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AZ CORP COMMISSION
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IN THE MATTER OF US WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE COMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

NOTICE OF FILING FINAL SUPPLEMENTAL WORKSHOP REPORT AND MOTION TO AMEND PROCEDURAL ORDER

The Arizona Corporation Commission Staff ("Staff") hereby files its Final Report and Recommendation on Checklist Items 1 and 2 arising from the July 30-31, 2002 Workshop ("Second Report") in the above-entitled matter.

The Staff requests amendment of the November 7, 2002, Procedural Order to permit this report to go directly to the Commission along with the related OSS report from this workshop. Qwest, Eschelon and AT&T have all stated their agreement to this amended procedure so that this report and recommendation can be considered by the Commission along with the OSS report from the Supplemental Workshop which was filed on February 25, 2003. In view of the fact that the parties filing comments have agreed to this process, Staff recommends its adoption.

RESPECTFULLY SUBMITTED this 27th day of June, 2003.

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IN THE MATTER OF QWEST COMMUNICATION, INC.'S SECTION 271 APPLICATION

ACC Docket No. T-00000A-97-0238

STAFF'S FINAL REPORT AND RECOMMENDATION

ON

JULY 30 – 31, 2002 SUPPLEMENTAL WORKSHOP

(REPORT TWO)

JUNE 20, 2003

I. INTRODUCTION

1. The Purpose of this Report and Recommendation is to provide Staff's recommendations on the checklist related impasse issues raised by the parties in the Supplemental Workshop conducted by the Arizona Corporation Commission (ACC) Staff on July 30 and 31, 2002. This Workshop was held in order to give parties to the Qwest Section 271 proceeding in Arizona, who were precluded from actively participating in the process through agreements with Qwest, and who believed there were unresolved issues resulting from this non-participation, an opportunity to voice the issues, and for Qwest to respond.

II. BACKGROUND

2. As stated in the Supplemental Staff Report and Recommendation concerning the 271 proceeding, four parties including XO, Eschelon, Z-Tel and McLeod had agreements with Qwest which acted to limit their participation in the Commission's 271 proceeding. Two of these carriers, Eschelon and McLeod, stated that they had unresolved issues as a result of agreements with Qwest. AT&T, WCom and Covad raised concerns about the non-participation of certain parties and with the resulting impact on the 271 record.

3. Staff held a Workshop on July 30-31, 2002, to address the concerns of parties, including Eschelon and McLeod who believe they have been precluded from raising issues due to their agreements with Qwest. Other parties were allowed to participate to the extent they had issues which arose from the new evidence presented.

4. In late June or early July Staff sent two sets of Data Requests to the approximately 80 carriers that are certified as CLEC's in Arizona, as well as to the parties to this docket and the 252(e) proceeding. Staff received responses from 44 of the 55 operating companies which could respond and contacted as many remaining carriers who did not respond as possible. No carrier contacted indicated that it did not respond because of any agreement written or oral with Qwest. In the Data Requests Staff asked whether the carrier had entered into any agreements with Qwest, either written or oral, which had precluded the carrier from participating in this proceeding. If the answer was "yes", the carrier was asked whether there were any issues that had been precluded from raising that had not yet been resolved through the participation of other parties.

5. Three responding CLEC's stated that they had entered into agreements that limited their participation in the Qwest Section 271 proceeding.1 The only CLEC that answered with an unqualified "yes" was Eschelon. Eschelon's Data Request Response to question four of Data Request No. 1 provided substantial comment on the fact that they had a signed unfiled contract in which they had agreed not to oppose Qwest in their 271 proceedings at the State Commission. A total of four CLEC's responded that they were aware of 271 issues that they believed were not adequately addressed in the Arizona proceedings as a result of Qwest's unfiled agreements with CLECs. WCom, AT&T and Covad answered Yes to Question four of Data Request No. 1. Of these WCom answered generically, and AT&T and Covad answered Yes because they believed Eschelon had issues that were not adequately addressed. Thus Eschelon was the focal point for responses concerning issues that were not all resolved satisfactorily. Eschelon went on to state that since they could not participate, they did not know whether all issues had been addressed.

6. Both Eschelon and McLeod raised issues during the workshop which they claim they had been precluded from raising during the course of the Arizona 271 proceeding because of written and oral agreements with Qwest respectively.

7. Eschelon raised a series of issues relating to Qwest's commercial performance. Eschelon's list of unresolved issues is summarized in its filing with the FCC on Qwest's five state application, included the following:

a. A Release 10.0 change was preventing CLEC-to CLEC Orders
b. Any telephone number coming from a 1FB with CCMS (Customer Calling Management System), Centrex 21, Centrex or Centron for conversion to UNE-P or Resale Pots will not flow through
c. The GUI process is cumbersome and will remain so as long as it continues to rely on so many manual processes
d. Qwest is dispatching technicians for orders that do not otherwise generally require a dispatch
e. Qwest does not have back end system records containing the DSL technical information needed for repair of Centron/Centrex Plus lines with DSL
f. Eschelon experiences inordinate delay when Qwest disconnects the customer's DSL in error.
g. When Eschelon converts a customer from Qwest to Eschelon, Qwest at times disconnects the customer's DSL early.
h. 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.
   Outages of Qwest's ordering tool must be incurred to obtain information needed by Eschelon to complete DSL installations.
i. 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, but does not do so for its wholesale customers.
j. There have been instances where Qwest is providing a US WEST branded statement to Eschelon's end-user customers and requires them to sign it.

[1] While only three CLECs indicated in their responses to Staff Data Requests that they had entered into agreements with Qwest that limited their participation to some extent in the 271 case, Staff also found an agreement between Qwest and XO with similar provisions.

Eschelon is not receiving timely bills for maintenance charges.

k. Qwest does not include sufficient information on its bills for Maintenance and Repair work. For instance, Qwest does not include circuit identification information in Eschelon's bills and also does not include the date of the dispatch or trouble repair.

l. Qwest closes trouble tickets without authorization and with the incorrect cause and disposition codes.

m. Eschelon incurs additional testing charges due to Qwest's use of pair gain.

n. Eschelon and other wholesale customers do not receive accurate customer loss information. Qwest's retail side does receive accurate customer loss information.

o. There is inadequate notice of rate and profile changes

p. Qwest charges rates that are not in Eschelon's Interconnection Agreements

q. There are problems with billing accuracy.

r. There are problems with Qwest changing its PID reporting procedures without adequate notice to the CLECs

s. Qwest was not providing complete and accurate records to Eschelon to bill interexchange carriers access charges.

t. There are Collocation Issues

u. There are CMP problems

v. There are tandem failure events

8. McLeod USA raised the following issues:

a. Qwest's failure to bill McLeod USA correctly under its Fourth Amendment to the Interconnection Agreement;

b. Qwest's failure to make payments required under various agreements;

c. Other performance issues that arise in the workshop discussions.

9. As stated earlier in this report, AT&T, WCom and Covad all expressed concern with the record given the unfiled agreements and the non-participation of certain parties. Further, AT&T raised certain questions during the July 30-31, 2002 Workshop concerning Cap Gemini Ernst & Young's responses to the Data Requests which Staff had provided them.

10. Staff issued its Report and Recommendation on OSS related issues arising from this Workshop earlier this year.

III. GENERAL POSITION OF THE PARTIES

11. This section presents the positions offered by each of the parties during the July 30-31, 2002 Workshop.

a. **Eschelon's Position**

12. Eschelon's witness stated at the beginning of its opening presentation that their effort would be to provide an idea of what its like to do business in Qwest's territory and what the end-user customers experience is. She pointed out that if you look at whether the CLEC customer is going to change carriers initially you need to look at their experience and how much of that experience was driven by Qwest. If the experience is adverse and the CLEC customer switches back to Qwest, she pointed out that this harms the CLEC's reputation and makes it harder to do business in the geographic area. She raised the question that if that's the case, is this the time to allow Qwest into the long-distance market, since by definition the local market really is not truly open?

13. She raised a concern about dealing only with issues, as Qwest suggested, that happened in a past time period. She was concerned also that Qwest would be given an opportunity to demonstrate what the CLEC experience is right here and now, and the opportunity to introduce new evidence to shore up its weaknesses. Concurrently, she pointed out that it was her understanding that Qwest is attempting to send a message that it doesn't want to hear from its Number 2 CLEC wholesale customer concerning its experience today.

14. Eschelon's witness stated that it was her plan to raise issues in this proceeding that were originally introduced in September of 2000 and go over the ones that are still problems today. She pointed out that Eschelon's problems have continued over a period of time, that they are persistent and should be taken care of. She included manual handling of orders, since much of Eschelon's transactions are manually handled and should be measured in order to measure the end-user customer experience. She also pointed out that as far as the end date of the agreement in which Eschelon agreed not to participate, that virtually everything was closed by then (March 4, 2002). Further, she pointed out that it was extremely difficult to participate following March 4, not knowing all the history in between November 2000 and March 2002. She agreed that this Workshop was not intended to deal with Public Interest issues and not intended to deal with unfiled agreements.

15. Eschelon's witness referenced the letter dated November 15, 2000 that restricted Eschelon's participation in the 271 proceeding. She said that the letter stated that during the development of the plan and thereafter, if an agreed upon plan is in place by April 30, 2001 Eschelon agrees to not oppose Qwest's efforts regarding 271 approval or to file complaints before any regulatory body concerning issues arising out of the interconnection agreements. She stated that this represents that there certainly was an agreement to not participate in the 271 proceeding. She further stated that although Qwest had indicated that PIDs are not an issue in the Workshop, Eschelon has been measuring performance, and plans to review that for the participants in the Workshop. She stated that the workshop participants will have to decide whether or not Eschelon's measurement of Qwest's performance has implications for the PIDs. She further stated that the PIDs are not a closed issue in Eschelon's mind. She cited PID PO-19B, which is a new measure that is being created with respect to SATE. With that, Eschelon concluded its introductory comments.

16. Eschelon entered 21 Exhibits into the Record and stated that it would walk through its issues referencing these exhibits. They planned to start by reporting back where we were on the issues raised in September of 2000, and referencing Exhibits E-1 through E-4 as a part of that discussion. Following this they planned to move to the Eschelon report card, which is covered by Exhibits E5 through E8. From this they planned to move to the comments that Eschelon filed with the FCC, as a way to go through the material.

17. Eschelon's witness pointed out that the company operated in most of Qwest's major metropolitan areas, including Phoenix, Salt Lake City, Denver, Portland, Seattle, Minneapolis and some other Tier II Markets. She stated that Eschelon is about 75% on-net provisioning today and 25% off-net. She followed up with the statement that the 25% off-net is now UNE-P. In the spring of this year Eschelon moved to ordering UNE-P (again) following a period in which they ordered UNE-E. She stated that they would talk today about the issues Eschelon is having with UNE-P, all issues that were raised in September of 2000, and which still exist.

18. Eschelon commented that they wanted to come to the workshop and be heard. They couldn't undo the fact that they hadn't been here for two years. But first Eschelon's witness stated that they have to explain what they did, and why they did it. She pointed out that the second part of the presentation which included Exhibits Five through Eight, are the report card measures, and a description of how Eschelon has calculated them, to describe how Qwest has performed over time. She pointed out that it was necessary to make sure that both sides had full knowledge of what the other side has been doing over the past two years.

b. McLeod's Position

19. McLeod offered brief introductory comments, stating that their representatives were present because, in spite of McLeod's agreement to remain neutral in the 271 proceeding, that agreement was premised on Qwest complying with all agreements that they had with McLeod, and McLeod representatives don't believe that Qwest did comply with all McLeod agreements. He further stated that McLeod's issues are pretty similar and a subset of the issues that Eschelon plans to discuss. They relate to McLeod's UNE-STAR product (called UNE-M) and the failure to bill appropriately and to actually provision the product as it is intended to be provisioned. This concluded McLeod's comments.

c. Qwest's Position

20. Qwest's witness stated at this point that rather than orally rebutting Eschelon's issues point-by-point, that it had filed pleadings with the FCC that addressed most of Eschelon's points and would rely on that. He also stated that they had been sent out by E-mail to all of the parties in this proceeding. He further stated that Qwest was planning to put together a presentation, addressing the issues that it thinks need to be addressed in addition to those which Qwest has in its federal filing. Further, he stated that they could present witnesses to talk about collocation issues as well. He suggested that we try to identify issues that we think we can work through and see if we can get resolution, although this would not require necessarily going through every issue for which both sides want to put evidence on the record. He suggested this be done the following day.

