



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

Molly O'Leary

Tel: 208-938-7900 Fax: 208-938-7904  
molly@richardsonandoleary.com  
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

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IDAHO PUBLIC  
UTILITIES COMMISSION

16 August 2007

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
P O Box 83720  
Boise ID 83720-0074

Via HAND DELIVERY

RE: Case No. QWE-T-06-17

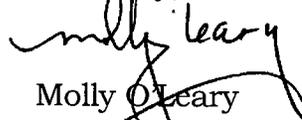
Dear Ms. Jewell:

Enclosed please find an original and eight (8) copies of the following:

**DIRECT TESTIMONY OF CLAY DEANHARDT, GREGORY W.  
NAGROSST AND ELLYCE BRENNER ON BEHALF OF AT&T  
COMMUNICATIONS OF THE MOUNTAIN STATES, INC.**

One of the above copies is to be considered the "Reporter's" Copy, and I have also enclosed an extra copy of each of the foregoing to be date-stamped and returned to us for our files. Thank you.

Sincerely,



Molly O'Leary

encl.

Molly O'Leary (ISB No. 4996)  
RICHARDSON & O'LEARY PLLC  
515 North 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, Idaho 83707  
Telephone: 208.938.7900  
Fax: 208.938.7904  
E-Mail: [molly@richardsonandoleary.com](mailto:molly@richardsonandoleary.com)

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Theodore A. Livingston  
Dennis G. Friedman  
MAYER, BROWN, ROWE & MAW LLP  
71 South Wacker Drive  
Chicago, IL 60606-4637  
Telephone: 312.782.0600  
Fax: 312.706.8630  
E-Mail: [dfriedman@mayerbrown.com](mailto:dfriedman@mayerbrown.com)

Dan Foley  
General Attorney & Assistant General Counsel  
AT&T WEST  
P. O. Box 11010; 645 E. Plumb Lane, B132  
Reno, Nevada 89520  
Telephone: 775.333.4321  
Fax: 775.333.2175  
E-Mail: [df6929@att.com](mailto:df6929@att.com)

Attorneys for Complainant AT&T Communications of the Mountain States, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,	)	
	)	
Complainant	)	CASE NO. QWE-T-06-17
vs.	)	
QWEST CORPORATION,	)	<b>DIRECT TESTIMONY OF</b>
	)	<b>CLAY DEANHARDT ON</b>
Respondent.	)	<b>BEHALF OF AT&amp;T</b>
	)	<b>COMMUNICATIONS OF THE</b>
	)	<b>MOUNTAIN STATES, INC.</b>

August 16, 2007

1 **I. INTRODUCTION**

2 **Q. Please state your name, address and employer.**

3 A. My name is Clay Deanhardt. My business address is 21-C Orinda Way, #374,  
4 Orinda, California, 94563. I am self-employed, and have been hired by AT&T  
5 Communications of the Mountain States, Inc. ("AT&T") to testify regarding my  
6 investigation into agreements that Qwest entered into with Eschelon Telecom, Inc.  
7 ("Eschelon") and McLeod USA ("McLeod") that provided for significant discounts  
8 on purchases of telecommunications products and services by those companies from  
9 Qwest.

10 **Q. What is the purpose of your testimony?**

11 A. In late 2000, Qwest entered into agreements with Eschelon and McLeod to  
12 provide them with discounts of up to 10% on every product and service purchased by  
13 those companies from Qwest between that point and the end of either 2003 (McLeod)  
14 or 2005 (Eschelon). In both cases Qwest deliberately concealed the agreements to  
15 prevent companies like AT&T from taking advantage of the same discounts. The  
16 primary purpose of my testimony is to: (a) describe these contracts and discounts, (b)  
17 explain how we came to discover that the agreements existed despite Qwest's  
18 ongoing efforts to conceal or deny them; and (c) describe the AT&T contract with  
19 Qwest that entitled it to the same discounts as Eschelon and McLeod.

20 **Q. What are your qualifications to provide this testimony?**

21 A. In 2001 and 2002, I conducted the original investigation and analysis on  
22 behalf of the Minnesota Department of Commerce (the "Department") into the

1 existence and terms of more than a dozen undisclosed, secret agreements between  
2 Qwest and several Competitive Local Exchange Companies (“CLECs”), including  
3 Eschelon and McLeod. Later the Arizona Residential Utility Consumer Office (“AZ  
4 RUCO”) hired me to assist in their investigation of the same agreements.

5 In the course of those investigations, as detailed below, I reviewed thousands  
6 of pages of documents, drafted discovery questions for Qwest and read their  
7 responses, interviewed the people who negotiated the agreements, witnessed the  
8 depositions of Qwest and McLeod witnesses regarding the agreements and reviewed  
9 the transcripts of those depositions. I testified about my investigation and my  
10 findings before an ALJ in Minnesota Public Utilities Commission (“MPUC”) Docket  
11 No. P-421/C-02-197 (the “197 Docket”), again in Docket No. P-421/CI-01-1371 (the  
12 “1371 Docket”), and before the Arizona Corporation Commission (“ACC”) in Docket  
13 No. RT-00000F-02-0271. I also sat through every day of the hearings in the 197  
14 Docket, read all of the testimony of witnesses for Qwest and the Department and  
15 attended the cross-examinations of those witnesses. Both the MPUC and the ACC  
16 agreed with my analyses and conclusions.

17 In addition, I have reviewed the main body (i.e., not the attachments) of the  
18 AT&T interconnection agreement with Qwest in Idaho.

19 **Q. Are there other aspects of your background that are relevant to your**  
20 **testimony?**

21 A. Yes. My resume is attached as Exhibit Deanhardt-1 to this testimony. I have  
22 been an attorney and a business person since graduating from law school in 1992. I

1 have extensive experience negotiating telecommunications contracts, including  
2 interconnection agreements. I have been a business executive in a start up company  
3 and served both as a member of and legal advisor to different boards of directors.  
4 Currently, I have my own solo law firm serving a variety of clients including  
5 technology companies for which I help draft and negotiate a variety of complex  
6 business agreements.

7 From January 1999 through September 2000 I was Senior Counsel for Covad  
8 Communications Company ("Covad") and responsible for Covad's legal relationship  
9 with Qwest (at the time, U S WEST). While at Covad, I led the operational and  
10 business team that determined, for the first time, how to implement DSL line sharing  
11 across telephone lines carrying Qwest voice services. As part of that work, I helped  
12 design the network architecture for line sharing over copper loops. I also helped  
13 design the processes that CLECs and ILECs use for ordering, provisioning and  
14 repairing line-shared lines.

15 After the completion of the line sharing trial ordered by the Minnesota PUC, I  
16 also led a group of CLECs in negotiating the interim line-sharing agreement and the  
17 first ever line-sharing interconnection agreement in the telecommunications industry.

18 The negotiations for both the interim line-sharing agreement and the line-  
19 sharing interconnection agreement included the negotiation of pricing for unbundled  
20 network elements (UNEs), OSS enhancements and related services that were required  
21 for line sharing. As part of my preparation for those negotiations, I prepared (and

1 helped others prepare) business case studies on the impact of line sharing on Covad's  
2 business and its ability to compete for residential broadband customers.

3 From September 2000 through July 2001, I served as COO, General Counsel  
4 and, eventually, President of Epidemic Networks, a start-up company designing  
5 communications and workflow software. In September, 2001, I created Deanhardt  
6 Consulting – a sole proprietorship – to offer consulting services for business plan  
7 reviews, telecommunications and regulatory issues. I subsequently assisted the  
8 Department in its investigation of Qwest related to Qwest's Section 271 application  
9 and Qwest's failure to file a number of interconnection agreements with the MPUC,  
10 giving testimony regarding the agreements, OSS checklist items, non-OSS checklist  
11 items and Section 271 public interest issues in the 197 Docket, the 1371 Docket and  
12 MPUC Docket Nos. P-421/CI-01-1370 and P-421/CI-01-1373. AZ RUCO  
13 subsequently asked me to assist in their investigation of interconnection agreements  
14 Qwest failed to file in Arizona, resulting in my testimony in Arizona Docket No. RT-  
15 00000F-02-0271

16 Through Deanhardt Consulting, I worked under contract to AT&T of  
17 California, prior to its merger with SBC, as a regulatory attorney responsible for cost  
18 dockets, UNE issues and interconnection arbitrations. I returned to Covad as an  
19 Assistant General Counsel in May, 2005 to integrate its litigation group with its  
20 business and regulatory units. Having accomplished that task, I left again to start my  
21 own practice in May, 2006. My current practice focuses primarily on general  
22 business and intellectual property law, including corporate formation, the drafting and

1 negotiating of business agreements and IP licenses, alternative dispute resolution and  
2 other matters on an as-needed basis.

3 **Q. What other involvement have you had with agreements between**  
4 **telecommunications companies?**

5 A. As I already noted, I was responsible for Covad's interconnection relationship  
6 with Qwest. That work required me to be intimately familiar with our agreements  
7 with Qwest, interpret them, and enforce them. I also was charged with negotiating  
8 amendments with Qwest when necessary, and with knowing when such agreements  
9 were not necessary (generally because the matter was already addressed in our  
10 interconnection agreement).

11 In addition, I participated in interconnection negotiations with Southwestern  
12 Bell Corporation ("SBC") and interconnection arbitrations with Southwestern Bell  
13 Telephone ("SWBT") (in Texas and Kansas) and Ameritech (in Illinois). I also  
14 testified in Illinois' consideration of the SBC / Ameritech merger regarding SWBT's  
15 conduct in interconnection negotiations and Covad's interconnection arbitration with  
16 SWBT in Texas.

17 While working under contract for AT&T, I also advised the company on  
18 interconnection negotiations with SBC and prepared for interconnection arbitrations  
19 with SBC in Nevada and California.

20 **Q. Can you please tell us about your investigation for the Minnesota**  
21 **Department of Commerce?**

1 A. In the summer of 2001, the Department began an investigation into whether  
2 Qwest was providing adequate wholesale service in Minnesota. In November 2001,  
3 the Department asked me to assist in that investigation.

4 Among other things, the Department asked me to investigate whether Qwest  
5 had entered into agreements with CLECs that should have been filed for approval by  
6 the Commission but were not. The Department also asked me to help it investigate  
7 Qwest's compliance with the checklist items set out in 47 U.S.C. §271(c)(2)(B).

8 At the beginning of my investigation, I reviewed more than 75 written  
9 agreements between Qwest and a variety of CLECs. These agreements had been  
10 produced by Qwest to the Department but had never been publicly disclosed or filed  
11 with the MPUC. Among those agreements was Qwest's written agreement to provide  
12 Eschelon with a 10% discount on all purchases made by Eschelon between October,  
13 2000 and December 31, 2005.

14 I followed up my review of these agreements by helping the Department draft  
15 a series of discovery requests to Qwest regarding the various agreements. I then  
16 reviewed all of the documents and written responses provided by Qwest in response  
17 to those requests. I also conducted a series of interviews with CLEC witnesses,  
18 including those involved in the negotiation of the several undisclosed Eschelon  
19 agreements.

20 Based on my initial findings, the Department filed a complaint against Qwest  
21 for failing to file 11 written agreements with the MPUC. That complaint resulted in  
22 the 197 Docket.

1           After the hearing related to the initial 11 agreements concluded, the  
2 Department learned that Qwest might have entered into an oral agreement with  
3 McLeod to provide it with a discount similar to the one Qwest provided Eschelon.  
4 On behalf of the Department, I began a new investigation into those allegations.

5           This second investigation began with interviews of McLeod officers,  
6 employees and representatives who had knowledge of and confirmed the existence of  
7 the oral agreement. I continued the investigation by drafting new requests for the  
8 Department to provide to Qwest seeking the information necessary to determine  
9 whether the oral agreement identified by the McLeod witnesses did, in fact, exist. I  
10 then reviewed all of the written responses and documents provided by Qwest to the  
11 Department in response to those requests.

12           In addition, as noted above, I reviewed all of the written testimony and  
13 exhibits<sup>1</sup> submitted by Qwest in both phases of the hearings in the 197 Docket. I also  
14 sat through all of the hearings and cross-examinations of witnesses in that docket.

15 **Q.     What materials from your original investigation did you review again**  
16 **prior to filing this testimony?**

17 A.     I reviewed my Minnesota testimony in the 197 Docket and the 1371 Docket,  
18 including all of the exhibits attached to it. Those exhibits included Qwest discovery

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<sup>1</sup> Throughout my testimony, I refer to documents that I originally collected and reviewed for the Department in 2002. These documents were all included as exhibits to testimony I submitted in one or more MPUC dockets related to these agreements. In response to AT&T data request No. 25 in this Docket, Qwest agreed that AT&T could have access to these documents and treat them as if they had been produced by Qwest in this proceeding. It also is my understanding that these documents, many of which were originally designated as trade secret, have now been designated as public.

1 responses, documents provided by Qwest and McLeod, the transcript of the  
2 deposition of McLeod officer Blake Fisher, and the affidavits signed by Mr. Fisher  
3 and McLeod employee Lori Deutmeyer. I also reviewed the transcripts of the  
4 hearings in the 197 Docket and the transcript of the deposition of Audrey McKenney,  
5 a primary negotiator of the agreements at issue. I also briefly scanned my Minnesota  
6 testimony in the other two dockets referenced above.

7 **Q. Based on your investigations, what did you conclude that is relevant to**  
8 **this proceeding?**

9 A. As discussed in more detail below, I concluded that Qwest entered into  
10 agreements to provide discounts of 10% to Eschelon and up to 10% to McLeod on all  
11 purchases made by those companies from Qwest over agreed-upon time frames,  
12 including purchases in Idaho and even purchases outside of Qwest's ILEC territory.  
13 It may be more accurate to describe these agreements as rebate agreements, since the  
14 discount was provided via rebate payments to both carriers.

15 Qwest and Eschelon entered into a written agreement for the Eschelon  
16 discount and tried to conceal it with a sham consulting arrangement. The discount  
17 agreement between Qwest and McLeod was an oral agreement because Qwest  
18 refused requests by McLeod to put it in writing. In both cases, however, there are  
19 documents demonstrating that Qwest did, in fact, make the required rebate payments  
20 to each carrier and calculated the rebate amount by applying a 10% discount to all  
21 purchases made by those carriers from Qwest.

22 **II. THE DISCOUNT AGREEMENTS**

1           **A.     THE ESCHELON AGREEMENT**

2           **Q.     Can you put the Eschelon agreement at issue here into its historical**  
3           **context?**

4           A.     Certainly. In the course of the Minnesota investigation, we found six  
5           agreements between Eschelon and Qwest that contained rates, terms or conditions  
6           that should have been made available to other CLECs. One of those agreements  
7           provided that Eschelon would receive a 10% discount on every purchase it made from  
8           Qwest so long as Eschelon met certain minimal purchase commitments from Qwest.  
9           In Minnesota, we referred to it as Eschelon Agreement IV because it was the fourth in  
10          the series of undisclosed agreements entered into between the two companies. That is  
11          the agreement at issue in this proceeding and is referred to in my testimony as the  
12          Eschelon Agreement. A copy of the Eschelon Agreement is attached as Exhibit  
13          Deanhardt -2 to my testimony.

14          **Q.     Have you read the Eschelon Agreement?**

15          A.     Yes. I read it many times during my initial investigation, again for the  
16          Arizona proceedings and again recently to refresh my recollection.

17          **Q.     Please describe the Eschelon Agreement.**

18          A.     The Eschelon Agreement is a written agreement entitled “Confidential  
19          Amendment to Confidential/Trade Secret Stipulation” and is dated November 15,  
20          2000.

21                 The agreement holds itself out as a settlement of disputes between Eschelon  
22          and Qwest regarding Eschelon’s ability to provide services to its customers using

1 UNE-P beginning in March, 2000. It is characterized as an amendment / addition to  
2 an agreement dated February 28, 2000 that was referred to in Minnesota as Eschelon  
3 Agreement I.

4 The Eschelon Agreement memorializes obligations of Eschelon and Qwest,  
5 including (a) that Eschelon purchase at least \$15 million of telecommunications  
6 services and products from Qwest between October 1, 2000 and September 30, 2001;  
7 and (b) that Qwest make a \$10 million payment to Eschelon by November 17, 2000.

