would be to establish a date-certain within 2002 by which Qwest will implement in the SATE all products that have been ordered by CLECs during the period of January 2001 to date. The remaining products, if any, that are now known to be available in production but not in the SATE should then be implemented at the rate of two (2) minimum per release beginning with the first release made available in 2003, until all products are implemented in the SATE.

CERTIFICATE OF SERVICE

I hereby certify that copies of Eschelon Telecom, Inc.'s Late Filed Exhibits E-B, E-C, E-D, and E-E, regarding Docket No. T-00000A-97-0238, attached, were sent by e-mail on September 10, 2002, and United States Mail on September 11, 2002, to the Arizona Corporation Commission, Docket Control, and upon those listed on the attached service list.

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