21. A discussion concerning the availability of Qwest's FCC filing ensued. In a discussion off the record it was determined that copies could be made available at the end of the session.

IV. IMPASSE ISSUES

22. Fifteen of the issues presented at the July 30-31, 2002 Workshop related to Checklist Items 1 and 2. Following are the parties' positions on each of the Checklist Item 1 and 2 Impasse issues and Staff's proposed resolutions of each.

A. UNE-P FEATURE AVAILABILITY – REMOTE ACCESS FORWARDING[2]

1. 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?

2. Alternatively, 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?

a. Eschelon's Position

24. One of the more significant long-term problems Eschelon has been having with Qwest is with regard to feature availability. According to Eschelon, Qwest has been giving it contradictory information with respect to the availability of a feature known as Remote Access Forwarding. At the Workshop Eschelon's witness stated that a Qwest representative had previously stated that a CLEC would be able to obtain this feature and so was not an issue; however Eschelon believes Qwest is refusing to provide it with this feature. She further stated that this is a switch feature which Eschelon has been requesting since 2000, but which it still has been unable to obtain. Eschelon's witness stated that its customers want this feature. Further, it affects the volume of orders which Eschelon can migrate to UNE-P. She stated that this is a significant issue for Eschelon.

25. Eschelon also discussed AIN features in general and the difficulty of determining which features are available and which are not available with UNE-P. One of the difficulties, as described by Eschelon, is the lack of a definition by Qwest as to which features are not available because they are categorized as AIN features. Eschelon's witness stated that you must plan a product before you can offer it to your customers, but if you don't have a clear defined list of what is available, it makes it difficult to determine whether to migrate customers to a product that will save them money, or to put a new customer on the product. This inability to plan a product is a major issue for them.

26. Eschelon's witness agreed that there is much more documentation of features on the web-site now than there was in the year 2000. However, the difficulty is that the listings on the web-site do not necessarily concur with statements made to Eschelon representatives by Qwest representatives. Thus, Eschelon states that although there has been significant improvement, the issue has not been completely resolved

[2] *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, 309, 313.

27. Eschelon proposes that 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.

28. Eschelon pointed out that 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.

30. The Eschelon witness raised the question as to whether or not in October of 2000, a feature of remote access forwarding through the USOC AFD, was available according to the ICONN database. She also asked whether or not if it showed up in the ICONN database it is a feature functionality and capability of that switch.

b. <u>Qwest's Position</u>

31. Qwest responded that Eschelon's position is based on three mistaken assumptions. First, Qwest's Remote Access Forwarding ("RAF") is AIN based, not switch-based. While a similar switch-based feature may be available, Qwest's current product offering is AIN-based. Second, Eschelon is mistaken when it asserts that Qwest provides switched-based RAF to its own customers. Third, in para. 491 of the UNE Remand Order, the FCC simply held that AIN service software should not be unbundled when the ILEC makes its AIN platform or database, Service Creation Environment, SMS, and STPs available for CLECs to develop their own AIN products. The FCC makes no mention of any exception to this holding for an AIN feature that is similar to a switch-based product an ILEC may have offered in the past.

32. Qwest described its UNE-P product catalogs ("PCATs") and stated that in the general information PCAT, Qwest includes a list of the features that are unavailable with UNE-P, including AIN products, voice messaging products, feature products, etc. The features are provided by USOC, and there is a language description for each one. Features available with products are also detailed, in each one of the individual PCATs, by USOC and language. Qwest's witness committed to check on the availability of the features Eschelon specifically inquired about, which included five USOCs, by convening Qwest's core team, reviewing their availability, and updating the available documentation as necessary, and funnel that through the CMP process. He stated that Qwest would distribute a notice through CMP channels, and file that as late-filed Exhibit Qwest-4.

33. Finally, CLECs have access to vertical switch features that are loaded but not activated, as detailed in SGAT section 9.11.4.3. Also, even though the FCC has held that ILECs are not required to load unloaded vertical switch features for CLECs, Qwest has voluntarily agreed to load unloaded vertical switch features for CLECs in SGAT section 9.11.4.4.

9.11.4.3 Vertical features that are loaded in a Switch, but not activated, shall be ordered using the Special Request Process set forth in Exhibit F. Qwest will provide the cost and timeframe for activation of the requested vertical feature(s) to CLEC within fifteen (15) business days of receipt of the Special Request.

9.11.4.4 Vertical features that are not loaded in a Switch shall be ordered using the Special Request Process set forth in Exhibit F. Qwest will provide information to CLEC on the feasibility of providing the vertical feature(s) within 15 business days of receipt of the Special Request.

c. Staff Discussion and Recommendation

34. At the time of the workshop, this was a critical issue for Eschelon and Staff is not aware that the issue has been resolved to-date. Qwest is currently providing Remote Access Forwarding and at least 3 other AIN features to Eschelon as part of UNE-Star or UNE-E. However, Qwest claims that because the Remote Access Forwarding it is providing is AIN based, that under FCC rules, it is not required to make proprietary AIN features available, and therefore, Eschelon cannot demand this feature when it converts its UNE-E customers to UNE-P. Qwest is willing to make the comparable switch-based features available (where they are already loaded in the switch) to Eschelon with UNE-P as long as Eschelon pays activation and testing fees.

35. In response to its take back, Qwest stated that Remote Access Forwarding as a switch-based feature is not activated on any of Qwest's switches. Remote Access Forwarding is loaded on the Nortel DMS100 switches, however, since it has never been offered as a switch based feature by Qwest it would need to be activated and tested. Qwest gave conflicting information as to whether Remote Access Forwarding is loaded on the Lucent 5ESS switches. The testimony of its witness during the workshop was that it was an inherent feature in the Lucent 5ESS switches; however, in its response to a take-back item, it stated that the feature was not loaded on any of its 5ESS switches. If this is the case, arguably Qwest would not have to make the feature available on its Lucent 5ESS switches.

36. The following additional information was provided by Qwest in Late Filed Exhibits in response to issues raised by Eschelon:

> **Features in the ICONN database:** Features listed on the ICONN database are features currently available to Qwest retail subscribers and are listed by USOC. Some of these features are Qwest AIN services that mirror a switch based feature. In the cases where Qwest is using the AIN feature, what is listed in the ICONN database is the AIN feature USOC. Switch based features that mirror AIN services can be requested via the Special Request ("SR") process.[3]

[3] Qwest's Late-Filed Exhibit A.

SRP for activation of AIN features: The Optional Features section of the PCAT (http://www.qwest.com/wholesale/pcat/unep.html) will be updated to clarify the language to clearly provide links to the ICONN database, SRP PCAT, updates the downloadable 'USOCs Not Available with UNE-P' ('Features Unavailable with UNE-P'). This update will be completed by the end of August and will follow the CMP level 1 change guidelines.[4] Additional information is available in Attachment 1, entitled USOCs Not Available with UNE-P Products.xls.

37. Qwest also indicated that the updates to the PCAT discussed by the parties in the workshop were completed on August 27, 2002.

38. Staff examined the FCC Orders relied upon by the parties to support their respective positions. The FCC found that AIN service software qualified as a proprietary network element, and therefore, should be analyzed under the "necessary" standard. The FCC's interpretation of the "necessary" standard requires a determination, after taking into consideration alternatives outside the incumbent's network, whether lack of access to that element would, as a practical, economic, and operational matter, preclude the requesting carrier from providing the services it seeks to offer. Qwest relies upon para. 419 of the UNE Remand Order to support its position that it should not have to provide AIN based RAF to Eschelon. In para. 419, the FCC stated that because it was unbundling the ILECs' AIN databases, SCE, SMS and STPs, requesting carriers that provision their own switches or purchase unbundled switching from the incumbent will be able to use these databases to create their own AIN software solutions. The CLECs therefore would not be precluded from providing service without access to it.

39. Eschelon does not dispute that Qwest is not obligated under FCC Orders to provide "proprietary" AIN features as an unbundled network element. In the instant situation issues arise as to whether the FCC intended to classify all AIN based features as proprietary or whether it intended that only select AIN features would fall under this classification if they had "proprietary" characteristics. No evidence was provided by any party on this issue; i.e., in particular by Qwest demonstrating that the features at issue here are indeed proprietary. Staff does not believe, however, that it is necessary to address this issue for purpose of deciding the instant impasse issue.

[4] Qwest's Late-Filed Exhibit A.

40. While Qwest is not obligated to make proprietary AIN features available to CLECs as unbundled network elements, nothing precludes Qwest from voluntarily agreeing to make certain of these features available to CLECs in its interconnection agreements. Once Qwest makes them available to one carrier, it must make them available to other carriers under the opt-in provisions of the 1996 Act. Staff has reviewed the amendments to Eschelon's interconnection agreement with Qwest dated July 31, 2001. While both of those amendments contain a listing of the features Qwest agreed to make available to Eschelon on a flat-rated basis with UNE-P, one of the amendments was entered into to amend the monthly recurring charges provided in connection with UNE-P and the features available on a flat-rated basis with UNE-P and the other was entered into to establish non-recurring charges for UNE-P. See Exhibits A and B attached. Both amendments, as well as the attachments, list the features available with UNE-P as including the following four AIN features at retail rates: Remote Access Forwarding, Scheduled Forwarding, Dial Lock and Do Not Disturb. Therefore, Staff finds that in looking at the plain language of these amendments and accompanying attachments, Qwest's agreements incorporate provisions which obligate them to make available to Eschelon at retail rates the four AIN features listed above.

41. Moreover, even though the plain language of the agreements is unambiguous, if Qwest could argue that it only intended to provide the features in connection with UNE-E; Staff believes that this would be discriminatory to other CLECs. There is no reason for Qwest to make AIN features available to some CLECs on a platform basis but not others. Staff believes that the discrimination provisions of the Federal Act are intended to prevent this very type of conduct by the BOC. In addition, because Qwest has committed to make voice mail available to CLECs in Minnesota with UNE-P, Staff believes that Qwest should also be required to make this feature available to CLECs in Arizona which desire this feature with UNE-P.

42. Finally, in addition to having the option of obtaining the AIN features at retail rates with UNE-P; Qwest must still make available the option of allowing CLECs to elect the switch-based features at cost based or TELRIC rates. In summary, Staff finds in favor of Eschelon on this issue.

3. 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? *See* Ex. E-D, p. 17

a. <u>Eschelon Position</u>

43. Eschelon points out that 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 accounted 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.

b. Qwest Position

44. Qwest responds that if Qwest uses AIN technology to provide services to its retail end user customers, it is under no obligation to make those AIN-based services available to CLECs purchasing UNE-P combination service. If a CLEC chooses to request that Qwest activate a switch-based service that is not currently available in Qwest's switch, there would be costs to perform such work. Such costs would be identified when a Special Request for loading or activating a switch feature or service is received from the CLEC and processed by Qwest. See Arizona SGAT at Section 9.11.4.4.

c. Staff Discussion and Recommendations

45. Once again, Eschelon raises some legitimate concerns. The process Qwest refers to is the SGAT agreed process, nonetheless the process itself does not directly address the specific concerns raised by Eschelon.

46. First Eschelon is concerned because it has no way of knowing whether Qwest's claims that a feature that has been available in the past, is actually a proprietary AIN feature as Qwest claims, such that Qwest no longer has to make it available are accurate, or whether Qwest is simply trying to get additional fees from the CLECs through activation and testing charges. Second, Eschelon is also concerned because it believes that Qwest intends to charge a small CLEC such as itself Qwest's total costs associated with activation and testing instead of spreading or apportioning its costs over more carriers. This may make the feature cost prohibitive from Eschelon's perspective.

47. Staff believes that Eschelon's concerns should be addressed through implementation of a more formal process for verification and cost justification. Qwest should be required to provide vendor feature documentation regarding whether a feature is or is not in the switch. Qwest might do this in the form of a letter from the vendor of the switch that they have not paid for the feature and that it is not installed in the switch. In addition, the vendor should know whether it has been activated and the date of activation, since in general when the carrier buys a feature, the vendor gives them a key so the carrier can start using the feature. Qwest should also be required to cost justify any activation fees and testing fees it charges and receive Commission approval of the charges subject to true-up. In particular, it should provide verification of any right to use fees. Staff also recommends that Qwest be required, at the time it receives a request for a switch-based feature that has not been activated, to utilize its CMP process to query CLECs on any features they anticipate requesting activation in the next 12 months. Depending upon the response received, Qwest should structure its charges accordingly.