8 **Q. What does the Eschelon Agreement do that is pertinent here?**

9 A. Under Paragraph 3 of the Eschelon Agreement, Qwest was required to pay  
10 Eschelon a 10% discount on all “aggregate billed charges for all purchases made by  
11 Eschelon from Qwest from November 15, 2000 through December 31, 2005” so long  
12 as Eschelon met its take-or-pay purchase commitments from an agreement attached to  
13 my testimony as Exhibit Deanhard -3. In other words, Paragraph 3 created a concrete  
14 and specific legal obligation for Qwest to provide Eschelon with a 10% discount on  
15 every purchase Eschelon made from Qwest between November 15, 2000 and  
16 December 31, 2005. That discount applied to all purchases, including access charges,  
17 interconnection rates (including UNEs) and items Eschelon purchased from Qwest’s  
18 tariffs.

19 **Q. Paragraph 3 of the Eschelon Agreement purports to tie the 10% discount**  
20 **to a consulting arrangement with Eschelon. Did that change your**  
21 **opinion regarding the intent and effect of Paragraph 3?**

1 A. Not in the slightest. My investigation determined that the consulting  
2 agreement was a sham agreement designed to help hide the 10% discount that Qwest  
3 had already agreed to provide Eschelon prior to Eschelon ever suggesting that it could  
4 provide consulting services to Qwest. I concluded, and the Minnesota ALJ, the  
5 MPUC and the ACC all agreed, that the entire “consulting” arrangement was a sham.

6 **Q. Why do you suggest that the work Qwest claims Eschelon did under the**  
7 **agreement was not the legitimate *quid pro quo* for the 10% refund?**

8 A. Several reasons. First, the fact that the consulting arrangement was intended  
9 to hide a straightforward discount is evidenced by Exhibit Deanhardt-4 to my  
10 testimony, a November 5, 2000 letter (sent by attached e-mail) from Richard Smith,  
11 President and COO of Eschelon, to Jim Gallegos, Judy Tinkham and Audrey  
12 McKenney at Qwest. According to numbered paragraph 1 in that letter, Qwest  
13 agreed on October 21, 2000 to provide Eschelon with a volume discount equal to  
14 10% of its purchases from Qwest. Mr. Smith notes that the Qwest had not put the  
15 agreement in writing, and states in Paragraph 10 that he has an idea how to enter into  
16 the agreement with a “mechanism that makes it more difficult for any party to opt  
17 into our agreements.” Qwest adopted Mr. Smith’s idea when, ten days later, it  
18 entered into the Eschelon Agreement containing Qwest’s agreement to give Eschelon  
19 a 10% refund on all of its purchases from Qwest in exchange for “consulting”  
20 services.

21 Second, the purported payment for these alleged consulting services had no  
22 rational relationship to the “consulting” services to be provided by Eschelon. Instead,

1 from Covad performing that work. No company was paid for that work, nor would  
2 they have expected to be paid.

3 Finally, there was no evidence from the time period contemporaneous with the  
4 agreement or my investigation to suggest that Qwest ever really wanted or used the  
5 “consulting services” described in Paragraph 3. Qwest never produced any documents  
6 suggesting that it was in the market for such consulting services or that it had  
7 discussed the possibility of receiving such consulting services from any entity other  
8 than Eschelon. Moreover, Exhibits Deanhardt -5 and Deanhardt -6 to my testimony  
9 show that the list of purported Eschelon “consulting” teams that Qwest provided to  
10 the Department in response to discovery requests was actually a list of teams intended  
11 to work on an entirely different issue – an implementation plan that was the subject of  
12 another Eschelon / Qwest agreement described in a letter dated November 15, 2000.  
13 (See Exhibit Deanhardt -7). In fact, the phrase “consulting teams” did not appear on  
14 the list for the first time until after the Department issued discovery requests to Qwest  
15 regarding the Eschelon Agreement on November 27, 2001.

16 **Q. What else, if anything, led you to conclude that the “consulting**  
17 **agreement” was a sham?**

18 A. In Minnesota, as discussed above, Qwest produced a list of the “consulting”  
19 teams purportedly established by Eschelon under the Eschelon Agreement.<sup>4</sup> I  
20 reviewed that list carefully, and based on my experience working with Qwest to  
21 design its line-sharing product, I can say that these teams were really focused on

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<sup>4</sup> A true copy of Qwest’s response to DOC 067 in MPUC Docket No. P421/DI-01-814 is included as part of Exhibit Deanhardt -8 to my testimony.

1 helping Qwest provide better service to Eschelon. Working with an ILEC to get your  
2 company better service was not a bad thing for Eschelon to do – quite the opposite –  
3 but it was not something a CLEC ever got paid to do.

4 After 1996, CLECs worked with Qwest every day, in face-to-face meetings, at  
5 change management meetings, and in regulatory forums to try to get Qwest systems  
6 and processes to work better. When I was at Covad, for example, we helped Qwest  
7 solve technical problems that were preventing Covad and other CLECs from being  
8 able to provision DSL under certain circumstances. Covad, not Qwest, funded the  
9 resources necessary to solve those problems.

10 CLECs did this work for free because the business of CLECs was, and is,  
11 serving end-users -- not consulting for ILECs. In fact, when I was at Covad, we were  
12 begging for the type of access and input that Qwest claims to have paid Eschelon for  
13 under this agreement, and usually we could not get Qwest to take it for free.

14 Ultimately, a telecom company lives or dies based on its ability to provide  
15 services to its customers at a price that is higher than the cost to provide that service.  
16 If you are a CLEC, helping Qwest provide you with better service so that you can  
17 provide your customers with better service is just good for your business. It is not a  
18 consulting business.

19 **Q. Did Qwest actually make any payments to Eschelon under Paragraph 3**  
20 **of the Eschelon Agreement?**

21 A. Yes. In its supplemental response to data request 67 made by the Department  
22 in Docket No. P421/DI-01-814, Qwest admitted that it refunded \$2,540,017 to

1 Eschelon for the time period between November 15, 2000 and August 31, 2001. A  
2 copy of Qwest's response is attached as Exhibit Deanhardt -8 to my testimony.

3 **Q. What did the Minnesota and Arizona commissions determine about the**  
4 **“consulting agreement” in Paragraph 3 of the Eschelon Agreement?**

5 A. In its 197 Docket, the MPUC affirmed the findings of its ALJ that Paragraph 3  
6 of the Eschelon Agreement contained a discount agreement and not a consulting  
7 services contract. Specifically, the MPUC found that the alleged “consulting”  
8 agreement with Eschelon was “a sham designed to conceal the discount that Qwest  
9 agreed to provide Eschelon.” *In the matter of the Complaint of the Minnesota*  
10 *Department of Commerce Against Qwest Corporation Regarding Unfiled*  
11 *Agreements*, ALJ Findings of Fact, Conclusions, Recommendation and  
12 Memorandum, ¶ 126 (MPUC Sept. 20, 2002) (“*Minn. ALJ 197 Order*”) (adopted by  
13 MPUC, *id.*, Order Adopting ALJ's Report and Establishing a Comment Period  
14 Regarding Remedies, 2002 Minn. PUC LEXIS 90 (MPUC Nov. 1, 2002).

15 The Arizona Corporation Commission similarly found that the Eschelon  
16 Agreement was a discount agreement, finding “[t]he evidence shows that the [Qwest]  
17 agreements with Eschelon for consulting services and with McLeod for purchases  
18 which Qwest claims were not subject to Section 252 requirements, were shams  
19 designed to hide the true nature of the agreements. *In the matter of Qwest's*  
20 *Compliance with Section 252(e) of the Telecommunications Act of 1996*, Opinion and  
21 Order (Decision No. 66949), at 38 (Apr. 30, 2004).

22 **B. THE MCLEOD AGREEMENT**

1 **Q. Please describe again how you conducted your investigation into the oral**  
2 **discount agreement between Qwest and McLeod.**

3 A. After the Department learned that there might be an oral discount agreement  
4 between McLeod and Qwest, I drafted discovery requests that the Department sent to  
5 both Qwest and McLeod. Those requests included interrogatories, document requests,  
6 and requests that Qwest admit or deny certain facts related to the Department's  
7 allegations. I then reviewed all of Qwest's responses, including every document  
8 produced by Qwest to the Department. When appropriate, I drafted follow-up  
9 requests to clarify the facts or to collect new information based on Qwest's responses.  
10 I also interviewed witnesses from McLeod regarding the alleged agreement. In  
11 addition, I was present at the depositions of Qwest's Audrey McKenney, McLeod's  
12 Lori Deutmeyer and Blake Fisher, a retired senior executive from McLeod.

13 **Q. Who did you interview?**

14 A. On May 23, 2002 I interviewed David Conn, a lawyer from McLeod. Mr.  
15 Conn gave me an overview of the relationship between McLeod and Qwest and he  
16 confirmed that Qwest had agreed orally to provide McLeod with a volume discount  
17 on all purchases made by McLeod from Qwest. Mr. Conn, however, was not directly  
18 involved in negotiating the agreements.

19 Therefore, on June 3 and 4, 2002 I interviewed Stacey Stewart, Lori  
20 Deutmeyer, and Todd McNally, all of whom worked for McLeod. Mr. Stewart was  
21 involved in negotiating the many agreements that Qwest and McLeod entered into on  
22 October 26, 2000, including the discount agreement. He confirmed that the discount

1 agreement existed. He also informed me that Blake Fisher was the lead negotiator for  
2 McLeod during the negotiations that resulted in the agreement.

3 Ms. Deutmeyer was the person at McLeod responsible for verifying that  
4 Qwest paid McLeod the full amount of the discount owed to it. She explained how  
5 the discount was calculated. At my request, she also provided the Department and me  
6 with documents reflecting those calculations.

7 I interviewed Mr. McNally because of his knowledge of issues related to  
8 aspects of the investigation I was conducting for the Department that were unrelated  
9 to the discount agreement. Mr. McNally had no information related to the discount  
10 agreement.

11 On June 6, 2002 I interviewed Blake Fisher, who had retired from McLeod in  
12 May 2002. Mr. Fisher confirmed that he was McLeod's lead negotiator with Qwest  
13 for the various agreements that the parties entered on October 26, 2000. He also  
14 confirmed that Qwest had agreed to provide McLeod with a discount based on the  
15 volume of purchases made by McLeod from Qwest.

16 **Q. How did you follow up on those interviews?**

17 A. To memorialize the witnesses' statements, I prepared draft affidavits for Ms.  
18 Deutmeyer and Mr. Fisher based on my interview notes. I provided those affidavits to  
19 McLeod's in-house counsel, and Ms. Deutmeyer and Mr. Fisher reviewed their  
20 respective affidavits for accuracy. Both made changes / edits to their affidavits and  
21 then executed them. Mr. Fisher's affidavit and its exhibits are attached as Exhibits 3  
22 and 4 to the transcript of his deposition taken on June 27, 2002. A true copy of that

1 transcript is attached to my testimony as Exhibit Deanhardt -9. A true copy of Ms.  
2 Deutmeyer's affidavit is attached as Exhibit Deanhardt -10 to my testimony.

3 **Q. What conclusions, if any, did you reach based on your investigation?**

4 A. I concluded that on or about October 26, 2000 Qwest and McLeod entered  
5 into an oral agreement whereby Qwest agreed to provide discounts to McLeod for all  
6 purchases made by McLeod from Qwest. The discount ranged from 6.5% to 10%  
7 depending on the volume of purchases made by McLeod from Qwest over the course  
8 of a year. The discount applied to all purchases McLeod made from Qwest, not just  
9 purchases of the wholesale services Qwest is required to provide under the  
10 Telecommunications Act of 1996 (the "Act"). So, for example, the discount applied  
11 both to McLeod's purchase of unbundled network elements ("UNEs") under the Act  
12 as well as to its payments for switched access, wholesale long distance and tariffed  
13 retail services (including private line transport services). The discount applied to all  
14 purchases made by McLeod both within Qwest's 14-state ILEC territory and outside  
15 of that region. The discount was available to McLeod if it met minimum purchase  
16 volume commitments to Qwest.

17 **Q. Upon what was your conclusion based?**

18 A. My conclusion is based on my review of documents provided by Qwest and  
19 McLeod; their written responses to information requests from the Department; the  
20 interviews I conducted on behalf of the Department; the depositions of Ms.  
21 McKenney, Ms. Deutmeyer and Mr. Fisher; affidavits signed by Ms. Deutmeyer and  
22 Mr. Fisher recounting the details of the discount agreement, and my participation in

1 the hearings regarding this agreement in Minnesota. My conclusion is also based on  
2 my own business experience, detailed above.

3 **Q. Has your conclusion changed based on your subsequent experience or**  
4 **your most recent review of the material you collected during your**  
5 **investigation?**

6 A. No.

7 **Q. Is there a single document that explains the discount?**

8 A. Yes. Exhibit Deanhardt -35 to my testimony, discussed in more detail below,  
9 defines the level of discount Qwest agreed to provide McLeod and the purchase  
10 requirements McLeod had to meet to get those discounts. Exhibit 3 to the Affidavit  
11 of Blake Fisher, which is included as part of Exhibit Deanhardt -9 to my testimony, is  
12 substantively identical to Exhibit Deanhardt -35 and was confirmed by Mr. Fisher as  
13 containing the terms of the oral discount agreement.

14 **Q. Please explain the context in which Qwest and McLeod entered into the**  
15 **discount agreement.**

16 A. Based on my interviews and the documents produced by Qwest and McLeod,  
17 it became clear that two things happened in 2000 to precipitate this agreement.

18 The first was that it became certain that ILECs were required to provide  
19 CLECs with access to some UNEs, including local switching, in a combined form.  
20 One combination of UNEs which included the local loop and local switching was

1 referred to as “UNE-P” or “UNE-Platform.”<sup>5</sup> Before UNE-P came along, McLeod’s  
2 relationship with U S WEST / Qwest was primarily that of a reseller. That is, McLeod  
3 purchased services from U S WEST / Qwest and resold them to McLeod’s customers.  
4 Most of the services resold by McLeod were CENTREX services. McLeod  
5 recognized, however, that it could reduce its costs (and thereby increase net revenues)  
6 by immediately converting its resold lines to UNE-P lines and later moving as much  
7 traffic as possible off of U S WEST’s network altogether.

8           The second thing to happen was that Qwest purchased and merged with U S  
9 WEST, and the newly merged Qwest made overtures to McLeod that it wanted to  
10 establish a better business relationship with McLeod and treat it more like a customer  
11 than a competitor.<sup>6</sup> So McLeod and Qwest entered into negotiations in the late  
12 summer / early fall of 2000 to create a new business relationship that would be  
13 beneficial to both. The new Qwest, according to its representatives, wanted to keep  
14 and even increase McLeod’s traffic on its network. McLeod, on the other hand,  
15 wanted to reduce costs and increase service quality.

16           The leading persons involved in these negotiations from Qwest were Greg  
17 Casey, Executive Vice President for Wholesale Markets at the time; Audrey  
18 McKenney, then Sr. Vice President of Wholesale Markets; and Arturro Ibarra, then  
19 Director of Business Development. (See Exhibit Deanhardt -9, Fisher Affidavit, ¶ 4).

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<sup>5</sup> In 2004, the FCC eliminated the obligation for ILECs to provide access to unbundled switching – and thus to UNE-P. But in 2000 the obligation was real, and ILECs and CLECs were still trying to figure out how to implement it.

<sup>6</sup> See Exhibit Deanhardt -72 to my testimony, which is a true copy of an e-mail produced by McLeod to the Department.

1           From McLeod, the lead negotiators were Blake Fisher, then the Group Vice  
2 President and Chief Planning and Development Officer; Jim Balvanz, McLeod's  
3 Vice President of Finance at the time; and Stacey Stewart, then Vice President of  
4 ILEC Relations. (See Exhibit Deanhardt -9, Fisher Affidavit, ¶ 5).

5           The negotiations resulted in six written agreements that the parties entered  
6 into on October 26, 2000. The key component of those agreements was the creation  
7 of a new product called UNE Star (or UNE-M when purchased by McLeod). The  
8 UNE Star product was a flat-rated UNE platform product that, in essence, converted  
9 McLeod resold CENTREX lines directly to UNE-P. One of the six agreements  
10 McLeod and Qwest entered into on October 26 was the Eighth Amendment to their  
11 interconnection agreement, which publicly disclosed some of the terms and  
12 conditions for the UNE Star product.