5. 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?[5]

a. Eschelon's Position

48. Eschelon raised numerous issues regarding Qwest's employees not responding to its inquiries in a timely fashion, and at times giving it contradictory information as to feature availability.

b. Qwest's Position

49. Qwest could not explain the specific problems experienced by Eschelon, however, does not believe that there is a problem with its employee's training.

c. Staff Discussion and Recommendation

50. Staff agrees with Eschelon that they should have access to employees that are knowledgeable about these processes. In the OSS test CGE&Y reviewed Qwest's ability to respond to CLEC inquires, and found that Qwest provided satisfactory performance. In addition, the test reviewed Qwests web site and other means of distributing information, and found them to be satisfactory. Nonetheless, Eschelon provided evidence that Qwest was not responding to its inquiries regarding RAF in a timely manner, that Eschelon was given contradictory information about the availability of features, and the miscommunications resulted in considerable delay. In the real world, this translates to serious problems for Eschelon and other CLECs that are attempting to compete with Qwest and places these carriers at a distinct competitive disadvantage. In fact, Staff does not believe that Eschelon received firm answers to some of its questions until the July workshop. This is very disconcerting to Staff.

51. To ensure that this does not happen again in the future, Qwest should be required to certify that its employees which interface with CLECs on end-user affecting issues have attended and passed the requisite training. Qwest should also be required to publish the training such employees are required to complete both on its website and its Code of Conduct. In addition, Qwest should implement a streamlined complaint process for CLECs experiencing difficulties in this regard. Staff also recommends that the Commission require Qwest to send out relationship management surveys to CLECs annually, as part of its CMP process, to determine whether Qwest is meeting its obligations in this regard, and is not acting in an anti-competitive manner with regard to any CLECs. Qwest should be required to publish the results of its survey on a state by state basis, where applicable.

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

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

a. Eschelon Position

52. Eschelon notes that Qwest has 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.

c. Staff Discussion and Recommendation

53. Staff understands MEL is provided by Qwest through AIN. However, it is equivalent to remote call forwarding which is also a switch based feature. This feature would not be provided by UNE-P as it does not require a switch port. This feature could be provided as an unbundled switch UNE that does not require a port. Staff believes that this issue has been resolved through its recommendations in Impasse Issues 1(a) and (b) above.

B. UNANNOUNCED DISPATCHES:[6]

1. 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?

a. Eschelon's Position

54. Eschelon stated that Qwest has apparently commenced a project to increase copper availability. Unfortunately, Qwest has failed to coordinate adequately with CLECs to avoid service disruptions. Eschelon first learned of this situation in the context of its migration of existing customer lines to UNE-P, but the problem also occurs with conversions of new customers to CLECs using UNE-P and resale. For orders that do not otherwise generally require a dispatch (such as conversions and reuse of facilities), Qwest nonetheless dispatches a technician to change cable and pair. If Qwest apprised Eschelon of its plan to do so, Eschelon could coordinate with Qwest and set end-user customer expectations. Qwest has not done that. At a minimum, this causes customer confusion, because Eschelon has told the customer that no technician would be needed. Instead of the expected seamless conversion, a Qwest technician appears and tells Eschelon's customer that the technician is going to take down the customer's service. This is disconcerting enough for the customer but if something goes wrong, the disruption may also be prolonged. In addition, depending on the work performed by Qwest, customer premise equipment could be affected. Thus, notification and coordination are needed to address these issues.

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[6] *See* Ex. E-9, pp. 7-8; E-D, pp. 30-38.

55. Eschelon gave an example where on July 2, 2002, a Colorado customer was supposed to convert to Eschelon. The order required no dispatch. But, a Qwest technician nonetheless arrived and changed a cable and pair. The Qwest technician failed to complete the cross connect at the demarcation. The end-user customer, an insurance company, suddenly found that it could make no calls on a business day shortly before a holiday weekend.

56. Eschelon stated that when Qwest begins a project such as the project to increase copper availability, Qwest should provide adequate notice to CLECs and coordinate with them to avoid service disruptions. Also Qwest should not be able to impose extra work and costs on CLECs to complete and correct work that Qwest is performing on its own.

57. At the Workshop, Eschelon reiterated that Eschelon is concerned because it is not aware that the technician shows up unannounced, since it is not informed ahead of time. Eschelon stated that Qwest needs to fully communicate when a dispatch will actually be invoked. Eschelon's witness discussed issues of Qwest technicians coming to the CLEC end-user's premises, when the dispatch is not ordered by the CLEC. Eschelon is concerned that its customer expected either no work to be done at all, or that they did not expect to have a Qwest technician show up branded as a Qwest technician. They are further concerned that the Qwest technician might tell the customer that it would be necessary to take a line down, in cases where Eschelon told the customers that this was an order which would require record work only. The situation could be exacerbated if something goes wrong in doing the work that Qwest is doing, which could lead to an unexpected outage. Eschelon concluded this issue by stating that Eschelon needs to know each time Qwest's technicians are coming to Eschelon's customer sites.

58. Eschelon believes that such protections should be added to the SGAT.

59. 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.

b. <u>Qwest's Position</u>

60. During an 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 that week.

61. Qwest also clarified two issues that were previously discussed. The first was that of unnecessary dispatches. Qwest's witness stated that there was a process change implemented on July 23, 2002 in which all orders that are for UNE-P do not have an unnecessary dispatch. Prior to this implementation there were five instances documented, two of which were in Arizona. Qwest stated that it conducted a root cause analysis to make sure that they understood the problem. They then made some process changes to ensure that the problem was resolved. Qwest stated that they're making sure that the order is provisioned correctly, flowing through the systems properly, and that they are monitoring it to ensure effective implementation. Qwest further stated that they believe they have fixed the problem, since they have monitored 25 orders since its July 23 implementation, and everything seems to be flowing through the system correctly with no technicians being dispatched. A discussion ensued concerning the orders which were identified to have errors, how and when Qwest identified them and corrective action taken.

62. Qwest's witness stated that they processed 724 LSR's in Arizona from May through July 18, and that only two of those were involved with unnecessary dispatch. Eschelon stated that it appreciated that Qwest is making process changes to address dispatches that occurred as a result of service order errors. However, Eschelon's witness stated that the issue being discussed in ongoing network maintenance for which Qwest's root cause analysis said that the dispatch was not a result of a service order. Further investigation by Eschelon showed that the dispatch was a result of this ongoing maintenance.

c. Staff Discussion and Recommendation

63. A published, documented process upon which CLECs may rely is needed.
Staff believes that Qwest's response resolves this impasse issue. Qwest did provide a matrix describing the process and distributed it to the CLECs. The matrix was added to the Qwest Wholesale Web Site under the general heading of Qwest Wholesale CLEC Ad Hoc Meetings on October 7, 2002. URL: http://www.qwest.com/wholesale/training/tradeShow.html. Notification was also sent to the CLECs on October 7, 2002. With this action on Qwest's part, Staff recommends that this impasse issue be closed.

C. DSL - DISCONNECT IN ERROR[7]

1. Should Qwest have a written obligation to escalate a disconnect in error for DSL to be due the same day?[8]

a. Eschelon's Position

[7] See E-9, pp. 10-11; E-D, pp. 37-38.
[8] See AZ 271 Tr., Vol. II, p. 458, lines 11 –20.

64. When Eschelon converts a customer from Qwest to Eschelon, Qwest at times disconnects 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. Therefore, the CLEC's end-user customers must wait days for their DSL service to be restored, when it never should have been disrupted. For some business customers that rely heavily on DSL service, a disruption in DSL service can be as important or more important than a disruption in voice service. If Qwest disconnects the DSL service of one of its retail customers in error, Qwest retail is unlikely to tell the customer that Qwest's policy is to make the customer wait for days to restore the customer's DSL service.

65. 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 has been doing.

66. Eschelon questioned whether or not a retail customer of Eschelon's would have to wait five days, to which Qwest responded no, that the policy is that we put in the order, escalate it and get it done as fast as we can. After some discussion about the interval, Eschelon's witness stated that her concern was that if somebody else caused the error and it shouldn't have happened at all, Eschelon believes it should not have to wait the entire interval whether it's 10 days of 5 days, in order to get it corrected.

b. <u>Qwest's Position</u>

67. Qwest next addressed issues concerning provisioning of DSL, and fixes they have implemented for those issues. Qwest's witness stated that she planned to discuss three Eschelon issues; 1) disconnect in error, 2) escalation process when there are problems, and 3) issues focused only on the Central Region.

68. According to Qwest, Qwest's records show that they had five cases of DSL disconnect in error. She stated that Qwest has looked at root causes and identified the problem. They implemented process modifications on July 11, 2002. She added that Qwest has looked at 133 orders since then and that they all flowed-through correctly without any disconnect in error problems. Therefore, she stated that if there is still an open issue, Qwest is not aware of it. To this Eschelon responded that the issue is the question as to Qwest's policy, and where that policy is documented. Qwest responded that this was discussed with all CLEC customers in detail during the July 17, 2002 CMP meeting. She further stated that project management had recently reduced the intervals for this product line. She stated that it was reduced from 10 days to 5 days.

69. Qwest stated that if the CLEC has unique situations, it should use the escalation process. Qwest stated that changes made on July 16, 2002 were communicated by voicemail to the escalation center, stating that training should begin immediately on DSL issues. She stated that the interval for DSL restoration is five days. However, if the customer needs it that day, Qwest tries to escalate it and provide it that day, which should resolve issue No. 2.

70. Eschelon's witness stated that they believe that Qwest's policy is that Eschelon has to wait the entire first installation interval (five days) and believes that is a bad policy. Eschelon stated that in its experience, there had been occasions on which DSL has been going down in error, as a result of Qwest's inaccurate customer service, showing DSL on a different line than the one it was on.

71. In the workshop on July 30^{th} and 31^{st}, 2002, Qwest referenced a specific instance with Eschelon ordering DSL. In this specific instance discussed at the workshop, Qwest resolved the situation where Eschelon had intended to issue an order for DSL but had failed to put DSL on the order. In this instance, Qwest escalated the issue and added DSL to the existing order with the standard interval due date. Qwest provisioned the DSL service on the original due date. In situations involving disconnects in error, Qwest typically restores service in less than 24 hours. In fact, in 21 of these types of disconnect in error situations for Eschelon during the months of June and July, 2002, Qwest restored service in one hour and 20 minutes on average. Therefore, Qwest sees no need to impose repair intervals on Qwest as Eschelon suggests.

c. Staff Discussion and Recommendation

72. While the results cited by Qwest show improvement, Staff disagrees with Qwest that there is no need to impose a shorter restore interval for this problem. If Qwest disconnects a DSL service in error, this is equivalent to a trouble condition. The DSL repair out of service commitment interval, therefore, should be used to restore service. This commitment should be documented in Qwest repair process procedures (Qwest Product Catalog (PCAT)-Maintenance and Repair Overview and Standard Interval Guide).

D. DSL – DISCONNECT DSL EARLY (BEFORE VOICE)[9]

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

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

a. Eschelon's Position

[9] See E-9, p. 11; E-D, pp. 38-39.

73. When Eschelon converts a customer from Qwest to Eschelon, Qwest at times disconnects the customer's DSL early. For example, Eschelon submits an order for UNE-P with DSL and indicates the due date. Qwest then disconnects the DSL before the due date. The customer still has voice service but loses DSL service. As indicated, some business customers rely heavily on DSL service, and a disruption in DSL service can be as important or more important than a disruption in voice service. This situation not only causes the end-user customer to lose its DSL service and become frustrated, but also causes additional work for both carriers. It also causes customer confusion because the customer believes that it has changed to a new provider. In fact, the customer is still a customer of Qwest's because the DSL was disconnected before the due date for the conversion to the CLEC. This leads to a frustrating and unsatisfactory experience for the customer, which may blame the CLEC even though Qwest disconnected the DSL early. Eschelon previously encountered a similar problem at Qwest when Qwest would take down the customer's voice mail early (before the due date for the voice service). Although the voice mail problem has since been resolved, the DSL problem appears similar and causes similar headaches.

74. Since the July workshop, Eschelon advises that they have experienced this situation again. Qwest disconnected the DSL at 5:30 am even though the cut was not scheduled until 11:30 am. 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.

b. Qwest's Position

75. Due to current process and system constraints, when a disconnect is issued on a customer's service, the Qwest DSL service disconnect is worked in a time certain window. This constraint applies to both retail and wholesale regardless of whether the disconnect is to completely discontinue service, as part of a customer move, or a conversion to another provider.

76. Qwest is currently investigating alternative solutions that would allow the DSL service to remain functional until the time the voice service is disconnected. Once these solutions have been thoroughly analyzed, Qwest will communicate proposed changes to the CLECs via the Change Management Process (CMP) in November.

c. Staff Discussion and Recommendation

77. Staff agrees with Eschelon on this issue. Qwest should develop a process such that DSL service is not disconnected early. Since Qwest advises they will make a proposal in the November CMP meeting, Qwest appears to agree. Qwest should advise the Commission when this proposed process to prevent early disconnect of DSL has been implemented.

78. Qwest recently provided an update on the CMP November meeting. It reported that an internal DSL system change was implemented on December 17, 2002. The change adjusted the internal system to recognize and adjust normal processing when Frame Due Time is present on the CLEC order. The CR (PC022802-1) was closed in the January 15th CMP meeting with the concurrence of Eschelon. With this update, Staff considers this impasse issue to be closed.

E. MAINTENANCE AND REPAIR – DISCRIMINATION[10]

1. 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)?

a. Eschelon Position

79. Eschelon points out that 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. When Qwest provides repair services to its CLEC wholesale customers, however, Qwest does not do so. Despite Eschelon's requests that Qwest provide this information to CLECs,[11] Qwest does not provide needed information until the monthly wholesale invoices arrive at a much later point in time. This places CLECs at a disadvantage. CLECs cannot dispute a charge at the time the work is completed, when all of those involved are most likely to know the facts necessary to determine the accuracy of the charge. CLECs must wait until the bill is received, and then it is a huge task to analyze after the fact what happened in each situation and whether a charge should have been applied. Eschelon should be able to record charges.

80. In summary, Eschelon claims that it cannot obtain an invoice of applicable repair charges at the time repair work is completed, but rather must wait until Qwest sends the monthly Wholesale invoices. Eschelon asserts this places them at a disadvantage in that it is not able to dispute such charges in a real time basis.

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[10] See E-9, pp. 12-13; E-D, pp. 40-42.

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

b. Qwest's Position

81. In response to Eschelon's issue that Qwest should 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), Qwest responded that it does provide CLECs with a dispute process for repair charges. The opportunity to dispute repair charges is dependent on the type of service (either designed or non-designed). In either event, the dispute processes for repair charges are provided in substantially the same manner as those utilized by Qwest retail personnel. For non-designed trouble tickets (including non-designed resale and UNE-P POTS), the technician that resolves the trouble closes the ticket as discussed above. By using the CEMR electronic interface, however, CLECs may access a view of the same non-designed service repair charge information that is available to Qwest retail personnel. CEMR provides indication of the Trouble Isolation Charge for a specified trouble ticket. Should CEMR review identify the need, CLECs may dispute the charge after it is billed with their billing representative.

82. For designed services, which are generally more complex, there are several opportunities to dispute repair charges before they appear on the CLEC bill. An MCO technician manages the closure of these trouble tickets. When Qwest is discussing the resolution of designed services trouble tickets with the CLEC, the MCO technician will advise the CLEC of the nature of the charges that will be applied. If the CLEC disputes the resolution of the ticket at that time, the ticket will not be closed. Thus, CLECs are given the opportunity to dispute the charges at the time of closure. Additionally, Qwest states that it's process is to hold a designed services trouble ticket for two weeks after closure before sending the charges to billing. This provides the CLEC with another opportunity to dispute repair. Further, in the event that repair charges were quoted by an MCO technician in a previous trouble report that is less than two weeks old, and a subsequent trouble report finds the trouble to be in the Qwest network, the CLEC has a third opportunity to dispute the initial trouble ticket charge with the MCO technician working the subsequent trouble report.

83. Therefore, Qwest stated that CLECs can dispute repair charges for designed services at ticket closure, any time up to two weeks after ticket closure, and after accepting repair charges (if a subsequent trouble finds a previously-billed trouble to have been incorrectly repaired or within the Qwest network). Finally, after the charges have been sent to billing, the CLEC can contact their Qwest billing representative to dispute any repair-related charges. Finally, in response to an Eschelon CR, Qwest is evaluating with the CLEC community through CMP whether a mechanism should be created to forward repair invoices to the CLECs for delivery to their end users.

84. Additionally Qwest is working on a Level of Effort (LOE) to determine the cost of implementing a change that would allow Qwest to send daily e-mail messages to CLECs after completion of the repair ticket, which would detail the ticket number of the repair and associated charges.

85. Finally, in response to an Eschelon CR, Qwest is evaluating with the CLEC community through CMP whether a mechanism should be created to forward repair invoices to the CLECs for delivery to their end users. This CR was discussed along with several others in the August monthly CMP meeting. At that meeting, a decision was made by Qwest and the participating CLECs, including Eschelon, to evaluate the CRs in an ad hoc meeting on August 27, 2002. A read out of the results of that meeting was provided in the September monthly CMP meeting. Qwest is working on a Level of Effort (LOE) to determine the cost of implementing a change that would allow Qwest to send daily email messages to CLECs after completion of the repair ticket, which would detail the ticket number of the repair and associated charges. Qwest plans to discuss the results of the LOE effort with the CLECs at the next scheduled CMP meeting.

c. Staff Discussion and Recommendation

86. Staff agrees with Eschelon that this is a very important issue and needs to be resolved. Since this issue is being appropriately worked on in CMP, this should provide a resolution to this impasse issue. Qwest should advise the Commission when this process is agreed upon and implemented. The PCAT in the Repair Overview should then be updated to advise CLECs of this procedure.

87. Qwest provided an update on progress in the CMP on this issue. Qwest reported that it has met with Eschelon on this CR (SCR070202-1X) to ensure that the requirements are correctly defined. This CR is in the development phase and following the CMP process.

F. MAINTENANCE AND REPAIR – UNTIMELINESS OF BILLS[12]

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

a. Eschelon's Position

88. A related issue raised by Eschelon is Maintenance and Repair – timeliness of bills. Eschelon's witness stated that charges from August and September first appeared on a November invoice, which made it very difficult for Eschelon to reconcile invoice contents. Eschelon believes Qwest has inherent problems with its billing systems if it is holding charges as long as she stated. Another witness corroborated the occurrence of delayed billing in Arizona specifying that June through September items appeared on the November bill.

89. The problem of not receiving a statement when work is completed is compounded by the problem of untimely bills for maintenance charges. Eschelon's Colorado bill for December 2001 contained charges going back to September of 2001. Eschelon's Colorado bill for January 2002 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. Bill verification becomes virtually impossible when dealing with such outdated information.

[12] See E-9, p. 14, Tr. Vol. I, p. 211 line 13 – p. 212, line 5.

b. Qwest's Position

90. Qwest advises that the policy of not billing for maintenance charges over 45 days old was implemented on 2/28/02. As a result of this implementation no tickets are processed that are over 45 days old. This process has been documented internally and Service Delivery Coordinators (SDCs) received training on this change which included the instruction not to manually issue any bills for any tickets over 45 days old. Given the fact that Qwest has attested to this policy in a public forum, no additional commitment is necessary.

91. Qwest has also 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). Nothing further on Qwest's part is needed.

c. Staff Discussion and Recommendation

92. Staff recommends that the Commission require Qwest to document its policy so that it is applied uniformly. Staff does not agree that this policy should not be documented. This policy should also be posted on the PCAT web site under Repair Overview so that CLECs are aware of this policy.

G. MAINTENANCE AND REPAIR – INSUFFICIENT INFORMATION ON BILLS[13]

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

a. Eschelon's Position

93. The next issue raised by Eschelon was Maintenance and Repair – insufficient information on the bill. The witness stated that for unbundled loops on the bills, Qwest has not included circuit identification numbers, a common way for CLECs and ILECs to find information for an individual item that would appear on a bill. Further, the bill did not include the date of the dispatch. Based on this, the Eschelon witness questioned how Qwest can claim a high bill accuracy rate. She stated that the effect on Eschelon is an inability to inquire on a timely basis about charges and the appropriateness of handling of the charges.

94. 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%. 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.

b. Qwest's Position

[13] See E-9, pp. 14-15; E-D, pp.44-45.

95. In response to Eschelon's complaint that it 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, Qwest stated that it and the CLECs are working, through the CMP, to develop a mechanized means for communicating repair charges to CLECs regardless of how the associated trouble report was submitted. Qwest stated that an agreement with all CLECs to determine functionality and priority is pending.

96. Qwest also stated that its bills do provide sufficient information so that the circuit identification numbers are not necessary for Eschelon to review its repair charges. Qwest stated that each bill is detailed at the sub-account level, as opposed to a summary level, so the CLEC can relate specific charges to a specific end-user account. For example, Qwest stated that there is never more than one unbundled loop per sub-account, so it is clear to which loop the charges apply. Qwest also stated that it implemented process modifications in March 2002, to allow the CLEC to relate more easily the charges on the bill to a specific trouble report. Prior to March, 2002, the bill displayed the date the service order was written to apply the maintenance and repair charges rather than the date the M&R work was performed. Since March, 2002, the bill displays the date the M&R charge was incurred, not the date the charge was added to the bill, so the CLEC can match the charge to a specific trouble ticket and can more easily audit these charges on its bill.

97. Qwest advises that it has responded to all of Eschelon's circuit identification number requests.

c. <u>Staff Discussion and Recommendation</u>

98. Staff understands that Qwest and the CLECs are working, through the CMP, to develop a mechanized means for communicating repair charges to CLECs regardless of how the associated trouble report was submitted. An agreement with all CLECs to determine functionality and priority is pending. This process should resolve this issue. Qwest should advise the Commission when this process is completed and implemented.

99. Qwest provided an update recently on its progress on this issue its CMP. Qwest reported that Circuit ID information on unbundled loop bills for maintenance and repair charges is already in the Central and Western regions. SCR060402-04, when implemented, will provide this functionality in the Eastern region as well. This CR was to be implemented on 3/17/03.

H. MAINTENANCE AND REPAIR – PAIR GAIN[14]

1. Should Qwest be allowed to impose upon CLECs dispatch charges before it has ensured that the loop is working from its equipment to the pair gain?

2. Should Qwest be allowed to impose unnecessary maintenance and repair charges on CLECs that are due to Qwest's use of pair gain?

[14] See Ex. E-9, pp. 15-16; E-D, pp. 47-48.

a. Eschelon's Position

100. Eschelon's next issue was Maintenance and Repair – pair gain testing. The witness stated that Eschelon has objected to the additional or optional testing policy that Qwest invoked approximately six months ago. The witness stated that when there is a pair gain on the line, Eschelon cannot test it. However if trouble is on the line, when Qwest goes out it could result in a test charge, a dispatch charge and/or a no trouble found charge. She further stated that there have been instances in which Qwest refused to open a repair ticket unless Eschelon authorized the optional testing.

102. Eschelon asserts that it should not incur maintenance and repair charges when the inability to provide accurate test results is due to Qwest's use of pair gain. Eschelon also asserts that Qwest will not accept a trouble ticket for loops provisioned on pair gain, such as Digital Loop Carrier, without receiving either test results or authorization to apply "Optional Testing Charges." [15]

103. Eschelon's witness stated that they believed that a good first step would be for Qwest to change its policy and documentation. She supported this by stating that they have had many issues with training, follow-through and compliance, so they don't believe an issue is taken care of until they have used the solution for a period of time, and satisfied themselves that it works.

b. Qwest's Position

104. Qwest's witness pointed out that a change was made on Friday, July 23, 2002 that provided that when the repair call handling bureau receives reports that say anything about pair gain, they are instructed to take the ticket whether any trouble results have been indicated or not. Eschelon questioned whether or not test results still needed to be reported, to which Qwest's witness responded no, you simply need to state that there is pair gain.

105. Qwest also stated that it does not impose unnecessary maintenance and repair charges. Qwest stated that it only charges for optional testing when CLECs elect to have Qwest conduct testing and for maintenance dispatches when the technician determines that the trouble resides outside the Qwest network. Specific to the issue of pair gain, as described in the July 30-31, 2002 workshop, when the CLEC identifies up front that the facilities are pair gain, Qwest will not assess optional testing charges.