13           Two of the other written agreements were the purchase agreements between  
14 McLeod and Qwest that I discuss in more detail later in my testimony. Another of the  
15 six agreements was the document identified as McLeod Agreement II in the  
16 Department's complaint in the 197 Docket in Minnesota. The final two agreements  
17 were billing settlement agreements that moved substantial sums of money back and  
18 forth between McLeod and Qwest.

19           In addition to the six written agreements, Qwest and McLeod also entered into  
20 two oral agreements. The first was the discount agreement at issue in this proceeding  
21 and was tied to McLeod's purchase agreement with Qwest. The second was

1 McLeod's agreement not to participate in proceedings considering Qwest's Section  
2 271 applications.

3 **Q. What did Mr. Fisher explain to you about the discount agreement?**

4 A. According to Mr. Fisher, McLeod approached U S WEST before its merger  
5 with Qwest about converting McLeod's resold lines to UNE-P. At that point, the  
6 parties began negotiations to create a new product that would leave McLeod's  
7 customers on the same physical telephone lines they already had but give McLeod the  
8 benefit of better pricing across U S WEST's region. The parties, however, did not  
9 agree on acceptable pricing before the merger.

10 Mr. Fisher explained that, once the merger happened, Qwest indicated that it  
11 wanted to improve its relationship with McLeod as a customer. McLeod and the new  
12 Qwest subsequently restarted their conversations about converting McLeod's resold  
13 CENTREX lines into UNE-Platform lines and, as I described earlier reached an  
14 agreement on implementation and pricing for a UNE-P product called UNE Star.

15 According to Mr. Fisher, however, McLeod was not satisfied that the pricing  
16 was low enough for McLeod to keep its traffic on Qwest's network (as compared to  
17 installing its own switches and going off-network). Qwest and McLeod therefore  
18 negotiated an additional discount agreement whereby McLeod committed to  
19 purchasing specified volumes of Qwest products under a take-or-pay agreement, and  
20 Qwest agreed to provide McLeod with discounts if McLeod exceeded its take-or-pay  
21 commitments. A true copy of the McLeod take-or-pay agreement is attached as  
22 Exhibit Deanhardt -11.

1 I documented everything Mr. Fisher told me in his affidavit, attached as part  
2 of Exhibit Deanhardt -9.

3 **Q. What is a take-or-pay agreement?**

4 A. It is an agreement that Company A (in this case, McLeod) will purchase a  
5 specified quantity of goods and/or services from Company B (in this case, Qwest)  
6 over a specified period of time. If Company A does not meet its purchase  
7 commitment, then Company A pays Company B the difference between the  
8 commitment amount and the amount actually purchased by Company A. Thus,  
9 Company A will either “take” the goods or “pay” the difference. Take-or-pay  
10 agreements are used by sellers to secure a revenue stream / commitment. Buyers  
11 typically enter into them because they are getting something in return – generally a  
12 discount as compared to purchasing the same amount of goods and services without  
13 the commitment.

14 **Q. What were the terms of the discount agreement?**

15 A. Qwest agreed to provide McLeod with discounts of either 6.5%, 8.0% or  
16 10.0% on all purchases made by McLeod from Qwest. The amount of the discount  
17 was determined by the aggregate dollar amount of purchases made by McLeod from  
18 Qwest within a given year. The table below shows, generally, how the discount  
19 worked. All dollar amounts are in millions.

20

21

October 2000 through December 2001		2002		2003	
Aggregate Purchases	Percentage Discount	Aggregate Purchases	Percentage Discount	Aggregate Purchases	Percentage Discount
\$178 – \$188m	6.5%	\$199 - \$230m	8.0%	\$199 - \$250m	8.0%
\$189 - \$199m	8.0%				
>\$199m	10.0%	>\$230m	10.0%	> \$250m	10.0%

1

2           Mr. Fisher attested to the parameters of the discount reflected in the table  
3 above in paragraph 19 of his affidavit. These terms are also found in the document  
4 attached as Exhibit 3 to his affidavit, which is part of the document attached as  
5 Exhibit Deanhardt -9 to this testimony. As Mr. Fisher explained, the discount applied  
6 to all telecommunications products and services purchased by McLeod from Qwest  
7 inside and outside of Qwest's 14-state ILEC territory. See Exhibit Deanhardt -9,  
8 34:24 – 35:12; see also Exhibit 1 to the Deutmeyer Affidavit (Exhibit Deanhardt -10)  
9 and Exhibits Deanhardt -12 through Deanhardt -16 (discussed in more detail below).

10 **Q.     Why was the discount agreement not in writing?**

11 A.     When I interviewed him, Mr. Fisher said that he had asked Greg Casey and  
12 Audrey McKenney from Qwest to put the discount agreement in writing, but they  
13 would not do so. Mr. Fisher confirmed this under oath in his deposition (Exhibit  
14 Deanhardt -9) at page 58 line 6 through page 59 line 9.

15 **Q.     Why would Ms. McKenney and Mr. Casey not put the agreement in**  
16 **writing?**

1 A. According to Mr. Fisher, they were concerned that other CLECs might feel  
2 entitled to the same discount if the agreement were written and made public. Mr.  
3 Fisher also confirmed this in his deposition at page 59 lines 10 - 24.

4 **Q. Did Qwest propose an alternative to putting the agreement in writing?**

5 A. Yes. Mr. Fisher expressed concern over the enforceability of the oral  
6 agreement for the discount. Qwest suggested that it would enter into its own take-or-  
7 pay agreement to purchases products from McLeod. According to Mr. Fisher's  
8 affidavit, the amount of the Qwest take-or-pay commitment was calculated by  
9 applying the 8% discount factor contained in the oral agreement to a projected  
10 amount of purchases by McLeod from Qwest. A true copy of the Qwest take-or-pay  
11 agreement provided to the Department by Qwest is attached as Exhibit Deanhardt -  
12 17.

13 **Q. After October 2000, did Qwest honor the oral discount agreement?**

14 A. Yes, it did. As Ms. Deutmeyer's affidavit explains, Qwest made payments to  
15 McLeod for what Qwest called the "Preferred Vendor Plan" for October 2000  
16 through September 2001. According to Ms. Deutmeyer's affidavit, Qwest calculated  
17 the amount of the payment by applying the 10% discount factors to all purchases  
18 made by McLeod from Qwest during the relevant time period. One of the  
19 spreadsheets Qwest used to calculate the discount amount is attached as Exhibit 1 to  
20 Ms. Deutmeyer's affidavit. As Ms. Deutmeyer's affidavit indicates, Qwest created  
21 this spreadsheet. Qwest confirmed this in its 2002 response to Department data  
22 request DOC 209, which is attached as Exhibit Deanhardt -18 to my testimony.

1 I should also point out that there was another set of regular payments made by  
2 Qwest to McLeod in addition to those related to the discount agreement. These  
3 additional payments refunded to McLeod the difference between the amount it  
4 actually paid Qwest for UNE-Star and the amount it was supposed to pay under the  
5 Eighth Amendment to its interconnection agreement. These separate payments were  
6 necessary because Qwest's billing system was not able to bill McLeod the correct  
7 amount for UNE-Star. I refer to them in this testimony only because I will later  
8 distinguish the evidence of those payments from the evidence of the discount  
9 payments.

10 **Q. Does the spreadsheet attached to Ms. Deutmeyer's affidavit contain any**  
11 **other information to indicate Qwest's understanding that it was**  
12 **providing McLeod with a discount?**

13 A. Yes. The spreadsheet is in Excel format, which I am familiar with and have  
14 used on many occasions. The file name and the worksheet name are printed in the  
15 bottom right-hand corner of each printed page of the Exhibit. Here, the file name is  
16 "vendor credit Q2 (2).xls" and the worksheet page is titled "M01 10% refund." In  
17 addition, the heading on the "Resale" chart reads "M01 10% True-Up Calculation",  
18 and the first column on nearly every chart is titled either "10%" or "Sum of 10%."  
19 Many other documents I reviewed demonstrated that "M01" was Qwest's way of  
20 referring to McLeod.

21 **Q. Did you confirm that the numbers on this spreadsheet were calculated by**  
22 **applying the 10% discount to McLeod's purchases?**

1 A. Yes. Qwest confirmed this in its responses to a series of requests for  
2 admissions I drafted for the Department in 2002. Qwest was asked to confirm that the  
3 numbers associated with Minnesota were calculated by applying the 10% factor to the  
4 amount Qwest billed McLeod for the product or service indicated on the spreadsheet  
5 during the month indicated on the spreadsheet. In each case, Qwest admitted that the  
6 number was calculated in the way I just described. Qwest's responses to those  
7 requests for admissions, numbered DOC 257 – 292, are attached as Exhibit  
8 Deanhardt -19 to my testimony.

9 **Q. Are there any other documents that confirm your conclusions and the**  
10 **statements in Ms. Deutmeyer's affidavit regarding this spreadsheet?**

11 A. Yes. Attached as Exhibit Deanhardt -12 to my testimony is a true copy of a  
12 spreadsheet titled McLeodUSA Monthly Summary that Qwest produced to the  
13 Department in response to DOC 210. That request asked Qwest to produce all of  
14 Anthony Washington's files regarding McLeod. At the time, Mr. Washington worked  
15 for Ms. McKenney and was one of two persons that Ms. Deutmeyer dealt with  
16 primarily when obtaining McLeod's discount payment from Qwest. In 2002, I  
17 compared each of the figures found in the "Current Charges" column of the  
18 spreadsheet to the amounts in the "Resale" chart on Exhibit 1 to Ms. Deutmeyer's  
19 affidavit and found that the numbers in the "Resale" chart are 10% of the numbers in  
20 the "Current Charges" column for October 2000 through March 2001, rounded off to  
21 the nearest dollar.

1 **Q. Did you find any other spreadsheets similar to the one attached to Ms.**  
2 **Deutmeyer's affidavit?**

3 A. Yes. Attached as Exhibit Deanhardt -13 to my testimony is a true copy of the  
4 spreadsheet I found that calculates the discount for October 2000 through March  
5 2001. Attached as Exhibit Deanhardt -14 is a true copy of the spreadsheet calculating  
6 the discount for April 2001 through June 2001. Attached as Exhibit Deanhardt -15 is  
7 a true copy of the spreadsheet calculating the discount for July 2001 through  
8 September 2001. Attached as Exhibit Deanhardt -16 is a true copy of the spreadsheet  
9 calculating the discount for October 2001 through December 2001. Qwest produced  
10 all of these documents to the Department in response to requests either for the  
11 specific spreadsheet or for Anthony Washington's or Arturo Ibarra's files related to  
12 McLeod. Mr. Ibarra also worked for Ms. McKenney and was Mr. Washington's  
13 direct supervisor.

14 **Q. Were these files originally sent by Qwest to McLeod?**

15 A. Yes. As Ms. Deutmeyer's affidavit indicates, Qwest sent these files to  
16 McLeod as part of the process of finalizing the discount payment to McLeod. In  
17 addition, I was able to tie Exhibits Deanhardt -14 through Deanhardt -16 to  
18 transmittal e-mails produced by Qwest that show those files being delivered to  
19 McLeod.

20 **Q. Did Qwest pay the amounts indicated on these spreadsheets to McLeod?**

21 A. It did for all the discounts due through September 2001. As Ms. Deutmeyer's  
22 affidavit indicates, she would compare the amount on the spreadsheet she received

1 from Qwest to her own calculation of the discount amount owed and, if the numbers  
2 were close, she would create and send an invoice to Qwest for the amount indicated  
3 on the spreadsheets. The invoices for October 2000 through March 2001, April 2001  
4 through June 2001 and July 2001 through September 2001 are attached to her  
5 affidavit as Exhibit 2. Qwest paid each of these invoices as evidenced by the wire  
6 transfer confirmations attached as Exhibits 3 – 5 to Ms. Deutmeyer's affidavit.

7 **Q. Did you uncover records from Qwest indicating that they made these**  
8 **payments?**

9 A. Yes. Qwest admitted to making the wire transfers referred to by Ms.  
10 Deutmeyer's affidavit in its responses to Department data requests DOC 171, 173 and  
11 175, all of which are attached as Exhibit Deanhardt -20 to my testimony. In addition,  
12 Attached as Exhibit Deanhardt -21 to my testimony are three Vendor Payment  
13 Authorizations used by Qwest to authorize the payments to McLeod in response to  
14 invoices sent by McLeod to Qwest. Qwest produced these documents to the  
15 Department in its supplemental response to Department data request DOC No. 2220  
16 in MPUC Docket No. P-421/CI-01-1371. Ms. McKenney confirmed her signature on  
17 the first two documents in Exhibit Deanhardt -21 during her deposition on June 11,  
18 2002.

19 **Q. Is there anything else about these records about which the Court should**  
20 **take note?**

21 A. Yes. In the "Business Purpose" section of the authorization for the \$10.77  
22 million payment for October 2000 through March 2001 – which was signed by

1 Audrey McKenney – someone at Qwest wrote “Refund per Vendor Agreement.”

2 This was authorization serial no. 501126547.

3 **Q. What about the discount payments after September 2001?**

4 A. E-mails produced by Qwest show that Qwest provided McLeod with Exhibit  
5 Deanhardt -16 calculating the amount due for the fourth quarter of 2001 (that is,  
6 October through December 2001) in March 2002. As Ms. Deutmeyer’s affidavit  
7 explains, her calculation of the amount due for that quarter differed from Qwest’s. As  
8 a result, McLeod and Qwest exchanged several e-mails trying to reconcile the  
9 differences to come up with a final amount that was due. They were still working on  
10 that task when the Department began making inquiries about the discount agreement.  
11 Subsequently, at an April 30, 2002 meeting, Qwest put the payment of the fourth  
12 quarter discount on hold for what Mr. Ibarra referred to as “undisclosed reasons” in  
13 an e-mail attached as Exhibit 6 to Ms. Deutmeyer’s affidavit (Exhibit Deanhardt -10).

14 I was unable to ever confirm what those “undisclosed reasons” were, although  
15 there are indications in notes that Qwest provided that Stephen Davis had become  
16 involved in handling this matter for Qwest.<sup>7</sup> At the time, Mr. Davis was Qwest’s  
17 Senior Vice President of Public Policy and Law, which suggests that Qwest  
18 recognized in the beginning of 2002 that continued payment of the discount had  
19 become a regulatory concern. To my knowledge, Qwest never made another discount  
20 payment to McLeod after the Department began its investigation.

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<sup>7</sup> See pages 13 and 14 of Exhibit Deanhardt -68 to this testimony.

1 **Q. What other evidence demonstrates that Qwest agreed to provide this**  
2 **discount to McLeod?**

3 A. There are three categories of documents that further evidence the discount  
4 agreement. The first category is documents showing how the agreement was  
5 negotiated. The second is documents from Qwest's files where Qwest refers to the  
6 discount. The third category is post-agreement documents from McLeod that refer to  
7 the discount.

8 **Q. Please describe the documents from the negotiation of the agreement that**  
9 **show the existence of the discount.**

10 A. These are the negotiation documents that I found, discussed in chronological  
11 order (to the extent possible): Exhibit Deanhardt -22 to my testimony is a set of  
12 documents created by Qwest that were stapled together when produced to the  
13 Department in 2002. The dated documents in the Exhibit show that they were created  
14 in the early stages of Qwest's discussions with McLeod in July and August 2000.  
15 Most of these documents show Qwest's consideration of the financial impacts to it of  
16 McLeod staying on a resale platform as compared to McLeod converting to UNE-P.

17 The 15th page in the Exhibit, dated August 28, 2000, compares the two  
18 options from what Qwest positions as McLeod's perspective. According to the  
19 banner, the document was created by or for "Worldwide Wholesale Markets" for  
20 Qwest. It is titled "McLeod Resale/UNE-P Pricing Proposal."

21 In this document, Option 1 for McLeod, the option to "Remain on Resale  
22 Platform", shows Qwest was already considering "Pricing points reductions to

1 TOTAL RESALE Billing” of between 10% and 20%. It also notes that the reductions  
2 would only be implemented if McLeod hit revenue targets for the time periods  
3 reflected for each discount, and that “Price reductions to be flowed back to McLeod  
4 as wire-transfer or quarterly or semi-annual basis based on actual billing for prior  
5 period.”