106. Qwest offered the following language from its PCAT as further clarification of its policy: The Qwest URL is as follows: www.qwest.com/wholesale/pcat/unloop.html#maint.

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[15] *See* Eschelon at 14-15.

CLECs have not performed trouble testing on the end-user's circuit. Qwest will offer the option of having Qwest conduct the testing on the CLECs behalf at a charge. If the CLEC chooses to have Qwest conduct the testing, Qwest will conduct the test and assess the results. Qwest will contact the CLEC with results stating that the trouble is in their network or in the Qwest network. If the trouble is found to be in the CLEC network and they authorize a dispatch, a charge will apply for both the optional testing and for any Maintenance of Service charges resulting from Qwest trouble resolution activity. However, if the circuit is on Pair Gain, the CLEC should advise Qwest that the circuit is on Pair Gain, and Qwest will not assess optional testing charges. If the trouble is found to be in the Qwest network, Qwest will dispatch a technician to conduct the repair work and close the ticket with the CLEC. No Maintenance of Service charges will apply for repair of the trouble on Qwest's side of the network; however, a charge will be assessed for the optional testing.

107. CLECs are also required to include at a minimum information in a trouble report including whether the circuit is on pair gain.

108. Qwest responds that it does not impose unnecessary maintenance and repair charges: Qwest only charges for optional testing when CLECs elect to have Qwest conduct testing and for maintenance dispatches when the technician determines that the trouble resides outside the Qwest network.

c. <u>Staff Discussion and Recommendation</u>

109. Staff agrees with Qwest's new process for handling of trouble testing that includes Pair Gain. Qwest should not impose unnecessary maintenance charges because a subscriber is served by Pair Gain facilities when the process is followed.

I. MAINTENANCE AND REPAIR – RECIPROCITY[16]

1. 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?

a. <u>Eschelon's Position</u>

[16] See Ex. E-9, p. 16 & E-D, p. 47.

110. Eschelon's next issue was Maintenance and Repair – reciprocity. This is the instance in which Eschelon is unable to charge Qwest when it dispatches a technician, and finds that the trouble was in Qwest's network. In this instance Eschelon is unable to reciprocally charge Qwest for its time and work done. The witness stated that Eschelon plans to bill Qwest for these charges. Further, if Qwest denies them, Eschelon will litigate because it has been trying to work out the issue and has been unable to do so. She further stated that this is the kind of issue that could be addressed in the SGAT. She pointed out that TCG has a contract that allows for reciprocity, but because of the status of the contract Eschelon is unable to opt-in. Since this (reciprocity) is something that Qwest has done for another CLEC, Eschelon states that it should be available to them. The Facilitator interjected that considerable time was spent on the issue of reciprocity in SGAT workshops.

111. Eschelon contends that 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.

b. Qwest's Position

112. In response to Eschelon's claim that Qwest should 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, Qwest responded that consistent with industry practice, its ICAs require that CLECs test to isolate trouble to the ILEC network before issuing a trouble ticket to Qwest and provide for charges to apply when the trouble is found to be outside the Qwest network. Qwest stated that CLECs use Qwest's network to serve their end-users; the reverse is not true.

c. Staff Discussion and Recommendation

113. Staff agrees with Qwest on this issue. The SGAT at 12.3.4 Trouble Isolation describes the responsibilities and applicable charges for trouble isolation and trouble clearing. This issue of reciprocal charges for repair was discussed at length in the workshops and was not identified as an Impasse issue at that time. The CLECs agreed with the language now in the SGAT. As pointed out in the SGAT, trouble isolation for a CLEC customer is a CLEC responsibility. If Qwest is dispatched on a trouble that is located in the CLEC network, Maintenance of Service Charge applies. Eschelon does not provide any new information that supports a change in this process.

J. LOSS AND COMPLETION REPORTS[17]

1. 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?

a. Eschelon's Position

[17] See Ex. E-9, p. 17; Ex. E-D, pp. 48-49.

114. Eschelon's next issue was Loss and Completion reports. This kind of report communicates information on action that was taken by Qwest on Eschelon customers. He stated that in May 2001 Eschelon did start to receive these electronically, however there were a multitude of problems with them. Eschelon's primary issue is that it is not effectively notified of the loss of a customer that has left Eschelon and moved back to Qwest or to another resale or UNE-P provider with Qwest. As a result, Eschelon would continue to bill that customer erroneously for some period of time. Eschelon continued to experience the problem as late as May 2002 and concludes that loss and completion reports continue to be inaccurate.

115. Eschelon advised that while there has been substantial improvements in the Loss and Completion Reports, the reports 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.

b. Qwest's Position

116. Qwest replied that it has a different understanding of what should constitute an internal versus external loss indication on the report. This was discussed further during the September CMP and Eschelon will be issuing a system CR to initiate the process for the change.

c. Staff Discussion and Recommendation

117. Staff agrees that a CLEC should be notified when a customer is lost. It is understood that this information is on the Loss and Completion Report, but not as clearly indicated as Eschelon would like. Additional changes to the Loss and Completion Report that Eschelon is requesting should be handled by the CMP process as Qwest has indicated.

118. Qwest recently provided an update on this issue from its CMP process. Qwest reported that Eschelon issued a system CR (SCR093002-01). In November 2002, Qwest provided the Level of Effort (LOE), and discussed the requirements with all CLECs in December 2002 to ensure that all CLECs understand how the changes will impact the report. The CR is in the definition phase now and following the CMP process.

K. POLICY OF NOT APPLYING RATES IN INTERCONNECTION AGREEMENTS[18]

1. **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?**

2. **May Qwest impose SGAT rates on a CLEC that has not opted into an SGAT?**

[18] 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.

3. **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?**

a. **Eschelon's Position**

119. Eschelon's witness next described the issue of inadequate notice of rate and profile changes. She stated that this is another process that Qwest rolled out on a unilateral basis, and that essentially Qwest does not provide adequate notice of rate and profile changes. She stated that the Qwest notification process is inadequate since it sends a complete list of 3,000 USOCs that have had changes, although Eschelon only orders one of these USOCs. Thus, they must find the individual item which effected them, rather than being provided the specific information by Qwest.

120. Eschelon's next issue was the policy for applying rates not in Eschelon's interconnection agreement. She stated that Qwest charges Eschelon SGAT rates, although Eschelon has not opted-into an SGAT. The result of this is that Eschelon pays rates to which it did not agree, and which usually are higher than they should be. She further commented that Eschelon was recently given a quote for collocation that was based on SGAT rates, even though rates for collocation are provided in Eschelon's interconnection agreement. She also listed an example of the situation in which Eschelon was trying to find out what rates it would be charged under the new additional testing policy, since Eschelon doesn't have this policy in some of its contracts in Arizona. She stated that Qwest sent an e-mail with rates in it, stating that these are the rates of Eschelon's contract which Qwest would apply. Eschelon's witness stated that they had compared the E-mail rates to its bills and found that they were not being billed for the quoted rates. She questioned why Qwest would use an SGAT rate when Eschelon hasn't opted into an SGAT. She stated that some SGAT rates are not cost based and therefore are not approved by Commissions. Thus, Eschelon is not being charged a cost based rate.

121. Eschelon raised the above issues in general as well as in a specific case related to a collocation quote.

c. **Staff Discussion and Recommendation**

122. The rates included in the SGAT should reflect the ACC approved rates resulting form the latest wholesale pricing docket in Arizona. These rates were most recently set in Docket No. T-00000A-00-0194, In the Matter of the Generic Investigation into US West Communication's, Inc.'s n/k/a Qwest Corporation's Compliance with Certain Wholesale Pricing Requirements and Resale Discounts. The Phase II Opinion and Order, Decision No. 64022, was entered on June 12, 2002. The Commission's Opinion and Order in Phase II(A), Decision No. 65451, was entered on December 12, 2002. If the CLEC Interconnection Agreement does not include rates for the work or service requested, then Qwest can and should utilize SGAT rates, as these are approved Commission rates. However, even for rates included in an interconnection agreement, many agreements provide that they shall be superceded by any Commission approved rates in a generic costing docket.

123. According to Qwest, it goes through each interconnection agreement in Phase I of its implementation of any Commission rate order and maps the new rates according to the terms of each agreement and the Commission's order. If Eschelon disputes whether Qwest is applying any charge correctly, it has the right to raise the issue with the Commission, or with Qwest.

L. COLLOCATION[19]

1. 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?

a. Eschelon's Position

124. Eschelon's witness referenced Exhibit E-18 which lists Collocation and Interconnection issues, and Exhibit E-19 which relates specifically to Collocation construction. Eschelon's witness first described dust contamination problems, stating that they had had several instances in which Qwest, in performing construction in a central office in which Eschelon's equipment is located, has not taken proper steps to protect Eschelon's equipment. Further, she stated that Qwest had actually entered Eschelon's collocation without informing them, and stated that this is a breach of security. She cited several illustrations of the dust problem, including the Orchard Central Office in Minneapolis (several illustrations). She stated that Qwest had provided a written response after Eschelon escalated the issue, stating that all methods and procedures were followed, and that Dust protection was appropriate and in place. Eschelon's witness commented that if that is the case, we need a change in methods and procedures since they are apparently inadequate. She cited additional problems in Denver, in March, 2001 and at the Scottsdale Thunderbird project in June 2002. Eschelon's witness also discussed measures that could have been taken to avoid the issue. Also, the witness provided detailed descriptions of the dust issues in Colorado and at the Orchard location in Minnesota. The witness also described an instance in which a Qwest approved contractor entered a collocation facility without securing Eschelon's authorization.

b. Qwest's Position

125. Qwest replied that it has documented and covered all of its appropriate managers on the documentation. The documentation has been distributed and is on the Qwest wholesale website. In addition, a letter was sent by Qwest's VP of Real Estate to all of its vendors stating that the vendors must follow Qwest's procedures with a "one strike rule" which will remove the non-compliant vendor from Qwest's approved vendor list There have been no further occurrences according to Qwest.

c. Staff Discussion and Recommendation

[19] See Ex. E-C; see also Exs. E-14, E-18, E-19.

126. Staff agrees that this is a very serious issue. CLEC equipment can be damaged and cause customer effecting troubles if not properly protected during construction activities. It appears from Qwest's response that they take this issue seriously and have taken appropriate steps. Therefore Staff believes this issue is resolved going forward, however, Staff requests that Eschelon notify Staff if there is a reoccurrence of this problem.

2. 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?

3. 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?

a. <u>Eschelon's Position</u>

127. In the workshop, Eschelon provided evidence that there was a reoccurring problem with protection of their central office equipment during central office building construction activity. In addition, they provided pictures of dust covering their equipment that occurred in the Scottsdale Thunderbird Office in June of 2002.

128. Eschelon commented that they believe that 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 documentation 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 in the recent Arizona situation, this issue should not be considered resolved until Qwest has a track record of actually following its procedures.

129. Eschelon requested that Qwest be required to pay the costs of clean up when these situations occur.

b. <u>Qwest Position</u>

130. Qwest advises that it has documented and covered with all of its appropriate managers on the processes for ensuring that CLEC collocation equipment is protected during construction activities. The documentation has been distributed and is on the wholesale website. In addition, a letter was sent by Qwest's VP of Real Estate to all of it's vendors stating that the vendors must follow Qwest's procedures with a "one strike rule" which will remove the non-compliant vendor from Qwest's approved vendor list. Qwest advises that there have been no further occurrences.

c. <u>Staff Discussion and Recommendation</u>

131. In response to this issue Qwest advised that it has developed written processes and procedures for protecting CLEC collocation equipment during construction. The enhancement of these processes and procedures was the subject of CMP change request PC021502-1, the response to which was approved in the CMP in April 2002. In the response to change request PC021502-1, a commitment was made to update Qwest's Technical Publication ("Tech Pub") No. 77350 which is referenced in the collocation section of the SGAT and the collocation section of the wholesale product catalog ("PCAT"). The update of Tech Pub 77350 related to approved change request PC021502-1 has been distributed through the CMP and is available to CLECs on the wholesale website. Staff believes that this response by Qwest satisfies Eschelon's request on this issue.

132. The SGAT should also be changed to include language that provides for Qwest to pay for clean up costs when Qwest construction results in dust contamination to CLEC equipment. Clean up costs includes repair or replacement of equipment that is damaged as a result of the dust contamination. This language also should be reciprocal. If a CLEC causes dust contamination, then it should pay for clean cost as well as cost of damage to Qwest equipment or other CLECs equipment. Staff requests recommends that the Commission require Qwest to update and include language in the SGAT that addresses this issue.

4. 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?

a. <u>Eschelon Position</u>

133. Eschelon requests that Qwest provide final 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.

134. Eschelon points out that Qwest provides preliminary, but not final, Alternative Point of Termination (APOT) information 15 days before the Ready for Service (RFS) date. Qwest does not provide a CLEC with ***final*** APOTs until on or after the collocation RFS date. On that date, CLEC is required to pay all remaining nonrecurring charges and begin paying recurring charges for the collocation space. Yet, the collocation space is not functional because the associated UNEs, transport services and CLEC-to-CLEC routing cannot be ordered with any certainty until after the final APOT information is made available to CLEC. While Qwest will allow CLECS to place orders based upon preliminary APOT information provided before the RFS date, this does not guarantee that CLEC can use its space on the RFS date. If Qwest determines that the final APOT is different from the preliminary APOT, CLEC is required to submit a supplement to its service order, thereby delaying delivery of UNEs, transport and CLEC-to-CLEC routing. Eschelon has asked Qwest to develop a process to provide CLECs with final APOT information at least 15 days before RFS so that CLECs can place orders in a time frame that enables them to actually use their collocation space on the RFS date (CR PC120301-2) Correcting APOT issues takes time and coordination, which, if handled in the early stages of the order, can be resolved without affecting the established RFS date generated by Qwest and expected by Eschelon customers.

135. Eschelon proposed the following addition to the SGAT at 8.4.1.2.1:

Upon receipt of CLEC's Collocation Acceptance by Qwest and CLEC's initial fifty percent (50%) payment, CLEC may begin submitting service order requests for Qwest UNEs, transport services and CLEC to CLEC routing utilizing assigned CLLI codes and APOTs as necessary. Qwest will provide the final APOTs at least fifteen (15) days before the RFS date. If Qwest provides incorrect APOT information, upon discovery Qwest shall immediately correct the erroneous information. Qwest's processing of CLEC's service orders shall not be delayed from the provisioning interval that would apply had there been no APOT error.

b. AT&T Position

136. AT&T commented that they do not oppose the change proposed by Eschelon. The language only speaks to "incorrect" APOT information and correction of "errors"; however, it appears that Eschelon intended to include any situation where a final APOT is changed. If Eschelon is intending to capture changes to APOT information (as may happen when the preliminary APOT is replaced with a final APOT), the language needs to be clarified to reflect this as well.

c. Qwest Position

137. Qwest addressed this issue in its Late-Filed Exhibits, filed August 8, and 16, 2002.

138. Qwest cannot accept the language recommended by Eschelon for the following reasons. Qwest has a 90-day timeframe for completing a collocation. By providing the CLEC with a final APOT 15 days prior to the RFS date, Qwest has in essence given the CLEC the collocation in a reduced time frame. Qwest agreed to provide the preliminary APOT information to the CLEC 15 days prior to the Ready For Service ("RFS") date so that the CLEC can begin preparing its service orders. The CLEC can submit its service orders to Qwest for processing based on the preliminary APOT information. The fact is, in some limited instances, during the installation work the need arises to change the preliminary APOT to reflect different terminations and in that case, the CLEC will need to ensure the new APOT information is reflected in any service orders the CLEC has already submitted. Service orders may be placed and turned up concurrently with the collocation RFS if the final 50 percent of the non-recurring charges has been paid. Qwest is providing the preliminary APOT information before Qwest's installation work on the collocation space has been completed as a courtesy to the CLEC so that it can get a jump on processing its service orders. However, there may be instances where the final APOT information is different based on what is encountered during the installation.

139. Again, because parties may not be familiar with the term Alternate Point of Termination (APOT), Qwest would like to elaborate. APOT information identifies specific collocation terminations at the CLEC's side of the Interconnection Distribution Frame (ICDF) or the frame where the service terminates and is used for the purpose of ordering UNEs, Finished Services, etc. The CLEC receives two APOT forms: a Preliminary APOT form 15 days prior to the RFS date and a Final APOT form. The final APOT is provided once the RFS has been met and the CLEC pays their final 50% (or balance due) of the nonrecurring charges contained in the collocation price quote.

d. **Staff Discussion and Recommendation**

140. Staff agrees with Qwest on this issue. Qwest has 90 days to complete the collocation. Giving the CLEC final APOT information in effect reduces the Qwest interval by 15 days. The 90 day interval for providing collocation space is short and substantially improved from original collocation provisioning intervals. Qwest states that it provides the preliminary APOT to the CLECs as a courtesy. Staff does not agree that requiring a final APOT 15 days early is justified at this time.

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

6. Should Qwest be permitted to charge CLECs the entire augment quote preparation fee of $345 for the minor activity of terminating unused power?

a. **Eschelon Position**

141. Eschelon points out that Qwest charges this fee when a CLEC makes an initial request for caged collocation space in Qwest premises. In almost all circumstances, Qwest also charges this fee if a CLEC makes a major material change (as Qwest defines that term) to its initial collocation request. For instance, if a CLEC requests a decrease in DC power (which, contrary to Qwest's definition, is not a major change), Qwest will charge CLEC a preparation fee to process the order. Qwest also charges the full fee to augment a completed collocation. If a CLEC orders a DS-3 circuit as an augment to its caged collocation space, Qwest charges the entire preparation fee. Augments to existing collocations and changes to initial collocation orders do not involve the same level of planning and engineering that the initial development of the collocation site requires. Qwest should not be permitted to charge the steep fee of $345 for augments and changes to collocations, as the work involved is a fraction of the work involved in developing the initial collocation site.

142. Eschelon requests that the SGAT be changed to state that Qwest will only charge a cost based fee for augments and changes to collocation orders.

b. **Qwest Position**

143. Qwest points out that the Quote Preparation Fee of $345 was agreed to in the Arizona cost docket (T-500000A-00-0194, decision #64922, dated June 12, 2002). Given the very specific nature of these questions remain the subject of ongoing discussion, Qwest suggests that they would be more appropriately addressed as part of the Arizona cost docket proceeding.

c. **Staff Discussion and Recommendation**

144. Staff agrees that the quote preparation fee should be cost based. The Quote Preparation Fee developed in the wholesale pricing docket was based upon information submitted by Qwest as to the time and effort involved in this endeavor. To the extent circumstances vary, and less time is involved, Staff believes that the price should reflect the actual cost to Qwest. Nonetheless, Staff agrees with Qwest that this issue is more appropriately addressed in the Commission's wholesale pricing docket.

7. **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?**

a. **Eschelon Position**

145. Eschelon argues that Qwest's SGAT at Section 8.4.1.2 defines "material changes" to a collocation order as those changes that would impair Qwest's ability to meet applicable intervals and would require Qwest to incur financial penalties. This subjective definition gives Qwest unlimited authority to decide what constitutes a material change.

146. Eschelon claims that some of the "changes" it requests on its collocation orders should not be considered as major changes.

b. **Qwest Position**

147. Qwest has stated that it would agree to define material change as those items listed on its web site under "Major/Minor Material Changes". That list, however, is over-inclusive. For instance, it lists a decrease in DC power as a major change to a collocation order when in fact it simply requires a fuse change.

148. The definition of "material change" should be objective so that it is clear to all parties when the definition has been met and it should be reasonable so that small changes to a collocation order do not permit Qwest to require CLECs to accept long delays.

149. Qwest points out that the one specific change Eschelon gives as an example is a decrease in the DC power cable, however, a decrease in DC power cable is more complex than Eschelon is willing to acknowledge. For these reasons, Qwest considers a revision to an order for a DC power reduction as a major change.

150. Qwest comments further that with regard to making revisions to collocation orders after submittal, the FCC's rules require that the CLEC submit a complete collocation application since the standard 90-day provisioning interval is based on the receipt date. In the 271 workshops, there was considerable discussion of "material" and "non-material" changes to orders. Qwest agreed to allow subsequent changes to the collocation order with the recognition that a material change would impair Qwest's ability to provision the requested collocation within the applicable intervals and could potentially result in Qwest incurring financial penalties. Thus, Qwest has a right to expect that the collocation application is complete and accurate when it is received. The complexity of the change requested and the timing of requested change (e.g., receiving a change to the order at the end of the installation interval for work that may have already been completed) may affect Qwest's ability to meet the provisioning interval and Qwest should not be expected to also incur financial penalties. As stated previously, the collocation application should be complete and accurate when it is received, however, Qwest is willing to accommodate changes. After much discussion, the language describing this, Section 8.4.1.2 of the SGAT, was agreed to in all states' 271 workshops.[20]

b. AT&T Position

151. AT&T commented that while Eschelon suggests that the standard for "Material Changes" should be objective, Eschelon has not proposed language changes to the SGAT. If Eschelon makes such a proposal, AT&T would like the opportunity to review and comment on it. Eschelon's comment also makes the following statement: "Qwest has stated that it would agree to define material change as those items listed on its web site under "Major/Minor Material Changes." At this point, AT&T would not agree to this Qwest proposal, because Qwest has the ability to change its website at any time. In any event, AT&T believes it would be difficult to agree on such a list, which is why the parties settled on the language in Section 8.4.1.2 during the workshops.

c. Staff Discussion and Recommendation

152. Staff agrees with AT&T on this issue. Staff believes that it would be difficult to agree on a list of major/minor changes. In the workshop on this issue, the parties agreed to the language in the SGAT. Since Eschelon has not proposed alternate language, Staff agrees that for the reasons stated by AT&T, that the SGAT should not be changed.

8. 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?

a. Eschelon Position

153. Eschelon argues that Qwest should have a process in place for timely reassignment of reclaimed collocation space when it becomes vacant or has not been in use for some months.

b. AT&T Position

[20] Qwest's Late-filed Exhibit A.

154. AT&T points out that SGAT Section 8.2.1.20.1, Space Denial Queue, describes a process whereby CLECs seeking space in a Qwest Premises, where their collocation applications have been denied, are kept in a queue in the order of their applications so that when space becomes available Qwest can promptly inform them. It is not clear from Eschelon's example whether this process was followed. It is AT&T's understanding that Qwest is developing a process in CMP called "Available Inventory" for vacated/decommissioned collocation space that is available for use by other CLECs. It is unclear whether this process would have improved Eschelon's experience. However, AT&T agrees that as space becomes available in a Qwest Premises, it should be made available to CLECs as soon as possible, especially when a queue has developed at that particular location.

c. Qwest Position

155. Eschelon assumes that just because space is vacant near their collocation space that Qwest should, if requested, make that space available to Eschelon in a "timely" manner. There are several issues that may inhibit Qwest's ability to make this unused space available including but not limited to bankruptcy or space abandonment. Each scenario requires Qwest to treat the space in a different manner. For example, space involved in bankruptcy proceedings are managed by the trustee and otherwise may be held up in the court for an undetermined period of time while a CLEC attempts to reorganize and may resume its business operations. Space abandoned by a CLEC does not just automatically revert to Qwest either. Once Qwest is aware of abandoned space, attempts to contact the CLEC are made, there may need to be an attempt to reclaim the space through a legal proceeding, the space must be reviewed for working circuits and notification made to the end users, and equipment in use within the space must be considered for disposal.

156. The processes for decommissioning collocation space and transfers of responsibility for collocation space have been addressed through a subcommittee of the CMP. Agreement has been reached on those processes and documented through the CMP. In addition, Qwest initiated a change request through the CMP for the posting of available previously provisioned collocation space that is no longer being used by a CLEC on Qwest's web site. Qwest has been working through CMP on the details of the posting of this available pre-provisioned collocation space and expects to begin posting the information in the September time frame.[21]

157. Qwest advises that they began posting the collocation available space inventory ("Collocation Classifieds") on September 6, 2002 which is available via a link from the collocation section of the PCAT. Qwest reviewed its new website posting at its September 2002 CLEC Forum.

d. Staff Discussion and Recommendation

158. This issue appears to have been addressed in the CMP process. Qwest now posts available pre-provisioned collocation space. This should address Eschelon's concerns and Staff considers this issue to now be closed.