6 The discounts finally agreed to by Qwest ended up being substantially lower,  
7 but they also ended up applying to *all* products and services, not just resale. But the  
8 significant point is that these two concepts from this very early document were  
9 incorporated into the final agreement.

10 Exhibit Deanhardt -23 to my testimony is a true copy of a letter from Mr.  
11 Fisher to Mr. Casey dated August 15, 2000. In the “Overview of Proposed Deal  
12 Structure” in this letter, Mr. Fisher included the following bullet point: “Revenue  
13 commitment for a period of 24 or 36 months with percentage discount breaks above  
14 minimums.”

15 Exhibit 2 to Mr. Fisher’s affidavit (part of Exhibit Deanhardt -9 to my  
16 testimony) is a true copy of a September 19, 2000 term sheet that, according to Mr.  
17 Fisher, the parties created together. Attached as Exhibit Deanhardt -24 to my  
18 testimony is another copy of the same document that came from Ms. McKenney’s  
19 files. Item number 6 reads: “Based on the proposed commitment by M, within 5  
20 business days, Q will propose volume and term discounts based on quarterly revenue  
21 targets, to be paid back to M by Q on a quarterly basis.”

1           Exhibit Deanhardt -25 to my testimony contains three different documents  
2 that Qwest created during the negotiations (and produced to the Department in 2002  
3 stapled together). The first is a presentation titled "McLeodUSA Discussion 9/29/00"  
4 and says that it was prepared by Freddie Pennington at Qwest. On the second page of  
5 the document, titled "Overview," there is a bullet point for the McLeod UNE  
6 Platform that contains a sub-point for "Additional Resale Revenue discount" of 12%  
7 in year 1, 14% in year and 16% in year 3. Another sub-point is "Out of Region  
8 Revenue discount TBD." The fourth page of the presentation touts "deeper discounts  
9 for long-term relationship," and the fifth page shows financial calculations that  
10 included the proposed discount.

11           The second document in Exhibit Deanhardt -25 is an e-mail from Ms.  
12 Pennington to Ms. McKenney and Mr. Ibarra attaching a second presentation. This  
13 presentation is titled "McLeodUSA Meeting Discuss New Resale Pricing Plan" and  
14 subtitled "Resale Revenue Commitment Incentive Plan." The overview on page two  
15 begins with "Incentive discount plan for Resale finished services (1FR, 1FB,  
16 Centrex)" and goes into further detail on how the discount would work. The fifth  
17 page of the presentation also touts "deeper discounts for long-term relationship,"  
18 while the sixth page contains financials that show a five-year commitment proposal  
19 with discounts to increase over every year as revenue increases for Qwest.

20           The final document in Exhibit Deanhardt -25 is another PowerPoint  
21 presentation attached to an e-mail sent to Ms. McKenney and Mr. Ibarra on  
22 September 18, 2000. This presentation contains a "Revenue Volume Term  
23 Commitment Unbundled Network Element Regional Year Plan." A handwritten note

1 on the second copy of the presentation reads “Global Volume Discount” in what  
2 Qwest has admitted is Ms. McKenney’s handwriting.<sup>8</sup>

3 Attached as Exhibit Deanhardt -27 is a true copy of an e-mail that James  
4 Balvanz at McLeod sent to Audrey McKenney on October 18, 2000 with McLeod’s  
5 proposal for the discount. The McLeod proposal was based on quarterly revenues and  
6 contained finer gradations of discounts ranging from 5% to 20%.

7 Exhibit Deanhardt -28 is a true copy of an October 20, 2000 e-mail from Mr.  
8 Ibarra at Qwest to Mr. Balvanz at McLeod attaching a file called “SummaryOfOffer  
9 10\_20\_00.xls.” The third page of the attached spreadsheet file is a worksheet titled  
10 “DiscountSmmryForM01” in the bottom right hand corner. The tables on that  
11 worksheet are labeled “McLeod Growth & Discount Scenarios” and show Qwest’s  
12 proposals for discount levels based on revenue generated by McLeod for Qwest.

13 Later that day, Mr. Ibarra sent Mr. Balvanz a second e-mail attaching a  
14 revised version of the “SummaryOfOffer 10\_20\_00.xls” file. The subject of the e-  
15 mail was “Revised Summary.” The e-mail says among other things “2. I added a  
16 not[e] on the “McLeod Growth & Discount” page to note that the discount will not  
17 exceed 10%.” A true copy of the e-mail is attached as Exhibit Deanhardt -29. The  
18 hardcopy produced to the Department in 2002 did not contain the attached file.

19 Exhibit Deanhardt -30 to my testimony is what appears to be McLeod’s  
20 counterproposal to the October 20, 2000 offer just described. Item number four says,  
21 “The discount schedule will be as previously offered by McLeodUSA except that it

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<sup>8</sup> See Qwest’s response to Department data request DOC 343, attached as Exhibit Deanhardt -26.

1 will be capped at 15%. In addition, the discount will begin 4th Quarter, 2000. It is our  
2 expectation that the discount schedule as well as certain other items will be reviewed  
3 on an annual basis.”

4 Exhibit Deanhardt -31 to my testimony is another group of documents that  
5 were stapled together when Qwest produced them to the Department. Based on the  
6 dates that appear on most of the documents, they were created between October 17  
7 and 20, 2000.

8 The first 17 pages of Exhibit Deanhardt -31 show different pricing scenarios  
9 Qwest considered for the UNE Star product. Pages 18 – 20, 22, 31, 33, 37, 39 and 40  
10 show Qwest’s consideration of different potential discount rates in various documents  
11 titled “McLeod Growth and Discount Scenarios.” Pages 26 and 29 are copies of the  
12 “McLeod Growth and Discount Scenario” worksheet that contains the “Discount will  
13 not exceed 10% in any year” language referred to in Exhibit Deanhardt -29. The  
14 following legend appears in the bottom right-hand corner of pages 26 and 29:  
15 “SmmryOfOffer 10\_20\_00 DiscountSmmryForM01.” Page 30 is another version of  
16 the same document, printed later in the day.

17 Page 38 of Exhibit Deanhardt -31 is another version of the “McLeod Growth  
18 and Discount Scenarios” document. This one, however, contains charts identified as  
19 the “gCasey Proposal.” In my review of the documents and investigation into this  
20 matter, the only person to whom that reference could apply is Greg Casey.

21 The final document in Exhibit Deanhardt -31 is titled “McLeod Growth and  
22 Discount Scenarios – Saturday, 10/21/00, 12:10 p.m. Counter Proposal.” It contains a

1 three-tiered proposal with discounts running between 8% and 10%, although the  
2 breakpoints are not the same as in the final agreement between Qwest and McLeod.

3 Exhibit Deanhardt -32 to my testimony is another e-mail from Mr. Ibarra to  
4 Mr. Balvanz. This one is dated October 21, 2000 and contains the subject line "Qwest  
5 Counterproposal." The counterproposal attached to the e-mail sets out a three-tiered  
6 range of discounts for McLeod based on the revenue it generates for Qwest.

7 Exhibit Deanhardt -33 to my testimony is yet another e-mail from Mr. Ibarra  
8 dated October 21, 2000. The subject of this one is "Counter Proposal." The e-mail  
9 header shows it was sent at 12:38 p.m. to Mr. Fisher, Mr. Balvanz and Randy Rings, a  
10 McLeod attorney. It contains a two-tiered discount proposal that differs slightly from  
11 the one attached as Exhibit Deanhardt -32.

12 Exhibit 3 to Mr. Fisher's affidavit is a true copy of an October 21, 2000 e-mail  
13 sent to him by Ms. McKenney with an attachment that laid out what became Qwest's  
14 final discount counterproposal to McLeod. It contains a three-tier discount structure  
15 tied to the amount of revenue generated by McLeod for Qwest.

16 At roughly the same time Qwest and McLeod were trading the proposals and  
17 counterproposals described above, Qwest was working internally to determine what  
18 its counterproposals should be. Attached as Exhibit Deanhardt -34 to my testimony is  
19 a group of documents showing Qwest's internal deliberations over the amount of the  
20 discount to provide McLeod. Qwest produced these documents stapled together. The  
21 first document in the exhibit is an e-mail showing that the documents following it are

1 “the business case associated with the McLeod negotiations.” The e-mail is dated  
2 October 21, 2000.

3 The business case compares the results of various revenue projections under  
4 the “New UNE-P” (UNE-Star) against projections for McLeod purchases of regulated  
5 UNE-P products. The spreadsheets for “New UNE-P” show “Vendor Plan” as a  
6 COGS or “Cost of Goods Sold” for providing the new UNE-P to McLeod. The  
7 second and third spreadsheets show the amount of the Vendor Plan COGS equals  
8 10% of the revenue for the year in which it appears, rounded to the nearest million.  
9 The Regulated UNE-P plan has no Vendor Plan COGS.

10 **Q. Are you familiar with the acronym COGS?**

11 A. Yes. I have a businessperson’s understanding of financial statements and  
12 business case analyses. In addition, when I was working to start up Epidemic  
13 Networks I created the financial plan that was part of the business plan. Based on that  
14 experience, I understand that COGS means the cost of goods sold – the costs directly  
15 associated with producing goods for sale.

16 **Q. What else did you find in Exhibit Deanhardt -34?**

17 A. The seventh page of Exhibit Deanhardt -34 is a handwritten note from Audrey  
18 McKenney to Greg Casey. It appears to be the coversheet for a fax Ms. McKenney  
19 sent to Mr. Casey who, at the time, was her direct supervisor. Ms. McKenney wrote  
20 that “Attached is the proposed internal McLeod Summary that Arturo, Dan, Freddie  
21 & I put together. – I could not go to 12% for YR 2001 or any 4 Q’00 discount. (We’d  
22 end up with negative revenues year to year).” (Emphasis in document).

1 Another note from Ms. McKenney appears on the tenth page of Exhibit  
2 Deanhardt -34. Here, she again writes to Mr. Casey, "Pls call me on McLeod. Their  
3 "take or pay" level & Discount plan were unacceptable to us. Attached is their  
4 proposal and our counter!" (Emphasis in document.)<sup>9</sup> The next document behind this  
5 note is a "Qwest Counterproposal" that proposes discounts for 2001 through 2003  
6 that range from 6.5% to 10% depending on the revenue generated by McLeod for  
7 Qwest.

8 The next three documents in Exhibit Deanhardt -34 are worksheets from a file  
9 named "mcleodunedealsummary" that was printed on September 21, 2000. Page 3 of  
10 the file again shows the proposed discount schedule and, under the heading "Key  
11 Settlement Points", says "Structure: - Mutual "Take or Pay" correlated to growth -  
12 Required growth levels must be met before discounts apply."

13 The next document in Exhibit Deanhardt -34 is another copy of the "Qwest  
14 Counterproposal" that is attached as Exhibit 3 to Mr. Fisher's affidavit (Exhibit  
15 Deanhardt -9). Handwriting in the top right hand corner of the document that appears  
16 to be Ms. McKenney's says "final Saturday 2:47 p.m." This is the same document  
17 that Ms. McKenney sent to Mr. Fisher at 2:46 p.m. on October 21, as demonstrated  
18 by Exhibit 3 to Mr. Fisher's affidavit.

19 The next three pages of documents in Exhibit Deanhardt -34 are labeled  
20 "Resale/UNE Settlement Impacts Summary McLeod." The footer indicates that the

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<sup>9</sup> Qwest admitted in its responses to Department data requests DOC 338 and 340, attached as Exhibit Deanhardt -74, that the handwriting on the seventh and tenth pages of Exhibit Deanhardt -34 is Ms. McKenney's.

1 file was created at 4:07 p.m. on October 21. These three pages analyze the impact of  
2 the overall deal agreed to by McLeod and Qwest, including the flat rate UNE-M  
3 pricing and the overall discount given by Qwest to McLeod. The third page addresses  
4 the "Mutual Preferred Vendor Plan" and shows the application of the discount to  
5 revenues generated by McLeod. Under "Structure" there is a bullet point for  
6 "Required growth levels must be met before discounts apply." In addition, a box in  
7 the financial calculations shows the final take-or-pay commitments that appear in the  
8 McLeod take-or-pay agreement (Exhibit Deanhardt-11), attributing them to "per  
9 Casey & Fisher."

10 **Q. What other negotiation documents did you find that led you to conclude**  
11 **that Qwest agreed to provide McLeod with this discount?**

12 A. Exhibit Deanhardt -35 to this testimony is an October 22, 2000 document  
13 titled "Qwest Counterproposal" that contains the tiered discount structure to which  
14 Qwest and McLeod finally agreed. I determined this by comparing it to paragraphs  
15 19, 26-27 and Exhibit 3 to Mr. Fisher's affidavit (Exhibit Deanhardt -9) and the  
16 discount contained on several post-agreement documents I discuss later in my  
17 testimony.

18 Exhibit Deanhardt -36 is a set of undated, handwritten notes that appear from  
19 their content to have been written during the negotiation of the October agreements.  
20 The second page of the notes start with the underlined heading "Discount Structure."  
21 Number 2 under that heading says "All products contribute (Globals). \$1m => 10%  
22 overall commitment By product mix." At the bottom of the page are notes for "Key

1 points w/ Joe (1) Bus to Bus (anchor client) (2) Bus. Important to Q.” Qwest  
2 admitted in response to Department requests DOC 332 and 334 that the handwriting  
3 on these notes is that of Ms. McKenney and that the “Joe” to whom they refer is Joe  
4 Nacchio, Qwest’s CEO when the notes were taken. True copies of those responses are  
5 attached as Exhibit Deanhardt -37.

6 Finally, Exhibit Deanhardt -38 is a true copy of an undated e-mail and a  
7 document Qwest produced to the Department on July 23, 2002. The document  
8 appears to be an early draft of the various agreements that the parties entered into on  
9 October 26, 2000, all combined into one agreement by Randy Rings at McLeod. This  
10 document is fashioned as “Interconnection Agreement Amendment Terms” and  
11 contains at paragraph 1.3 – 1.3.5 the same business escalation procedures that appear  
12 in what was identified in the 197 Docket as McLeod Agreement II.

13 The following note appears at paragraph 1.8.2: “Jim – this is intended to  
14 address the price squeeze concern we have raised. Attachment 1.8.2 will be the rates  
15 and discount.” Then, at paragraph 3.2, the following appears in reference to Qwest’s  
16 commitment to supply McLeod with products: “I need help from some biz folks to do  
17 these attachments, but the concept is the same as suggested in your note. Consider  
18 whether the discount on the total can be in a side letter.” Ultimately, the various  
19 agreements in this draft – including the discount agreement – were broken apart and  
20 entered into as separate agreements on October 26, 2000.

21 **Q. Where were these negotiation documents located?**

1 A. The two documents attached to Mr. Fisher's affidavit were produced to the  
2 Department by McLeod. Exhibit Deanhardt -38 came from Stephen Davis' files,  
3 according to Qwest. Otherwise, the documents all came from Ms. McKenney's files  
4 and were produced by Qwest in 2002 response to Department information request  
5 DOC 212 for Ms. McKenney's files related to McLeod.

6 **Q. What did you conclude from reading these documents?**

7 A. I have negotiated many different business and legal agreements, both inside  
8 and outside the telecom industry. The documents I reviewed are consistent with the  
9 kind of documents I would expect to find for any heavily negotiated agreement.  
10 Based on the documents I reviewed, I concluded that, between July and October  
11 2000, Qwest and McLeod entered into substantial negotiations over the scope of a  
12 discount that would apply to all purchases made by McLeod from Qwest once  
13 McLeod reached negotiated minimum revenue commitments. These negotiations  
14 were part of those that resulted in the series of written agreements and the oral  
15 discount agreement that Qwest and McLeod entered into on October 26, 2000.

16 **Q. What documents did you find from your second category – documents**  
17 **from Qwest's files created after the agreement that refer to the discount?**

18 A. The first document is an October 31, 2000 document Qwest apparently  
19 created to internally explain the complete deal it had struck with McLeod. A true  
20 copy is attached as Exhibit Deanhardt -39 to my testimony. The document consists of  
21 six pages of spreadsheets. The first is titled "Resale/UNE Settlement Impacts  
22 Summary McLeod." It shows revenue projections based on whether McLeod hits

1 "High" or "Low" revenue targets and shows the "Vendor Plan – High" as a COGS.  
2 The numbers in the "Vendor Plan – High" row are calculated by multiplying high  
3 revenues by 10% and rounding to the nearest million. The "Low" revenue projections  
4 do not have a "Vendor Plan" correlation because the numbers are too low for Qwest  
5 to apply the discount. This is consistent with the deal that Qwest and McLeod struck.

6 The "Mutual Preferred Vendor Plan" also appears on page 3 of the  
7 presentation. Except for the title, page 3 is the same document that Qwest originally  
8 called the "Qwest Counterproposal" on October 22, 2000. You can see this by  
9 comparing this document to Exhibit Deanhardt -35. Other pages in this set of  
10 spreadsheets also refer to amounts associated with the "Vendor Plan," which can  
11 always be calculated by multiplying revenues by 10%.

12 I also found a set of handwritten notes that is undated but appears from its  
13 content to have been taken in a meeting held shortly after Qwest agreed to provide the  
14 purchase volume discount to McLeod. The notes, attached as Exhibit Deanhardt -40  
15 to my testimony, address the "Implementation Plan with McLeod."<sup>10</sup> The second  
16 page contains the following notations: "(5) Reconciliation process 10% vendor  
17 payment," and "Discount 10% off top." Qwest admitted in its response to DOC 345,  
18 attached as Exhibit Deanhardt -41 that Ms. McKenney wrote these notes.

19 In addition, two sets of Qwest accounting documents that show Qwest  
20 understood both the McLeod and Eschelon agreements to be discounts. Exhibit

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<sup>10</sup> Qwest and McLeod agreed in another undisclosed agreement, dated October 26, 2000 and referred to in the 197 Docket as McLeod Agreement II, to create an implementation plan.

1 Deanhardt -42 is a true copy of a printout of a file named "UNE DEAL  
2 REFUNDS.xls." The ninth page of Exhibit Deanhardt -42 is an April 3, 2001 memo  
3 from Mr. Ibarra to Suzy Francis that reads "This is to reduce UNE-Star revenues for  
4 10% discount that will be issued to Eschelon and McLeod should they meet they're  
5 [sic] revenue/volume commitments per the UNE-Star contract." That same note  
6 appears on a March 5, 2001 memo to Ms. Francis from Mr. Ibarra that is the 12th  
7 page of Exhibit Deanhardt -42.<sup>11</sup>

8 The same April and March memoranda are also part of Exhibit Deanhardt -43,  
9 which is a true copy of the printout of "UNE DEAL REFUNDS 2.xls." They appear  
10 as the 22nd and 25th pages of Exhibit Deanhardt -43 and differ only in that the dollar  
11 amounts missing from the April 3 printout in Exhibit Deanhardt -42 appear in the  
12 printout attached as Exhibit Deanhardt -43.

13 Another accounting spreadsheet produced by Qwest is attached as Exhibit  
14 Deanhardt -44. This sheet is undated, but appears to have been created in March  
15 2001. The file name is "M01 UNE M details.xls." The following legend appears at  
16 the top of the spreadsheet: "THIS SHEET WAS USED TO CALC M01 10%  
17 DISCOUNT THROUGH MARCH." (Capitalization in original). As I previously  
18 noted, "M01" is McLeod.

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<sup>11</sup> As I discussed earlier in my testimony, Qwest also made payments to McLeod equal to the difference between the resale price McLeod paid for UNE-Star and the UNE-Star contract price. The documents in Exhibit Deanhardt -42 to which I refer in the text clearly do not relate to those true-up payments, however, because accruals for the true-up payments are addressed in separate memos included in Exhibit Deanhardt -42 that follow the ones to which I refer.

1           Exhibit Deanhardt-45 to my testimony is a true copy of an e-mail sent  
2 internally within Qwest containing the agenda for a meeting between Qwest and  
3 McLeod scheduled to take place on May 1, 2001. A handwritten note attached to the  
4 agenda says, "We have an agreement that they get add'l 10% off of billing by Q."  
5 This document comes from Ms. McKenney's files, and Qwest admitted that the  
6 handwriting is hers in its response to Department data request DOC 336, attached as  
7 Exhibit Deanhardt-46.

8           Exhibit Deanhardt-47 to my testimony is a May 25, 2001 e-mail from Stacey  
9 Stewart at McLeod to Ms. McKenney and others at Qwest. The e-mail contains an  
10 attachment of "the issue list we discussed yesterday." The third item on the issue list  
11 is the "Mutual Preferred Vendor Plan." Under the heading "Description," Mr. Stewart  
12 writes "As part of our UNE-M agreement, McLeodUSA is eligible for a customer  
13 specific quarterly override of 10% based on total expenditures with Qwest for the  
14 applicable quarter."

15           Attached as Exhibit Deanhardt-48 are several e-mails exchanged between Ms.  
16 Deutmeyer at McLeod and Mr. Washington at Qwest addressing when Qwest will  
17 make its Preferred Vendor Plan payment for the third quarter of 2001. These e-mails  
18 are significant because both Qwest and McLeod refer to the plan payments as a  
19 discount. Thus, in a November 27, 2001 e-mail, Ms. Deutmeyer writes to Mr.  
20 Washington "I figured out the \$5.6 credit and you are right that was 2nd quarters  
21 preferred vendor discount. I am still researching the Sept. #'s. Do you know when  
22 you will have the 3rd quarter preferred vendor discount calculated?" Following up on  
23 November 30, Ms. Deutmeyer writes "Can you also tell me when you will have info

1 pulled together for the preferred vendor discount?" Mr. Washington replies on  
2 December 3: "as for the vendor discount we want to get this done before the end of  
3 the month – we'll see."

4 I also found an e-mail exchange in which Mr. Fisher writes to Ms. McKenney  
5 that "Our people have not received information concerning the third quarter payment  
6 of the preferred vendor discount. Could you please check on the status?" Ms.  
7 McKenney responds on December 14, 2001 as follows: "will do – I am not sure if it  
8 got caught up in a new wire transfer process that Robin, our CFO implemented." A  
9 true copy of this e-mail exchange is attached as Exhibit Deanhardt-49.

10 The remaining documents in this category come primarily from two sets of  
11 related negotiations between Qwest and McLeod that took place in the spring and  
12 summer of 2001.

13 The first set of negotiations grew out of an e-mail exchange between Mr.  
14 Fisher and Mr. Casey on April 25, 2001. A true copy of those e-mails is attached as  
15 Exhibit Deanhardt-50 to my testimony. In his initial e-mail to Mr. Casey, Mr. Fisher  
16 proposes that a meeting be scheduled to outline a new deal. One of the points Mr.  
17 Fisher suggests for discussion in the new deal is to "Revisit our override discount."

18 Two of the issues that Mr. Fisher's e-mail also addressed were rates for DSL  
19 and Voice Messaging Services (VMS). On April 25, 2001, Freddie Pennington at  
20 Qwest sent Ms. McKenney an e-mail with a file named "VMS DSL  
21 Chronology.doc." A true copy of that e-mail and its attachment are attached as  
22 Exhibit Deanhardt-51 to my testimony. Under the date 2/16/2001, the chronology

1 states: “Lowest rates available are ... 1FB UNE-STAR (10% discount applied all  
2 states).”

3 The negotiations that began thereafter centered on a term sheet and other  
4 documents that McLeod sent to Qwest on May 21, 2001. A true copy of the e-mail  
5 and the proposal created by McLeod is attached as Exhibit Deanhardt-52. The  
6 “Proposed Term Sheet” contains item 3, which reads: “In recognition of the  
7 preceding, McLeodUSA will provide to Qwest an increased commitment off revenue  
8 and term which includes an additional discount tier.” The next attachment to the e-  
9 mail is the proposed “additional discount tier” which shows a higher level of discount  
10 and an additional year being added to the agreement Qwest and McLeod struck in  
11 October. On that document, the Tier 1-3 rows for the 2001 – 2003 columns accurately  
12 reflect the discount deal Qwest and McLeod actually entered into in October.

13 Exhibit Deanhardt-53 to my testimony is a true copy of another copy of  
14 Exhibit Deanhardt-52, but without the transmittal e-mail. This exhibit, however,  
15 contains handwritten notes made by Audrey McKenney.<sup>12</sup> Beside item 3 on the Term  
16 Sheet, Ms. McKenney wrote “give a counter proposal.” The second page of the  
17 exhibit is the new discount proposal by McLeod. Beside the Tier 3 row, Ms.  
18 McKenney wrote, “Today’s contract” with arrows pointing to proposed Tier 4 that  
19 say, “New level given M&As.” Again, the Tier 3 row to which Ms. McKenney refers  
20 accurately reflects the discount deal Qwest and McLeod actually entered into in  
21 October 2000.

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<sup>12</sup> See Qwest’s response to Department request DOC 349, attached as Exhibit  
Deanhardt -54.

1 Qwest and McLeod met to discuss McLeod's new proposal on May 31, 2001.  
2 Exhibit Deanhardt-55 is a June 2, 2001 e-mail that Stacey Stewart of McLeod sent to  
3 Ms. McKenney and Mr. Casey, among others, summarizing the discussions. Item on  
4 the initial e-mail is "Qwest to provide a response to McLeod's tiered discount sheet  
5 by 6/11."

6 Arturo Ibarra at Qwest responded to Mr. Stewart's e-mail on June 13. A true  
7 copy of the response is attached as Exhibit Deanhardt-56. In paragraph 9 of the e-  
8 mail, Mr. Ibarra responds to the tiered discount sheet by saying, "On the tiered  
9 discount (Item #3), based on the documentation on our 10/22/00 weekend proposals  
10 we understood that both parties had agreed to negotiate final rates based on market  
11 conditions and for the integration of Split Rock and other acquisitions. If you would  
12 like a copy of this document, let me know and I will fax it to you." Mr. Ibarra goes on  
13 to discuss how Qwest was already accounting for companies merged into McLeod  
14 when it calculated the "Preferred Vendor Plan."

15 The document to which Mr. Ibarra refers to in Exhibit Deanhardt-56 is the  
16 October 22, 2000 Qwest Counter Proposal attached as Exhibit Deanhardt-35. Qwest  
17 confirmed this in its response to Department request DOC 320, which is attached as  
18 Exhibit Deanhardt-57.

19 The language from Exhibit Deanhardt-35 to which Mr. Ibarra refers in Exhibit  
20 Deanhardt-56 is located within the 3-Tier discount proposal that was accepted by  
21 McLeod. It says "The above level is an interim default level. Both Parties agree to

1 negotiate final rates based on market conditions on an annual basis and for the  
2 integration of Split Rock / other acquisitions.”

3 The second set of new negotiations related to McLeod’s desire to reduce the  
4 price of ISDN/PRI lines it purchased from Qwest. Gary Dupler, at the time a Vice  
5 President of Network Planning at McLeod, and Jim Shearburn, a Vice President of  
6 Sales for Qwest’s Central Region, are the two individuals who appear to have done  
7 most of the negotiating on this issue.

8 In the course of these negotiations, Qwest prepared a letter to Mr. Dupler  
9 setting out its proposed new ISDN/PRI pricing, which would reduce McLeod’s cost  
10 to \$667 per circuit resulting in approximately \$1.27 million per month in savings to  
11 McLeod.

12 On June 11, 2001 Mr. Shearburn sent Ms. McKenney and several other people  
13 at Qwest an e-mail regarding the drafting of that letter. The e-mail asks “Has the 10%  
14 across the board discount been negated by the reference that no additional discounts  
15 apply? Are we still required to discount this price component by an additional 10% in  
16 a monthly rebate per the B2B deal?” A true copy of the e-mail is attached as Exhibit  
17 Deanhardt-58.

18 Later that same day, Mr. Shearburn sent the Qwest proposal to Mr. Dupler. A  
19 true copy of the transmittal e-mail, with the proposal letter, is attached as Exhibit  
20 Deanhardt-59 to my testimony. Page three of the proposal letter says the following  
21 under “Approved Rates”: “4) Please note ‘NO’ Additional Reseller Discounts Apply  
22 to the \$667 price. The rate for McLeod’s ISDN/PRI services stated in this contract

1 does not apply to any other discounts and specifically, that the 10% Business to  
2 Business reduction does not apply to the services addressed in this Contract.”

3 The June 11 proposal letter subsequently went through further revisions at  
4 Qwest (even though it had already been sent to McLeod). On June 13, 2001, Mr.  
5 Shearburn sent an e-mail to Ms. McKenney stating “As to the discount issue. What is  
6 not clear to OMR or product is that this 10% across the board applies to all products. I  
7 asked that the ‘carve out’ language be inserted in order to set the expectation that this  
8 is the best and final price, candidly I do not think we need to go any lower, he is  
9 pretty happy with this, I think.” A true copy of this e-mail is attached as Exhibit  
10 Deanhardt-60.

11 Then, on June 18, Mr. Shearburn writes in another e-mail addressing the  
12 ISDN/PRI proposal to McLeod: “Audrey needs to come up with alternate language  
13 dealing with the 10% B2B deal. We should not use the language we have in the 1  
14 proposal, too specific. We either use the alternate language, or reprice all components  
15 at a rate 10% higher, and remove the paragraph entirely.” A true copy of this e-mail is  
16 attached as Exhibit Deanhardt-61.

17 **Q. What did you conclude from these documents?**

18 A. Based on my experience conducting business negotiations in a variety of  
19 settings and working with Qwest / U S WEST when I was employed by Covad, these  
20 documents are consistent with negotiation, deal evaluation and daily business  
21 communications. These documents indicate that Qwest understood that it had agreed

1 to give McLeod a 10% discount on all purchases and that Qwest considered how to  
2 account for that fact when negotiating new deals with McLeod.

3 I also noted that Qwest never responded to any of the communications from  
4 McLeod about the discount by stating that the discount did not exist. I would  
5 certainly expect to see that kind of disclaimer if Qwest had not agreed to the discount.

6 **Q. Did Qwest and McLeod enter into any new agreements based on the**  
7 **follow on negotiations you just discussed?**

8 A. Not any of which I am aware.

9 **Q. Where did you find these documents?**

10 A. Qwest produced Exhibit Deanhardt-39 in response to the Department's  
11 request for all of Arturo Ibarra's files related to McLeod. It produced Exhibits  
12 Deanhardt-42 and Deanhardt-43 in response to the Department's request for all of  
13 Anthony Washington's files related to McLeod. Qwest produced Exhibit Deanhardt-  
14 48 in response to Department request DOC 188, which asked Qwest to produce all e-  
15 mails exchanged between Anthony Washington and Lori Deutmeyer. It produced  
16 Exhibit Deanhardt-57 in response to Department request DOC 320. The remainder of  
17 these documents came from Ms. McKenney's files, and Qwest produced them in its  
18 response to Department request DOC 212, which asked for Ms. McKenney's files  
19 related to McLeod.

20 **Q. Please describe the documents from your third category – those created**  
21 **by McLeod after Qwest agreed to provide it with the discount.**

1 A. The first is the document that is Exhibit 4 to Mr. Fisher's affidavit (Exhibit  
2 Deanhardt-9). This is a printout of a March 1, 2001 e-mail from Mr. Dupler to Mr.  
3 Balvanz in McLeod. Mr. Dupler asks Mr. Balvanz a series of questions about the  
4 discount agreement after opening his e-mail by saying "As I understand it there is a  
5 6-10% additional discount on the prices we pay for all qwest services." Mr. Fisher's  
6 affidavit confirms the accuracy of Mr. Balvanz's handwritten responses to Mr.  
7 Dupler's questions. Those responses include Mr. Balvanz setting out the conditions  
8 under which the discount applies. Those conditions are consistent with the October  
9 22, 2000 "Qwest Counterproposal" that is attached as Exhibit Deanhardt-35.

10 The second document is a March 28, 2001 e-mail that Mr. Fisher sent to  
11 Stephen Gray, McLeod's President. Mr. Fisher's e-mail sets out "the beginning of a  
12 concept of a term sheet with Qwest on the next possible business deal." Item number  
13 six is "M gets revised discount plan (probably in a form of amended take or pay)." A  
14 true copy of this e-mail is attached as Exhibit Deanhardt-62.