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

a. Eschelon Position

[21] Qwest's Late-filed Exhibit A.

159. In the workshop, 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 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.

b. Qwest Position

160. Eschelon raised an issue around a quote for cageless (2-bays) at the Thunderbird central office. In its brief description of the issue, Eschelon stated that Qwest had based the estimate on SGAT rates and when compared to a past cageless collocation quote, the nonrecurring charges were dramatically higher. In researching the issue, it appears that there were some rate elements associated with the cageless collocation that were not in Eschelon's interconnection agreement. Qwest provided a quote for this cageless collocation based on the approved Arizona SGAT for those rate elements.[22]

161. Eschelon addressed a difference in two quotes for collocation, emphasizing that the more recent quote was significantly higher than the earlier quote. Qwest would like to specifically address the difference in quotes. Unlike the nearly $20,000 difference in cost Ms. Clauson and Ms. Powers spoke to during the workshop, research into the issue only shows a difference of $6,379.17 between the quotes. The original quote dated February 11, 2000 on BAN C01LC01 was $47,130.59 and the 3 bay addition dated May 16, 2002 on BAN C21LC20 was $53,509.76. As a general matter, differences are to be expected because more than 2 years elapsed between the quotes and the Arizona cost docket decision was put into the effect. Specifically, there is one difference contained in the application that needs to be noted. Eschelon requested only 300 DS-0 terminations on the first application for a total cost of $2,149.71 while on the second application Eschelon requested nearly 4 times that amount or 1,100 DS-0 terminations. This by itself accounts for a significant difference. Additionally, Qwest notes that while the non-recurring costs were increased for having these additional terminations, the monthly recurring costs were actually $40.51 less than the recurring costs for Eschelon's initial request.[23]

162. 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. 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. The specific elements not included in the ICA are (C1FYA) two bays and one 40 amp A&B power feed and (C1FYC) each additional bay.[24]

c. Staff Discussion and Recommendation

[22] Qwest's Late-filed Exhibit A.
[23] Qwest's Late-filed Exhibit A supplemental response.
[24] Qwest's Late-filed Exhibit E.

163. Staff believes that Qwest Position provides a satisfactory explanation on this issue. Rates in the companies Interconnection agreements should be utilized. If there are no rates agreed to in an ICA for certain services, then the SGAT which contains ACC approved rates, should then be utilized.

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

a. Eschelon Position

164. 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 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)).

165. 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.

166. Eschelon proposes that additional language at the end of Section 8.1.1.6 of the SGAT should be added to read:

> Adjacent Collocation includes two scenarios: (1) where CLEC wishes to obtain space for collocation facilities in a building or property not owned by Qwest nearby or across the street from Qwest's premises (the "Nearby Location"); and (2) where CLEC wishes to obtain space for collocated facilities in a cabinet on the parking lot or grounds of Qwest's premises (the "On Grounds Location"). Collocation at a Nearby Location will be available to CLEC only if On Grounds Location is not available because of space limitations.

167. At the Workshop, Eschelon's witness reiterated that Qwest refuses to provide Eschelon with adjacent off-site collocation, and Eschelon has suggested a language change for Section 8.1.1.6 of the SGAT. She further stated that Eschelon believes that adjacent off-site collocation is offered by SWBT and that the FCC has said that if one ILEC offers another type of collocation, another ILEC must also offer it unless it is not technically feasible.

b. Qwest Position

168. Qwest argues that there is no legal requirement or FCC rule that requires Qwest to provide collocation in or on property owned by a third party. The 1996 Telecommunications Act requires: ". . . physical collocation of equipment necessary for interconnection or access to unbundled network elements *at the premises of the local exchange carrier*, . . ." Premises is very clearly defined in 47 C.F.R. § 51.5, as follows:

> "Premises. Premises refers to an incumbent LEC's central offices and serving wire centers; all building or similar structures owned, leased or otherwise controlled by an incumbent LEC that house its network facilities; all structures that house incumbent LEC facilities on public right-of-ways, including but limited to vaults containing loop concentrators or similar structures; and all land owned, leased, or otherwise controlled by an incumbent LEC that is adjacent to these central offices, wire centers, building, and structures." [emphasis added]

169. Thus, there is no FCC requirement to offer a collocation product for equipment located on someone else's property, "adjacent off-site collocation." To the contrary, and as clearly stated by the FCC in its Advanced Services Order on Reconsideration regarding Adjacent Collocation: "This definition [premises] of course, *excludes* land and buildings in which the incumbent LEC has no interest. In that circumstance, the incumbent LEC and its competitors have an equal opportunity to obtain space within which to locate their equipment." Thus, the FCC agrees that Qwest does not have any obligation to provide collocation in or on premises that are not its own or under its control.

170. Qwest's legal obligations as set forth in its Interconnection Agreements, as well as its practices, establish that it meets all FCC requirements in Arizona. For example, according to the August 2, 2002 Space Denial Report available on Qwest's web site, there is only one central office where a CLEC queue exists because space has been denied for caged physical collocation. Qwest need only make adjacent available when the specific CLEC has been denied physical collocation space in a Qwest premises. Adjacent collocation is clearly defined in the FCC rules 47 C.F.R. § 51.323(k)(3), as quoted above, to be required in those cases where "physical collocation space is legitimately exhausted."

171. There is no legal requirement and no FCC requirement to make collocation available in or on premises that are not owned or controlled by Qwest and that house its network facilities. That being said, there is nothing that precludes the CLEC from leasing space in property adjacent to Qwest's property and locating its equipment there, but that process is not collocation. Simply put, "co-location" is the sharing of the incumbent LEC's premises, not some third party's.[25]

[25] Qwest's Late-filed Exhibit A.

172. Also in the July workshop, Eschelon referenced a Southwestern Bell tariff related to the issue of adjacent off-site collocation. The tariff in question is the Local Access Service Tariff in Kansas for Southwestern Bell Telephone Company. The section on Adjacent Off-site Arrangement went into effect June 14, 2000 and the change is noted on the 1st Revised Sheet 2. This language limits the deployment of Adjacent Off- site to only those offices "Where Physical Collocation space within a SWBT Eligible Structure is Legitimately Exhausted, and the Collocator's Adjacent On-site space is not within 50 ft. of the Eligible Structure's outside perimeter wall, the Collocator has the option and SWBT shall permit an Adjacent Structure Off-site Arrangement, to the extent technically feasible." While SWBT may have made a business decision to offer this product, it should not drive Qwest to the same decision especially in light of the fact that the SWBT offer goes well beyond and outside of the FCC's definition of collocation and the term "premises". A CLEC is not precluded from locating adjacent to or near to a Qwest premises, it just is not "co-location."[26] 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.

c. AT&T Position

173. AT&T advises that it takes no position on Eschelon's proposal; however, if Eschelon is able to obtain this form of collocation, it should be available to other carriers.

d. Staff Discussion and Recommendation

174. Staff believes that Qwest has met its obligations under FCC orders and rules on this issue. Staff agrees with Qwest on this issue.

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

a. Eschelon Position

175. Eschelon points out that Qwest's SGAT does not provide for interconnection at the ICDF. Eschelon asked Qwest to agree to allow it to interconnect at the ICDF when Eschelon uses ICDF collocation. Qwest has refused this request. Without this ability, Eschelon cannot interconnect LIS trunks at the ICDF.

176. Eschelon advised that 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, Eschelon agrees that this issue should then be resolved.

b. AT&T Position

[26] Qwest's Late-filed Exhibit A supplemental response.

177. AT&T agrees that CLECs should be able to access interconnection at the Qwest ICDF. While this is not reflected in the Qwest SGAT, AT&T understands that Qwest has a new "product" it calls "Facility Connected Collocation (FC Collocation)" that should permit this, as well as access to UNEs, Ancillary Services and finished services. Qwest should comment on whether this form of collocation will accommodate Eschelon's request. If so, and if Qwest seeks to add terms for this "product" to the Arizona SGAT, AT&T would like the opportunity to comment on such new terms.

c. Qwest Position

178. Qwest responded with the following: The first sentence of 8.2.5.1 should be changed to read:

> Interconnection Distribution Frame (ICDF) Collocation is available for CLECs who have not obtained Caged or Cageless Physical Collocation but who require access to the Qwest Premises for interconnection, combining unbundled network elements and ancillary services and/or terminating EAS/local traffic.

179. As an initial matter, ICDF Collocation is not a required type of collocation under the FCC's rules. ICDF Collocation is an optional product that Qwest has made available to CLECs. Qwest's ICDF Collocation is offered for the purpose of facilitating the combination of UNEs and ancillary services. In response to various requests, Qwest has initiated a change request through the CMP for the ICDF Collocation product to allow for the termination of Local Interconnection Services ("LIS"). The CR will be presented during the August CMP Product and Process meeting with the expectation of product availability by September 30, 2002. With this change, Qwest will allow the combination of finished services (i.e., LIS) with other elements at Eschelon's ICDF Collocation.[27]

180. A notice of this product change and the revised PCAT documentation was sent through the CMP July 24, 2002 and is available for ordering by CLECs.

d. Staff Discussion and Recommendation

181. Staff believes that this issue has been handled through CMP. With the change, Qwest will allow the combination of finished services (i.e., LIS) with other elements at Eschelon's ICDF Collocation.

M. INTERCONNECTION

1. Should Qwest be permitted to charge transit charges in addition to access charges on intraLATA toll calls?

a. Eschelon Position

[27] Qwest's Late-filed Exhibit A.

182. Section 7.2.2.3.1 of Qwest's SGAT defines transit traffic as local and exchange access (defined as Qwest intraLATA toll) but excludes "jointly provided switched access" which is toll provided by a carrier other than Qwest. Transit charges should apply to local traffic only. They should not apply to intraLATA toll, including Qwest's intraLATA toll. Qwest provides no rationale for charging transit rates on Qwest intraLATA toll calls.

183. The last sentence of Section 7.2.2.3.1 should be deleted and the second to last sentence should read: For purposes of the Agreement, Transit Traffic does not include traffic carried by intraLATA or interLATA toll carriers, including Qwest.

184. Section 7.3.7.2 of the SGAT states that regarding intraLATA toll transit: "The applicable Qwest Tariffed Switched Access tandem switching and tandem transmission rates apply to the originating CLEC or LEC. The assumed mileage contained in Exhibit A of this Agreement shall apply."

185. Eschelon objects to this SGAT provision because it would result in charging Eschelon switched access charges when Eschelon is not the toll carrier. Qwest itself may be the intraLATA toll carrier, yet Qwest seeks to charge local carriers access charges simply because the call transits its network. Qwest should charge the intraLATA toll provider access charges, not the CLEC.

186. Section 7.3.7.2 should be deleted.

b. <u>Qwest Position</u>

187. On this point, Qwest and Eschelon agree. When Qwest charges Eschelon for transit, Qwest does not also charge an interexchange carrier. The reverse is also true. Eschelon describes one type of call in Scenario 1 of Attachment B to its filing. Qwest describes this type of call in Section 4 of the SGAT as "meet-point-billed". "Meet-Point Billing" or "MPB" or "Jointly Provided Switched Access" refers to an arrangement whereby two LECs (including a LEC and CLEC) jointly provide Switched Access Service to an Interexchange Carrier, with each LEC (or CLEC) receiving an appropriate share of the revenues from the IXC as defined by their effective access Tariffs.

188. Eschelon says, "Qwest would not bill Eschelon . . .Qwest would bill the intraLATA toll provider tandem rate element access charges." The intraLATA toll provider in scenario 1 is WorldCom. Qwest agrees.

189. Qwest disagrees with Eschelon's characterization of scenario 2. Qwest is not an interexchange carrier in Arizona. Qwest is not currently provided Feature Group D service by Eschelon. If a division of Qwest were authorized to operate as an interexchange carrier in Arizona, Qwest the ILEC would agree that Qwest the interexchange carrier[28] would be billed as described by Eschelon. Until that day, Qwest is billing for this traffic as described in Figure 6-3 of the ATIS/OBF MECAB guideline[29]. Transit charges are not new and are sanctioned in the guideline at page 6-5. Here Qwest follows a national standard that is committed to at section 2.4.7 of the Arizona Exchange Access Tariff and similarly in the FCC No. 1 Tariff.

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28 A Telecom Act section 272 affiliate.

29 Alliance for Telecommunications Industry Solutions/ Ordering and Billing Forum Multiple Exchange Carrier Access Billing guideline, version 7. Eschelon's Scenario 1 is described at figure 6-7.