15 Finally, the third document is a May 18, 2001 draft version of the term sheet  
16 that ultimately went to Qwest on May 21, 2001 (Exhibit Deanhardt-52). Item 11  
17 states "In recognition of the proceeding, McLeodUSA will provide to Qwest an  
18 increased commitment in revenue and term." Handwritten notes on the side say  
19 "Extend one yr, 180 take or pay for 2% more discount." A true copy of this document  
20 is attached as Exhibit Deanhardt-63 to my testimony.

21 McLeod produced all three of these documents to the Department in its  
22 response to Department Information Request No. 1224 in 2002.

1 **Q. What did you conclude from these documents?**

2 A. Again, these are the kinds of documents created in the course of conducting  
3 business and preparing for business negotiations with a significant vendor. The  
4 documents show that McLeod was operating under the belief that it had a discount  
5 from Qwest on all of its purchases

6 **Q. Has Qwest made any effort to try to explain this discount?**

7 A. My understanding is that, to date, Qwest continues to claim that it did not  
8 enter into a discount agreement with McLeod — that its only agreements with  
9 McLeod are the written agreements, including the Qwest take-or-pay agreement.

10 **Q. How does Qwest explain the Preferred Vendor Plan payments?**

11 A. In 2002 responses to Department discovery requests on that question Qwest  
12 claimed that the three payments were for “a calculated shortfall in purchases made by  
13 Qwest from McLeod and associated with” Qwest’s written take-or-pay agreement to  
14 purchase products and services from McLeod (Exhibit Deanhardt-17). Qwest’s  
15 responses in this regard are attached as Exhibit Deanhardt-64 to my testimony.

16 **Q. Is this explanation consistent with the results of your investigation?**

17 A. No. To begin with, Mr. Fisher, Mr. Conn and Mr. Stewart all confirmed that  
18 the oral discount agreement existed. In addition, Ms. Deutmeyer confirmed that  
19 Qwest made payments under the oral agreement, the amounts of which were  
20 calculated by applying 10% to the amount billed by Qwest to McLeod.

1           Moreover, as discussed throughout most of my testimony, I found a large  
2 number of documents showing that both Qwest and McLeod understood that Qwest  
3 had agreed to provide McLeod with a purchase volume discount.

4           Just as importantly, Qwest has acknowledged in discovery responses that it  
5 made additional payments to McLeod during 2001 for the telecommunications  
6 services it actually purchased from McLeod. These payments were separate from  
7 those made by Qwest to McLeod under the Preferred Vendor Plan / discount  
8 agreement. Exhibit Deanhardt-65 to my testimony is a true copy of a spreadsheet  
9 created by Qwest showing payments of \$5,504,690 made by Qwest to McLeod for  
10 usage and private line services in 2001. The spreadsheets behind the summary page  
11 show the dates and check numbers for the various checks sent by Qwest to McLeod  
12 for these purchases.<sup>13</sup> In its response to DOC 358 attached as Exhibit Deanhardt-67,  
13 Qwest admitted that the summary sheet at the beginning of Exhibit Deanhardt-65  
14 shows payments actually made by Qwest to McLeod.

15           The purchases reflected on Exhibit Deanhardt-65 are the types of purchases  
16 that would be covered by the Qwest take-or-pay agreement attached as Exhibit  
17 Deanhardt-17. If Qwest's explanation for the Preferred Vendor Plan payments were  
18 correct, then I would have expected to see the payments Qwest made calculated by  
19 subtracting the total actually spent by Qwest from the amounts owed under the take-

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<sup>13</sup> On July 22, 2002 Qwest produced a supplemental response to DOC that included a spreadsheet in the same format as Exhibit Deanhardt-65 showing payments made by Qwest to McLeod for October through December 2000. A true copy of the document produced by Qwest is attached as Exhibit Deanhardt-66.

1 or-pay agreement. I did not see any documents reflecting that kind of calculation in  
2 any of the documents produced by Qwest to the Department in 2002.

3 To the contrary, the spreadsheets Qwest used to calculate the Preferred  
4 Vendor Plan payments (See Exhibits Deanhardt-13 through Deanhardt-16) show that  
5 the payments were actually calculated by applying a 10% factor to revenues  
6 generated in various categories including "Resale", "Collocation" and "Unbundled  
7 Loops." In 2002, Qwest did not purchase those kinds of services from McLeod, but  
8 McLeod did purchase those services from Qwest.

9 In fact, as I discussed previously, Qwest has admitted that the amount of the  
10 Preferred Vendor Plan payments were calculated by multiplying the amounts Qwest  
11 billed to McLeod by 10%. That calculation is consistent with the discount agreement  
12 confirmed by Mr. Fisher and described in the many documents I have discussed. It is  
13 completely inconsistent with the claim in Exhibit Deanhardt-64 that Qwest was  
14 calculating a shortfall in purchases it was supposed to make from McLeod.

15 **Q. Are there any other documents that led you to conclude that Qwest's**  
16 **explanation is not accurate?**

17 A. Yes. As I already discussed, Qwest created several business case documents  
18 that it used internally to evaluate various aspects of the McLeod deal as it negotiated  
19 with McLeod in the fall of 2000 (Exhibit Deanhardt-34). In those documents, Qwest  
20 referred to the Vendor Plan as a COGS, or cost of providing goods to McLeod. The  
21 Vendor Plan COGS for each year substantially exceed the take or pay amount set out  
22 in Exhibit Deanhardt-17, the Qwest take-or-pay agreement. In 2001, for example, the

1 written agreement called for a \$15.84 million take or pay commitment by Qwest. The  
2 Vendor Payment COGS for the second and third spreadsheet for the same time period  
3 was \$20 million. In 2002, the numbers were \$18.32 million for the take-or-pay and  
4 \$25 million for the spreadsheet COGS, and in 2003 the numbers were \$19.92 million  
5 and \$29 million, respectively. If Qwest were only obligated to meet its take-or-pay  
6 commitment, then the maximum it should have projected as a cost of providing goods  
7 to McLeod would have been the full value of the commitment for the given year.

8 **Q. Did you find any documents supporting Qwest's explanation?**

9 A. I found only three Qwest documents (out of approximately eight boxes of  
10 documents produced by Qwest) that were consistent with Qwest's explanation. Two  
11 of them, however, were created only after the Department began investigating the  
12 discount agreement. The third was created by a person not involved in the  
13 negotiations and reflects a lack of understanding about the deal. All three documents  
14 are attached as Exhibit Deanhardt-68 to my testimony.

15 The first document is an e-mail and spreadsheet sent by Mr. Ibarra to Anne  
16 Richardson and Ms. McKenney on May 31, 2002. The spreadsheet, titled "McLeod  
17 Vendor Plan Summary" seems to compare the sum of the Preferred Vendor Plan  
18 payments and Qwest's actual purchases from McLeod to the amount that would have  
19 been due under the Qwest take-or-pay contract (Exhibit Deanhardt-17), finding an  
20 overpayment of \$12 million.

21 The second document is a set of handwritten notes from the April 30, 2002  
22 meeting between McLeod and Qwest. The seventh page of the notes contains the

1 following “Will Q be making 4Q payment? In legal today. Will resolve in face-to-  
2 face mtg. \$5m pymt in June 01 included 4Q2000 & s/n/h/been. Offset amount issue &  
3 substantially overpaid in error. McLeod booked this in 4Q. Randy had conversation  
4 with Steve Davis on this.”

5           The third document – and the only one created *before* the Department began  
6 its investigation into the McLeod discount agreement – is a January 16, 2002 e-mail  
7 from Steve Hansen at Qwest to Robin Szeglia, Qwest’s CFO at the time, attempting  
8 to explain the request for the \$5.9 million Preferred Vendor Plan payment to McLeod.  
9 Mr. Hansen refers to the payment as “a result of a take or pay commitment.” Mr.  
10 Hansen, however, goes on to say that “We enlisted there [sic] support on regulatory,  
11 legal, 271 and other matters of consulting for a \$48M take or payment commitment  
12 over the same period. ... We have a similar deal with Eschelon.”

13 **Q. Did you consider these documents before you reached the conclusions**  
14 **about which you have testified?**

15 A. Yes, I did. They did not change those conclusions, though. Both Mr. Ibarra’s  
16 spreadsheet and the April 30, 2002 meeting notes were created only after the  
17 Department had filed its complaint in the 197 Docket and propounded substantial  
18 discovery requests to McLeod and Qwest designed to determine whether they had a  
19 discount agreement. Thus they may have been created in response to the  
20 Department’s ongoing investigation of Qwest’s unfilled agreements. All the day-to-  
21 day business documents created before then, on the other hand, consistently reflect  
22 the companies’ joint understanding that the discount agreement existed.

1 I similarly gave less consideration to Mr. Hansen's e-mail because it is  
2 factually inconsistent with Qwest's own description of its agreements with McLeod.  
3 Mr. Hansen, who was not involved in the negotiation or execution of the October  
4 2000 agreements, describes the Preferred Vendor Plan payment as if Qwest had  
5 entered into the same "consulting" agreement with McLeod that Qwest claims it did  
6 with Eschelon. That is not correct, and Qwest never produced to the Department any  
7 agreement with McLeod that suggested there was a consulting arrangement similar to  
8 the one Qwest claims in Eschelon Agreement.

9 **Q. Did you find any other documents suggesting Qwest's explanation may be**  
10 **correct?**

11 A. The evening before Ms. Deutmeyer's deposition, McLeod produced a  
12 document, attached as Exhibit Deanhardt-69, entitled "Summary of Qwest agreement  
13 package." That document states that "Under a highly confidential agreement, we also  
14 received a revenue / purchase commitment from Qwest based on the following." The  
15 document goes on to lay out commitments that correspond with Exhibit  
16 DEANHARDT-35, the Qwest Counterproposal of October 22, 2000.

17 **Q. Did you consider this document before you reached the conclusions about**  
18 **which you testified here?**

19 A. Yes. Again, however, it doesn't change my conclusions. Ms. Deutmeyer  
20 explained at her deposition that this document was given to her by Joe Terfler. It does  
21 not appear that Mr. Terfler was involved in the negotiation of the October 2000  
22 agreements. Also, the "purchase commitment" described in the document is not

1 consistent with the Qwest take-or-pay commitment set out in Exhibit Deanhardt-17,  
2 but it is consistent with the discount agreement set out in Exhibit Deanhardt-35.

3           Moreover, Qwest has asserted on numerous occasions that it has no oral  
4 agreements with McLeod, suggesting that Exhibit Deanhardt-69 is not referring to a  
5 modified oral version of Exhibit Deanhardt-17. It would also be an odd “purchase  
6 commitment” since Qwest’s commitment to McLeod is potentially unlimited and  
7 fluctuates based on McLeod’s expenditures with Qwest. An agreement of that type  
8 would not be good business practice for Qwest because it commits Qwest to  
9 purchases for which it has no forecasted need. Therefore, this document reinforces the  
10 conclusion (also supported by Mr. Fisher’s deposition), that the take-or-pay  
11 commitment by Qwest was intended to mask the discount agreement.<sup>14</sup>

12 **Q.     If Qwest’s explanation of its payments is correct, would that change your**  
13 **conclusion that the Preferred Vendor Plan payments were actually**  
14 **discount payments?**

15 A.     Possibly, but not necessarily. The mere fact that Qwest made take-or-pay  
16 payments would not resolve the question of whether those payments were a disguised  
17 discount. Here, for example, we know that Qwest only spent \$5.5 million with  
18 McLeod in 2001. Qwest’s take-or-pay commitment, however, was \$15.84 million –

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<sup>14</sup> I should also note that Qwest produced, on July 24, 2002, a new document it said came from Audrey McKenney’s files that appears to be a draft agreement from October 23, 2000 – the day after Qwest and McLeod reached the discount agreement. A true copy of the document is attached as Exhibit Deanhardt-70. Attachment 3.2 to the document is a draft purchase commitment that mirrors the description in Exhibit Deanhardt-69. The parties never entered into this written agreement, however, further suggesting that Mr. Terfler’s description of the discount as a “purchase commitment” is not accurate.

1 or almost three times Qwest's actual expenditures. Those numbers are too far apart to  
2 be simply a miscalculation by Qwest of its need to purchase products and services  
3 from McLeod.

4 Moreover, Qwest never provided the Department with any documents  
5 showing its projections of what it might buy from McLeod in response to the  
6 Department's requests for such documents. I would expect to see those kinds of  
7 projections from a company as a matter of course before it commits to a take-or-pay  
8 contract. Based on the lack of documents and the enormous real-life difference  
9 between Qwest's actual expenditures and the commitment amount, I would conclude  
10 (absent additional evidence) that Qwest's commitment was a sham intended to  
11 disguise a discount to McLeod.

12 In fact, Mr. Fisher confirmed in both my interview of him and his deposition  
13 that Qwest and McLeod created the take-or-pay commitment only to insure that  
14 McLeod would at least receive a portion of the discount agreed to by Qwest. See  
15 Exhibit Deanhardt-9, 34:17 – 39:5 and Fisher Affidavit, ¶¶ 21-23.

16 **Q. If the Qwest take-or-pay agreement was a legitimate agreement for Qwest**  
17 **to buy needed goods and services from McLeod , would that change your**  
18 **conclusion regarding the existence of the oral discount agreement?**

19 A. No. There are simply too many documents created by both McLeod and  
20 Qwest referring to the discount for it not to exist. There is simply no way to explain  
21 all of these discount references absent a discount. Moreover, Qwest did actually

1 purchase needed services from Qwest, as reflected on Exhibit Deanhardt-65. It simply  
2 paid for those services separately from the discount payments it made to McLeod.

3 **Q. Assuming that you are correct about this agreement, why did Qwest give**  
4 **McLeod this discount?**

5 A. The documents suggest two reasons. First, as Mr. Fisher explains, the new  
6 Qwest wanted to keep McLeod's traffic on Qwest's network, thereby insuring a  
7 revenue stream for assets that might otherwise go unused. Without the discount,  
8 McLeod would have proceeded with its plans to move as much traffic off of Qwest's  
9 network as possible as quickly as possible. Many of the documents discussed earlier  
10 in my testimony contain references to this reason.

11 Second, Qwest's acquiescence to the October 2000 agreements, including the  
12 discount agreement, was expressly contingent on McLeod's oral agreement not to  
13 oppose Qwest's Section 271 application. One of the most important things Qwest  
14 could do to improve and grow its business was to obtain the authority to provide  
15 interLATA services again in the areas where Qwest had to stop providing such  
16 services after the merger. The importance of McLeod's agreement on this point was  
17 noted in the September 19, 2000 term sheet attached as Exhibit 2 to Mr. Fisher's  
18 affidavit. The Section 271 agreement is also discussed in several other exhibits to my  
19 testimony, including the documents reflecting Qwest's internal consideration of the  
20 deal with McLeod.

21 **C. OTHER FACTORS**

1 **Q. Did Qwest and Eschelon take any action with respect to the Eschelon**  
2 **Agreement in response to the Department's investigation?**

3 A. Yes. On March 1, 2002 – just two weeks after the Department filed its  
4 complaint in the 197 Docket – Qwest and Eschelon entered into a “Settlement  
5 Agreement” terminating nearly all of the undisclosed agreements between them,  
6 including the take-or-pay agreement and the Eschelon Agreement containing the  
7 discount agreement. A copy of the agreement is attached as Exhibit Deanhardt-71.

8 In exchange for agreeing to terminate these agreements, Eschelon received a  
9 payment, in the form of a credit against amounts it owed Qwest, for \$7,912,000.00.  
10 Given that Eschelon had only earned a \$2.54 million discount on ten months of  
11 purchases between November 2000 and August 2001, this \$7.9 million *immediate*  
12 payment seems like quite a benefit to Eschelon in exchange for foregoing future  
13 potential discounts.

14 **Q. Did Qwest and McLeod also terminate the McLeod agreement before it**  
15 **expired on its own terms?**

16 A. No. Even in its responses to AT&T's data requests in this docket, Qwest still  
17 denies that the McLeod discount agreement ever existed. It would be impossible for  
18 Qwest to terminate an agreement that it says never existed.

19 **Q. Are there any other factors that this Commission should be aware of that**  
20 **led you to conclude that Qwest agreed to provide the discounts you**  
21 **described to both Eschelon and McLeod?**

1 A. Yes. There are simply too many similarities between the structure and timing  
2 of the McLeod discount agreement and the Eschelon discount agreement for Qwest to  
3 deny the existence of either agreement. In sum, those similarities are:

4 • The McLeod discount agreement and the Eschelon discount agreement  
5 were negotiated and entered into by Qwest concurrently, in October, 2000.

6 The McLeod oral discount agreement was reached the weekend of October  
7 22, 2000, and the written agreements were signed on October 26, 2000. The  
8 Eschelon discount agreement was reached on October 21, 2000 and the  
9 documents reflecting it were signed on November 15, 2000.

10 • In both cases, the parties entered into a series of interrelated  
11 agreements, including take-or-pay agreements with purchase volume  
12 commitments.

13 • In both cases, one of the interrelated agreements was filed as an  
14 interconnection agreement amendment that gave the CLEC access to UNE-  
15 Star. The two UNE-Star amendments are substantially similar to each other in  
16 form and content.

17 • In both cases, one of the agreements extracted from the CLEC was an  
18 agreement not to participate in the consideration of Qwest's various Section  
19 271 applications.

20 • The same person at Qwest – Audrey McKenney – was intricately  
21 involved in the negotiation of both the Eschelon agreement and the McLeod  
22 agreement.

1 • In both cases, Qwest has attempted to hide the discount behind a sham  
2 agreement to prevent other CLECs from taking advantage of it.  
3 In short, there are simply too many similarities for this to constitute a mere  
4 coincidence in the real business world.

5 **Q. What did the Minnesota and Arizona commissions conclude about the**  
6 **McLeod oral discount agreement?**

7 A. In its 197 Docket, the MPUC affirmed the findings of its ALJ that the  
8 McLeod oral discount agreement existed and constituted an interconnection  
9 agreement. Specifically, the MPUC found that the McLeod Agreement existed and  
10 discounts were paid and that Qwest's testimony to the contrary was not credible.  
11 *Minn. ALJ 197 Order*, ¶¶ 320-21, 338. As noted above, the ACC similarly found that  
12 "[t]he evidence shows that the [Qwest] agreements with Eschelon for consulting  
13 services and with McLeod for purchases which Qwest claims were not subject to  
14 Section 252 requirements, were shams designed to hide the true nature of the  
15 agreements. *In the matter of Qwest's Compliance with Section 252(e) of the*  
16 *Telecommunications Act of 1996*, Opinion and Order (Decision No. 66949), at 38  
17 (Apr. 30, 2004).

18 **III. THE FAILURE TO DISCLOSE THE DISCOUNT AGREEMENTS**

19 **Q. Did Qwest have any obligation to file or otherwise make the terms and**  
20 **conditions of the Eschelon and McLeod discount agreements available to**  
21 **AT&T and other carriers?**

1 A. Yes. When Qwest entered into and tried to conceal its agreements with  
2 Eschelon and McLeod, Qwest had a statutory obligation under 47 U.S.C. § 252(e) to  
3 disclose and file with this and other state commissions the terms and conditions of  
4 any agreement for interconnection or access to unbundled network elements,  
5 including specifically rates. Discounts, of course, are a part of calculating any final  
6 rate.

7 **Q. What are the practical effects of Qwest concealing the discount**  
8 **agreements?**

9 A. By concealing the discount agreements, Qwest prevented AT&T and other  
10 companies from taking advantage of the “most favored nations” clauses in its  
11 interconnection agreements with Qwest to obtain the same discount. Thus, the legal  
12 and contractual obligation to disclose the discount agreements had a practical  
13 business purpose as well.

14 As discussed below, AT&T had “most favored nations” (or MFN) clauses in  
15 its agreements with Qwest. These MFN clauses required Qwest to make available to  
16 AT&T the same terms and conditions that Qwest made available to other carriers.  
17 The only way to check Qwest’s compliance with that provision is either by Qwest  
18 notifying AT&T of the agreements or, more commonly, through review of publicly  
19 disclosed agreements. By concealing the Eschelon and McLeod discount agreements,  
20 Qwest intentionally deprived AT&T of the ability to take advantage of the same  
21 discount.

22 **Q. Should Qwest have filed the Eschelon and McLeod Agreements in Idaho?**

1 A. Yes. There is no doubt that agreements that affect rates for interconnection  
2 and unbundled network elements must be filed with state commissions. By this  
3 failure and the lack of any other notice to AT&T, Qwest prevented AT&T from  
4 obtaining the same discounts as Eschelon and McLeod.

5 **IV. AT&T INTERCONNECTION AGREEMENTS**

6 **Q. What is AT&T Communications of the Mountain States, Inc.?**

7 A. The Idaho CLEC affiliate of AT&T, Inc.

8 **Q. Do you know whether it had an interconnection agreement with Qwest in**  
9 **Idaho at the time Qwest entered into the Eschelon and McLeod deals?**

10 A. Yes, it did.

11 **Q. Have you reviewed AT&T's interconnection agreement with Qwest in**  
12 **Idaho?**

13 A. Yes.

14 **Q. Do the agreements contain "most favored nation" type clauses?**

15 A. Yes. It can be found in Section 2.1 of the main body of the agreement, which  
16 contains the "Terms and Conditions." A true copy of the main body of the AT&T  
17 interconnection agreement is attached as Exhibit Deanhardt-75. Section 2.1 provides  
18 that:

19 **Most Favored Nation Terms and Treatment**

20 Until such time as there is a final court determination  
21 interpreting Section 252(i) of the Act, U S WEST shall make  
22 available to AT&T the terms and conditions of any other  
23 agreement for interconnection, unbundled Network Elements

Deanhardt, Di-65  
AT&T Communications of  
The Mountain States, Inc.

1 and resale services approved by the Commission under Section  
2 252 of the Act, in that agreement's entirety. After there is a  
3 final court determination interpreting Section 252(i) of the Act,  
4 the Parties agree to revise this Section 2.1 to reflect such  
5 interpretation.

6 **Q. What is the purpose of an MFN clause?**

7 A. In general, MFN clauses guarantee one party (Party A) to an agreement that  
8 no other entity doing business with the second party (Party B) will get a better deal  
9 that the first party (Party A). If a third party (Party C) does get better terms, then the  
10 first party is allowed to also incorporate the better terms into its own agreement.

11 In this case, the purpose of the MFN clauses at issue was to permit AT&T to  
12 opt into agreements Qwest had with other carriers that might be beneficial to AT&T.  
13 Here, the MFN clause would have allowed AT&T to opt into the Eschelon and  
14 McLeod discount agreements such that AT&T could have received the same  
15 discounts. AT&T's other witness here indicates that AT&T would have taken  
16 advantage of those discounts, which is not surprising given the substantial amount of  
17 money that AT&T could have saved.

18 **Q. Are there any other provisions of AT&T's interconnection agreement**  
19 **that affect AT&T's ability to opt into the Eschelon and McLeod discount**  
20 **agreements?**

21 A. Yes. Section B of the part of the agreement labeled "Scope of Agreement"  
22 states:

1 In the performance of their obligations under this Agreement,  
2 the Parties shall act in good faith and consistently with the  
3 intent of the Act. Where notice, approval or similar action by a  
4 Party is permitted or required by any provision of this  
5 Agreement (including, without limitation, the obligation of the  
6 parties to further negotiate the resolution of new or open issues  
7 under this Agreement) such action shall not be unreasonably  
8 delayed, withheld or conditioned.

9 This language imposes two obligations on Qwest that, had Qwest lived up to  
10 them, would have given AT&T the opportunity to take advantage of the Eschelon and  
11 McLeod discounts. The first is the obligation to “act in good faith and consistently  
12 with the intent of the Act.” There is no doubt that a primary intent of the act was that  
13 ILECs (like Qwest) not discriminate against CLECS (like AT&T) by offering  
14 favorable terms to some, but not others. Had Qwest followed this principle, it would  
15 have made the discount agreements available to AT&T.

16 Second, in a situation where notice is required – for example, to effect the  
17 requirement that Qwest “shall” make available to AT&T the terms of other  
18 interconnection agreements – then Qwest must provide such notice without  
19 unreasonable delay or conditions.

20 Instead of living up to these two obligations, Qwest actively concealed the  
21 existence of the discount agreements.

22 Agreement Section 24.1 contains more language that required Qwest to make  
23 the discount agreements available to AT&T. It reads: “Each Party shall comply with  
24 all applicable federal, state and local laws, rules and regulations applicable to its  
25 performance under this Agreement.” As I previously discussed, federal laws and  
26 regulations in 2000 and 2001 required Qwest (a) to disclose the terms of the discount

1 agreements by filing those terms with this Commission, and (b) to make the discount  
2 agreements available to AT&T. Again, instead of following the contract, Qwest  
3 actively concealed the discount agreements and prevented AT&T from being able to  
4 take advantage of them.

5 **Q: Does this conclude your direct testimony?**

6 **A:** Yes, it does.

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**Deanhardt, C. - Exhibit 1**

**Case No. QWE-T-06-17**

**AT&T**

# Clay Deanhardt

21 'C' Orinda Way, #374  
Orinda, CA 94563  
(925) 258-9079  
clay@deanhardtllaw.com

## EDUCATION

- 1989 - 1992 **Harvard Law School** *Cambridge, MA*  
Graduated *cum laude* with JD.
- 1985 - 1989 **East Carolina University** *Greenville, NC*  
Graduated *summa cum laude* from Honors Program with BA in Philosophy and English, with a concentration in writing. GPA 3.9/4.0. Completed first year's requirements for MA in English.

## WORK HISTORY

- 2006 - Present **Law Office of Clay Deanhardt** *Orinda, CA*  
*Principal / Owner*
- Provide outside general counsel services to small and emerging companies, including corporate formation, securities compliance, IP review and dispute resolution services.
  - Draft and negotiate inbound and outbound commercial agreements including technology licenses and Internet service agreements.
  - Draft and negotiate finance and purchase / sale agreements.
- 2005 - 2006 **Covad Communications Company** *San Jose, CA*  
*Assistant General Counsel*
- Led vendor negotiations that eliminated a potential \$30+ million software licensing liability in favor of a new license that reduced company expenses.
  - Participated in inbound and outbound service and license agreement negotiation and drafting.
  - Integrated Covad's litigation department with its business and regulatory goals.
  - Managed legal support for labor and employment issues, including legal issues surrounding a national reduction in force (resulting in no claims being filed against the company).
  - Managed customer relationships that had escalated to potential litigation threats.
  - Directed all of the company's litigation matters, including antitrust and IP litigation, using both internal resources and outside counsel and achieving successful results in a wide variety of matters.
  - Provided ongoing advice regarding SOX compliance and corporate communications.
- 2001-2005 **Deanhardt Consulting** *San Francisco, CA*  
*Principal / Owner*
- Provided business and legal services to clients including AT&T, the Minnesota Department of Commerce and the Arizona Residential Utility Consumer Office.
- 2000-2001 **Epidemic Networks** *Santa Barbara, CA*  
*President & General Counsel, member of Board of Directors*
- Managed a start-up peer-to-peer software company financed by the Santa Barbara Technology Incubator, first as COO/GC and later as President/GC and a member of the Board of Directors.
  - Transformed Epidemic Networks from a consumer Internet company with no revenue model into a business software company with a Fortune 500 pilot customer and three-year plan to profitability.
  - Wrote the business, marketing and financial plans.
  - Prepared and delivered business plan presentation for potential A-round investors.
  - Recruited executive team including VP of Engineering and VP of Marketing.

- Managed software development team located in Santa Barbara and New Zealand.

1999- 2000

**Covad Communications Company**  
*Senior Counsel*

*Santa Clara, CA*

- Led the cross-functional team that designed a new method for deploying DSL broadband services that opened the residential market to Covad, leading to wholesale relationships with major Internet service providers and profitability for Covad's DSL products.
- Negotiated and drafted agreements with incumbent local exchange carriers that allowed Covad to provide service across the United States.
- Managed Covad's legal and business relationship with U S WEST (now Qwest).
- Developed the company's legal and regulatory strategy for western United States and contributed to the development of national legal strategies.
- Advised Covad on a variety of securities law compliance and human resource legal issues.
- Reviewed corporate communications for disclosure issues and compliance with securities regulations.
- Retained and managed outside counsel on regulatory and litigation matters.

1996-1999

**Graham & James, LLP (now Squire, Sanders & Dempsey LLP)**  
*Associate*

*Palo Alto, CA*

- Practiced intellectual property and general commercial litigation.
- Conducted all aspects of litigation and trial preparation for cases including patent infringement actions, software licensing disputes, copyright infringement actions, and commercial transaction disputes.
- Advised clients on intellectual property and general business issues.

1993-1996

**Brown & Wood, LLP (now Sidley Austin LLP)**  
*Associate*

*San Francisco, CA*

- Practiced securities, general commercial and banking litigation.
- Helped prepare a \$40 million public financing as part of legal settlement in favor of my client.

1992-1993

**Dinkelspiel, Donovan and Reder**  
*Associate*

*San Francisco, CA*

- Practiced general commercial litigation, securities litigation and telecommunications law.

2/91-5/91

**Harvard University**

*Cambridge, MA*

Teaching assistant for "Thinking About Thinking" taught by Alan Dershowitz, Robert Nozick and Stephen Jay Gould.

### BAR ADMISSIONS

State of California; 9th Circuit Court of Appeals; Northern, Central, Southern and Eastern Districts of California.

Idaho Public Utilities Commission  
Office of the Secretary  
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Boise, Idaho

**Deanhardt, C. - Exhibit 2**

**Case No. QWE-T-06-17**

**AT&T**

SUBJECT TO RULE OF EVIDENCE 405

CONFIDENTIAL AMENDMENT TO  
CONFIDENTIAL/TRADE SECRET STIPULATION

This Amendment to the Confidential/Trade Secret Stipulation Between ATI and U S WEST ("Agreement"), is hereby entered into by Qwest Corporation ("Qwest"), formerly known as U S WEST, Inc., and Eschelon Telecom, Inc. ("Eschelon"), formerly known as Advanced Telecommunications, Inc., d/b/a: Cady Communications, Inc., Cady Telmanagement, Inc., American Telephone Technology, Inc., Electro-Tel, Inc., and Intelocom, Inc., (hereinafter referred to as the "Parties" when referred to jointly) on this 15th day of November, 2000. This Amendment adds terms to the Confidential/Trade Secret Stipulation Between ATI and U S WEST dated February 28, 2000. The Parties acknowledge the recitals and terms contained in the Confidential/Trade Secret Stipulation Between ATI and U S WEST and seek to resolve differences which existed between the Parties as of that date, and continue as of the date of this Agreement, including differences relating to service quality.

ADDITIONAL RECITALS

1. Disputes have arisen between the Parties as to the effective date of Eschelon's ability to provide services through the unbundled network element ("UNE") platform. Eschelon claims that it was eligible to receive platform rates as of March 1, 2000.
2. Qwest believes that Eschelon was unable to provide services through the unbundled network element platform as of March 1, 2000.
3. In an attempt to finally resolve the issues in dispute and to avoid delay and costly litigation, the Parties voluntarily enter into this Confidential Agreement to resolve all disputes, claims and controversies between the Parties, as of the date of this Confidential Agreement that relate to the matters addressed herein, and Eschelon releases Qwest from any claims regarding the issue as described herein.

CONFIDENTIAL AGREEMENT

1. The Parties enter into this Agreement in consideration for the terms described below, and Eschelon's release of any claims that can or could have been brought against Qwest because Eschelon was providing services through resale of finished services instead of providing service through unbundled network elements. Eschelon claims that it had the right to elect platform prices as of March 1, 2000, while Qwest disagrees with Eschelon's claim, as described above.

2. Eschelon agrees to purchase from Qwest, under this agreement or any other agreement between the parties, at least \$15 million (fifteen million dollars) of telecommunication services and products between October 1, 2000 and September 30, 2001. In consideration for Eschelon's agreement to make such purchases and for such other good and valuable consideration set forth in this agreement and documented in Qwest's November 15, 2000 letter, Qwest agrees to pay Eschelon \$10 million by no later than November 17, 2000 to resolve all issues, outstanding through the date of execution of this agreement, related to the UNE platform and switched access. Further, Qwest will pay to Eschelon the revenue Qwest billed to IXCs at Qwest's established switched access rates for Eschelon platform end users for usage for the month of October 2000. Qwest will pay this amount to Eschelon within 30 days of the date Qwest receives WTN information for Eschelon for all of October 2000. For any month (or partial month), from November 1, 2000 until the mechanized process is in place, during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access, Qwest will credit Eschelon \$13.00 (or pro rata portion thereof) per Platform line per month as long as Eschelon has provided the WTN information to Qwest. After the mechanized process is in place, Eschelon and Qwest will use the established escalation procedures if a dispute arises. Qwest will credit the IXC and other companies for daily usage traffic that Qwest provides to Eschelon to bill to the IXC (to eliminate double billing).