190. As Eschelon points out, these particular calls are originated by an Eschelon retail local service customer. When that customer chooses Eschelon over Qwest as a local service provider, Qwest effectively loses its ability to bill that end user for intraLATA toll service. Qwest has consistently taken the position that it may choose whether or not to serve a customer as an IntraLATA toll carrier, based on the profitability of the service in individual markets. It currently costs Qwest as much as $1.25 per billable message to render a bill to a retail local service customer of Eschelon since an outsourced service bureau must do the billing and collection functions.

191. For these reasons, Qwest informed Eschelon in writing that Qwest does not accept a "de facto" assignment of intraLATA toll carrier responsibilities from Eschelon's retail end users when those end users are transferred from a resale environment to a facility-based environment. Qwest also directed Eschelon to cease offering Qwest as an intraLATA toll carrier when Eschelon converts a new end user to CLEC switch-based services. This explains why it is Qwest's opinion that, in what Eschelon has labeled scenario 2, the carriers are now billing each other, but neither is billing the end user. Eschelon mistakenly treats Qwest like an interexchange carrier by billing as if Feature Group D service were being provided. Qwest bills Eschelon for transit. Based on data shared between the parties, approximately twenty-five Arizona end user customers are impacted by this unusual circumstance.

192. To restate and summarize, should Qwest be permitted to charge for transit of Eschelon's local customers' intraLATA toll? Yes, when Exchelon sends Qwest a call that Qwest delivers to a non FG D carrier network,[30] and the dialed number is intraLATA toll, Qwest should bill Eschelon the toll transit rate. If Exchelon sends Qwest a call that Qwest delivers to a FG D interexchange carrier network, Qwest does not bill Eschelon a transit rate. In that case, both Parties bill the Interexchange Carrier. Should Qwest be permitted to charge for transit of Eschelon's local customer's intraLATA toll in addition to assessing access charges on an interexchange carrier for jointly provided (meet-point-billed) intraLATA toll calls? No, an individual call involves either a transit charge to Eschelon or an access charge to the interexchange carrier, but not both.

193. While the parties may disagree on the billing of this particular call type, Qwest's Telecom Act section 271 reciprocal compensation obligations have been met.

c. **AT&T Position**

194. AT&T is not certain it fully understands the issue presented by Eschelon. AT&T believes the issue raised by Eschelon and its proposal need to be more fully developed and understood before changes are made to the SGAT. However, if the Staff proposes changes to this language, AT&T would like the opportunity to participate in discussions with Qwest and Eschelon and file written comments to insure that this issue is fully explained and explored.

d. **Staff Discussion and Recommendation**

195. Staff believes this issue is a cost docket issue and should be resolved there.

2. **Should Qwest be permitted to charge CLECs for incomplete or old Category 11 billing records?**

a. **Eschelon Position**

196. In Sections 7.5.4 and 7.6.3 Qwest proposes charging CLECs for Category 11 billing records. Eschelon believes that Qwest should bill at cost based rates and only charge for records that CLEC is able to use to bill customers. Other records are not useful.

197. Eschelon proposes that the word "billable" be added before the word record in these two sections. The following definition of "Billable Record" should be added to SGAT Section 4:

198. "Billable Record" means a record that: 1) only contains charges that are less than 90 days old, 2) contains accurate information in each field and 3) is filled out completely and according to OBF standards.

b. **Qwest Position**

199. Qwest responds that in Eschelon's Late-filed Exhibit E-C, Eschelon acknowledges that Qwest, under oath during the July 30 workshop provided the preferred answer to the question and agreed with the proposed language change. (See Arizona Supplemental Final Workshop Transcript Volume II, page 522). This allows that the impasse be considered settled in Arizona.

c. **AT&T Position**

200. AT&T does not object to the changes proposed by Eschelon to Sections 7.5.4 and 7.6.3.

d. **Staff Discussion and Recommendation**

201. Staff understands from Qwest response that they have agreed to the changes requested by Eschelon. This closes this impasse issue.

3. **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?**

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

a. **Eschelon Position**

202. Eschelon points out that Section 7.2.7.1 states that Qwest will charge the applicable LIS tandem switching and tandem transmission rates at the assumed mileage rates contained in Exhibit A. This section also says the assumed mileage will be modified to reflect actual mileage when mileage can be measured, based on negotiations of the parties.

203. Eschelon attempted to negotiate actual mileage rates in our interconnection agreement and Qwest has refused to do so. Eschelon believes that CLECs should have the right to pay only for the miles actually traveled and should not be required to pay for mileage based on Qwest determined assumed rates. For instance, if Qwest uses the average mileage for the entire state, CLECs whose territory does not similarly cover the entire state will be charged an incorrect rate.

204. Section 7.3.7.1 should be changed to read:

> The applicable LIS tandem switching and tandem transmission rates at the actual mileage based on V and H coordinates apply to the originating party unless the originating party chooses to use the assumed mileage contained in Exhibit A of this Agreement.

b. AT&T Position

205. AT&T does *not* agree that Section 7.3.7.1 should be changed. Transit traffic may travel by various routes. It may not be feasible to identify each such route and the actual mileage associated with each in advance of passing traffic. As a result, the current SGAT language is more workable in that it allows for traffic to be carried, without delay, based on assumed mileage. Even with this as the default, the current SGAT language, as written, should permit carriers to establish actual mileage at any time.

c. Qwest Position

206. Qwest responds that Eschelon is concerned that Qwest applies a nine-mile assumed distance for transport on tandem-switched transit calls. Eschelon asks for a charge based on actual distance rather than average distance since it says that all locations to whom an Eschelon-originated, Qwest-transited call is destined are located in downtown Phoenix. Eschelon's statement is not accurate.

207. For example, Great West Services, a wireline CLEC, operates a switch using a point-of–interface (POI) with Qwest located 14 miles from Qwest's Phoenix tandem. AT&T's wireline CLEC operation uses a POI with Qwest located 13 miles from Qwest's Phoenix tandem. Eschelon Phoenix retail customers initiate local calls to the retail customers of these carriers via Qwest-provided transit service. These distances exceed nine miles.

208. Verizon Wireless has trunk groups to Qwest's tandem in Phoenix. One POI is 11 miles from Qwest's tandem and the other is 16 miles from Qwest's tandem. These distances exceed nine miles and these spans likely carry Eschelon Phoenix retail customers' local calls via Qwest-provided transit service.

209. In addition to this clear evidence in contradiction to Eschelon's statements, actual distances are not consistently measurable due to the absence of wireless and CLEC POI's in the National Exchange Carrier Association Tariff Number 4. If all carriers' POIs were recorded there, actual distances could be measured. If not, use of average assumed distances is necessary.[31]

d. Staff Discussion and Recommendation

210. Staff concurs with AT&T and Qwest on this issue. The current SGAT language is appropriate and workable.

N. TANDEM FAILURE EVENTS

1. 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?[32]

a. Eschelon's Position

211. Eschelon also raised the issue of tandem failure events, stating that Qwest does not have a PID to measure these events. The witness pointed out that Eschelon's major network outages include tandem failures and pointed out that Qwest has had six such failures in the last three months alone, although it acknowledged that none of these were in Arizona. Eschelon's witness commented that if there were some sort of PID and PAP associated with these outages, there would be an incentive to pay more attention to their effect. The witness commented that as a small CLEC, it is heavily reliant on the tandem.

212. Eschelon's witness distributed copies of a tandem failure notification from Qwest, which showed the statement that the information is confidential and/or proprietary to Qwest, and that use of the information by recipient shall conform with non-disclosure/confidentiality terms and conditions of interconnection agreements. She stated that that is the language that Eschelon has asked to be removed, and inquired of Qwest if there was a response available. Qwest's witness stated that they would take back this issue and respond later in the day. With respect to the preceding issue of actual versus assumed mileage the Eschelon witness stated that Eschelon has suggested a language change for Section 7.3.7.1 of the SGAT. With this, the Eschelon witness stated that she had completed presenting the issues which Eschelon wished to raise with respect to Collocation and Interconnection.

[31] While Eschelon claims that, "Qwest can measure the mileage as it is currently doing for all but Type 1 wireless provider calls", this is not true. Type 1 calls require manual bill adjustment where all other calls are mechanically billed. Mechanical billing is often used to rate an average/assumed mileage element.

[32] 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.

213. Eschelon then went on to the issue of inadequate support for resolving issues. The witness pointed out that inadequate support and turnover of personnel without adequate transition of information or duties remains a problem. Eschelon stated that this was raised in September 2000 and continues to be an issue. Eschelon believes there are systemic issues with Qwest, relative to its resources and service management. Their principal concern is that when there is a transition in a position, very little is done to bring the new person up to speed, which then requires that Eschelon basically reeducate that person about Eschelon's business and what Eschelon's issues are. Although Eschelon has seen some improvement, the issue is still there. Eschelon is also concerned that the account manager roll has been changed to strictly a sales role.

a. <u>Qwest Position</u>

214. Notification of Tandem failures is treated the same way as any other network outage. In the interests of both Qwest and the CLECs, the Qwest Network Management Center (NMC) reacts as quickly as possible to any network event. The NMC is responsible for managing of Qwest's local network traffic including network outages, traffic re-routes and event correlation. Events can include outages, disaster recovery or mass calling (for example call in lines for tickets concerts or major sporting events). Notification follows the same process for both Qwest and CLECs who have subscribed to receive notifications. The documented process Qwest follows is an internal confidential document and as such cannot be distributed publicly.

215. However, the key components of the documented process that support the 30 minute notification are as follows:

216. The Network Reliability and Operations Center (NROC) focus groups are required to notify the NMC within 15 minutes of any network outage. The NROC focus groups consist of technical subject matter experts who are aligned with and monitor specific network elements, to minimize out of service conditions. When a network outage is reported to the NMC, the NMC will input an ANCR (Abnormal Condition Report) within 15 minutes of receipt of the notification from the appropriate focus group. At that time, the ANCR system creates an email of the event details and sends it to a distribution list of all parties that have subscribed to receive network outage notifications. Parties, including CLECs, can subscribe to notifications based on the types of outages and the specific geographic locations that affect its business. This represents a 30-minute notification process for everyone receiving ANCR notifications for the particular types of outages and geographical locations for which they subscribe. This 30-minute goal is reinforced with NMC managers on a monthly basis by NMC technical support and the NMC upper management team.

217. The ANCR notification includes a confidentiality footer. The confidential statement is generated by the ANCR system and cannot be removed. Even if no such system constraint existed, Qwest believes it would be inappropriate to remove the confidentiality footer. In responding to an outage, Qwest makes available the best information it has via the ANCR system. However, information gained in responding to emergency outages is very dynamic. For example, there are instances where, at first, a third party's action appears to have contributed to an outage. Pertinent information regarding the third party's actions may be contained in the ANCR and may later need to be retracted in subsequent notifications because additional facts establish that the third party was not involved. Because of these types of dynamic changes, it would be inappropriate for Qwest to provide notifications without a confidentiality footer.

218. However, to address CLECs' need for information about an outage, Qwest has an existing process for CLECs to request a root cause analysis without a confidentiality footer that pertains to a network outage and may be provided to their customers. Such a request should be made through their service or account manager as described in the Qwest PCAT at URL: http://www.qwest.com/wholesale/clecs/accountmanagers.html, sixth bullet under Service Team responsibilities.

c. Staff Discussion and Recommendation

219. Staff believes the description furnished by Qwest summarizing its processes for handling and reporting network outages is adequate.

220. The process offered by Qwest to provide outage information for CLECs to provide their customers should also satisfy Eschelon's concern. Qwest will provide information that will contain a root cause analysis of the network failure. This can be used to explain to a customer the cause of the network problems they experienced. The information is provided without a confidential footer and can therefore be shared with customers.

V. VERIFICATION OF COMPLIANCE

221. Based upon the proceedings and record herein, and Qwest's implementation of the recommendations set forth above, Staff recommends that the Commission find that Qwest is in compliance with applicable 271 checklist requirements.

VI. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Corporation Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA service originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making nay determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the BOC with the requirements of Section 271.

6. As a result of the proceedings and record herein, and subject to Qwest's agreement to implement the recommendations contained herein, Staff recommends that the Commission find that Qwest meets all applicable checklist requirements relating to the issues addressed herein.