In the event that Eschelon does not purchase, under this agreement or any other agreement, \$15,000,000.00 (fifteen million dollars) in telecommunications services and/or products within the time frame set forth above, Eschelon shall, by December 31, 2001, make a pro rata refund of the payment received from Qwest.

3. Eschelon shall provide to Qwest consulting and network-related services, including but not limited to processes and procedures relating to wholesale service quality for local exchange service ("Services"). These Services will address numerous items, including loop cutover and conversion, repair, billing and other items agreed upon by the Parties. The Services may include all lines of business and methods of local market entry used by Eschelon. Eschelon agrees to utilize knowledgeable and experienced personnel for the Services. Eschelon further agrees to assign, upon request, up to two full time representatives dedicated to working with the Qwest account team or other Qwest organizations to facilitate handling of provisioning issues. The Parties agree to meet together (via telephone, live conference, or otherwise) as necessary to facilitate provisioning of the Services. Executives from both companies agree to address and discuss the progress of the Services at quarterly meetings to begin in 2001 and continue through the end of 2005. In consideration of Eschelon's agreement to provide Services and for such good and valuable consideration set forth in this agreement, Qwest agrees to pay

Eschelon an amount that is ten percent (10%) of the aggregate billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005. Eschelon will invoice Qwest annually. Payment is due within 30 days of the invoice date. In the event that the Confidential Purchase Agreement between Eschelon and Qwest (as of the same date as this Agreement) is terminated, this paragraph of this Agreement also terminates simultaneously with termination of that Confidential Purchase Agreement and any payments made pursuant to this paragraph as of the date of termination will be promptly returned to Qwest. In addition, if Eschelon fails to meet its purchase commitments under sections 2, 2.1, 2.2, 2.3, 2.4 or 2.5 of the Confidential Purchase Agreement, Eschelon will promptly return to Qwest any payments made pursuant to this section.

4. If the Parties fail to finalize the Implementation Plan by April 30, 2001, as required by the Parties' Escalation Procedures Agreement, they agree to immediately terminate the Purchase Agreement, the Confidential Billing Settlement Agreement, this Amendment to the Confidential/Trade Secret Stipulation, the Escalation Procedures Agreement, and the Interconnection Agreement Amendment, all dated November 15, 2000, and cooperate in good faith to determine and promptly return to each other all of the economic benefits each received from the other in consequence of those Agreements. Moreover, all of the claims, whether in law or in equity, that either Party released or discharged in those Agreements shall be restored to them.

5. The Parties will address in their quarterly meetings appropriate price adjustments for the telecommunications services and products purchased by Eschelon and Qwest in the preceding quarter.

6. For valuable consideration mentioned above, the receipt and sufficiency of which are hereby acknowledged, Eschelon does hereby release and forever discharge Qwest and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liabilities, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the disputes/matters addressed in "Additional Recitals" paragraphs 1 and 2 above, including all disputes related to the UNE platform and switched access.

7. The terms and conditions contained in this Confidential Agreement shall inure to the benefit of, and be binding upon, the respective successors, affiliates and assigns of the Parties.

8. Eschelon hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claims which is released or discharged by this Confidential Agreement.

9. The Parties agree that they will keep the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Confidential Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will: (1) first notify Qwest of any obligation to disclose some or all of this Confidential Agreement; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this Confidential Agreement; and (3) apply for confidential treatment of the Confidential Agreement. It is expressly agreed that this confidentiality provision is an essential element of this Confidential Agreement and negotiations, and all matters related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

10. In the event either Party initiates arbitration or litigation regarding the terms of this agreement or has a legal obligation which requires disclosure of the terms and conditions of this Confidential Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided in this Agreement.

11. This Confidential Agreement constitutes an agreement between the Parties and can only be changed in a writing or writings executed by both Parties. Each of the Parties forever waives all right to assert that this Confidential Agreement was the result of a mistake in law or in fact.

12. This Confidential Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota, and shall not be interpreted in favor or against any Party to this Agreement.

13. The Parties have entered into this Confidential Agreement after conferring with legal counsel.

14. In the event that any provision of this Confidential Agreement should be declared to be unenforceable by any administrative agency or court of law, either Party may initiate an arbitration under the provisions of section 14 below within 90 days of such declaration, to determine the impact of such declaration on the remainder of this Confidential Billing Settlement Agreement. The arbitrator shall have the authority to determine the materiality of the provision and any appropriate remedies, including voiding the agreement in its entirety. If neither Party initiates such an arbitration within 90 days, the remainder of the Confidential Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provisions were not part of this Confidential Agreement.

15. Any claim, controversy or dispute between the Parties in connection with this Confidential Agreement shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. The arbitration shall be conducted in Minneapolis, Minnesota. Each Party shall have the right to seek from a court of appropriate jurisdiction equitable or provisional remedies (such as temporary restraining orders, temporary injunctions, and the like) before arbitration proceedings have been commenced and an arbitrator has been selected. Once an arbitrator has been selected and the arbitration proceedings are continuing, thereafter the sole jurisdiction with respect to equitable or provisional remedies shall be remanded to the arbitrator. Any arbitrator shall be a retired judge or an attorney who has been licensed to practice for at least ten (10) years and is currently licensed to practice in the state of Minnesota. The arbitrator shall be selected by the Parties within fifteen (15) business days after a request for arbitration has been made by one of the Parties hereto. If the Parties are unable to agree among themselves, the Parties shall ask for a panel of arbitrators to be selected by the American Arbitration Association. If the Parties are unable to select a sole arbitrator from the panel supplied by the American Arbitration Association within ten (10) business days after such submission, the American Arbitration Association shall select the sole arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement and award appropriate damages, but the arbitrator shall not have authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator, except that the arbitrator shall have the discretion award reasonable attorneys' fees and costs in favor of a Party if, in the opinion of the arbitrator, the dispute arose because the other Party was not acting in good faith.

16. The Parties acknowledge and agree that they have a legitimate billing dispute about the issues described in this Confidential Agreement and that the resolution reached in this Agreement represents a compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement cannot be used against the other Party, including but not limited to admissions.

17. This Confidential Agreement may be executed in counterparts and by facsimile.

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15<sup>th</sup> day of November 2000.

Eschelon Telecom, Inc.

By: [Signature]

Title: President - CEO

Date: 11/15/00

Qwest Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15<sup>th</sup> day of November, 2000

Eschelon Telecom, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Qwest Corporation

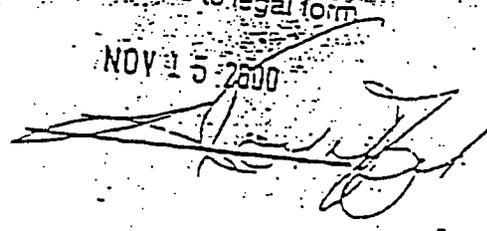
By:  \_\_\_\_\_

Title: EVP \_\_\_\_\_

Date: 11-15-00 \_\_\_\_\_

Approved as to legal form

NOV 15 2000



Idaho Public Utilities Commission  
Office of the Secretary  
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AUG 16 2007

Boise, Idaho

**Deanhardt, C. - Exhibit 3**

**Case No. QWE-T-06-17**

**AT&T**

Confidential Purchase Agreement

This Purchase Agreement ("PA") is made and entered into by and between Escheion Telecom, Inc. and its subsidiaries and affiliates ("Escheion") and Qwest Corporation and its subsidiaries ("Qwest") (collectively, the "Parties") effective on the 1st day of October, 2000.

The Parties have entered in to enter into this PA to facilitate and improve their business and operational activities, agreements and relationships. In consideration of the covenants, agreements and promises contained below the Parties agree to the following:

1. This PA is entered into between the Parties based on the following conditions, which are a material part of this agreement:

1.1 This PA shall be binding on Qwest and Escheion and each of their respective subsidiaries, affiliated corporations, successors and assigns.

1.2 This PA may be amended or altered only by written instrument executed by an authorized representative of both Parties.

1.3 The Parties, intending to be legally bound, have executed this PA effective as of October 1, 2000, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

1.4 Unless terminated as provided in this section, the initial term of this PA is from October 1, 2000 until December 31, 2005 ("Initial Term") and this PA shall thereafter automatically continue until either Party gives at least six (6) months advance written notice of termination. This PA can only be terminated during the term of the agreement in the event of a material breach of the terms of this Amendment which remains unresolved and uncompensated following application of the dispute resolution provisions of this agreement.

1.5 All factual preconditions and duties set forth in this PA are intended to be, and are considered by the Parties to be, reasonably related to, and dependent upon each other.

1.6 If either Party's performance of this PA or any obligation under this PA is prevented, restricted or interfered with by causes beyond such Parties' reasonable control, including but not limited to acts of God, fire, explosion, vandalism which reasonable precautions could not protect against, storm or other similar occurrence, any law, order, regulation, direction, action or request of any unit of federal, state or local government, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, strike or work stoppage or material vendor failures, or cable cuts, then such Party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction or interference (a "Force Majeure").

1.7 The Parties agree that they will keep the substance of the negotiations and/or conditions of this PA and the terms or substance of this PA strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the

SUBJECT TO RULE OF EVIDENCE 408

substance of the negotiations and/or conditions of this settlement and the terms or substance of this PA to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will: (1) first notify Qwest of any obligation to disclose some or all of this PA; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this PA; and (3) apply for confidential treatment of the PA. It is expressly agreed that this confidentiality provision is an essential element of this PA and negotiations, and all matters related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

In the event either Party initiates arbitration or litigation regarding the terms of this agreement or has a legal obligation which requires disclosure of the terms and conditions of this PA, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided in this PA.

1.8 Neither Party will present itself as representing or jointly marketing services with the other, or market its services using the name of the other Party, without the prior written consent of the other Party.

1.9 Any claim, controversy or dispute between the Parties in connection with this PA shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. Each Party shall have the right to seek from a court of appropriate jurisdiction equitable or provisional remedies (such as temporary restraining orders, temporary injunctions and the like) before arbitration proceedings have been commenced and an arbitrator has been selected. Once an arbitrator has been selected and the arbitration proceedings are continuing, thereafter the sole jurisdiction with respect to equitable or provisional remedies shall be remanded to the arbitrator. Any arbitrator shall be a retired judge or an attorney who has been licensed to practice for at least ten (10) years and is currently licensed to practice in the state of Colorado. The arbitrator shall be selected by the parties within fifteen (15) business days after a request for arbitration has been made by one of the Parties hereto. If the Parties are unable to agree among themselves, the Parties shall ask for a panel of arbitrators to be selected by the American Arbitration Association. If the parties are unable to select a sole arbitrator from the panel supplied by the American Arbitration Association within ten (10) business days after such submission, the American Arbitration Association shall select the sole arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement and award appropriate damages, but the arbitrator shall not have the authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator, except that the arbitrator shall have the discretion to award reasonable attorneys' fees and costs in favor of a Party if, in the

opinion of the arbitrator, the dispute arose because the other Party was not acting in good faith.

1.10 This PA shall be interpreted and construed in accordance with the laws of the State of Colorado, and shall not be interpreted in favor or against any Party to this Agreement.

1.11 This PA constitutes an agreement between the Parties and can only be changed in a writing or writings executed by both Parties. Each of the Parties forever waives all right to assert that this agreement was the result of a mistake in law or in fact.

1.12 This PA may be executed in counterparts and by facsimile.

2. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 3, Eschelon agrees to purchase from Qwest, or one of its affiliates, during the Initial Term of this PA, at least \$150 million worth of telecommunications, enhanced or information services, network elements, interconnection or collocation services or elements, capacity, termination or origination services, switching or fiber rights (the "Products"). If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a \$10 million penalty.

2.1 Subject to the provisions of this section 2, from January 1, 2001 to December 31, 2001, Eschelon will purchase, under this agreement or any other agreement between the parties, a minimum of \$16 million of Products and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2002, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 63% of its 2001 annual revenue commitment to Qwest.

2.2 Subject to the provisions of this section 2, from January 1, 2002 through December 31, 2002, Eschelon will purchase a minimum of \$24 million of Products, and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2003, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 42% of its 2002 annual revenue commitment to Qwest.

2.3 Subject to the provisions of this section 2, from January 1, 2003 through December 31, 2003, Eschelon will purchase a minimum of \$31 million of Products, and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2004, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 32% of its 2003 annual revenue commitment to Qwest.

2.4 Subject to the provisions of this section 2, from January 1, 2004 through December 31, 2004, Eschelon will purchase a minimum of \$37 million of Products, and in the

event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2005, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 27% of its 2004 annual revenue commitment of Qwest.

2.5 Subject to the provisions of this section 2, from January 1, 2005 through December 31, 2005, Eschelon will purchase a minimum of \$42 million of Products, and in the event purchases by Eschelon do not meet this minimum, Eschelon agrees to make a payment to Qwest, no later than January 15, 2006, in an amount equal to the difference between actual purchases and the minimum. If Eschelon fails to meet this purchase commitment, this agreement is terminated and Eschelon will be required to pay Qwest a penalty of \$10 million which is the equivalent of 24% of its 2005 annual revenue commitment to Qwest.

Eschelon's annual and contract term purchase commitments will be reduced proportionally in the event Qwest sells any exchanges where it is currently the incumbent local exchange service provider, but only to the extent that any such sale materially impacts Eschelon's purchases from Qwest.

Eschelon's annual and contract term purchase commitments will be adjusted proportionally and/or appropriately in the event Eschelon acquires, or merges with, or divests to, another company where such acquisition, merger or divestiture materially changes Eschelon's market capitalization, size, markets or other similar measure, as mutually agreed.

2.6 The Parties will resolve any disputes pursuant to Escalation Procedures to be developed by the Parties.

3. In consideration of the agreements and covenants set forth above and the entire group of covenants provided in section 2, all taken as a whole, with such consideration only being adequate if all such agreements and covenants are made and are enforceable, Qwest agrees to make the Products available for purchase by Eschelon at such rates and on such terms and conditions as agreed.

[Remainder of page intentionally blank]

SUBJECT TO RULE OF EVIDENCE 408

Made and entered into on the effective date written above by Eschelon and Qwest.

Eschelon Telecom, Inc.

Qwest Corporation

\_\_\_\_\_  
Authorized Signature

  
\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

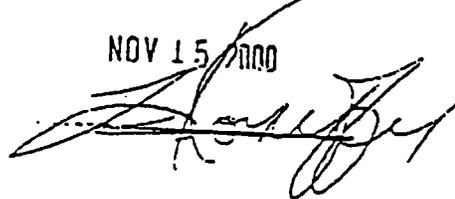
EVP  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

11-15-00  
\_\_\_\_\_  
Date

Approved as to legal form

NOV 15 2000



H:Qwest/MTOP102500

SUBJECT TO RULE OF EVIDENCE 40S

Made and entered into on the effective date written above by Eschelon and Qwest.

Eschelon Telecom, Inc.

Qwest Corporation

  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

Richard A. Smith  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

President - CEO  
Title

\_\_\_\_\_  
Title

11/19/00  
Date

\_\_\_\_\_  
Date

Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED

AUG 16 2007

Boise, Idaho

**Deanhardt, C. - Exhibit 4**

**Case No. QWE-T-06-17**

**AT&T**

WCO-16

To: "Jim Gallegos (Qwest)" <jhgalle@uswest.com>, "Judy Tinkham" <jtinkha@uswest.com>, "Audrey McKenney (Qwest)" <axmcken@uswest.com>, "Laurie Korneffel" <lkornef@uswest.com>, "Judith Rixe" <jrix@uswest.com>  
cc: "Oxley, J. Jeffery" <jjoxley@eschelon.com>

Subject: Letter from Richard A. Smith - Subject to Federal Rule of Evidence 408 (Confidential)

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See attached letter from Richard A. Smith on Subject to Federal Rule of Evidence 408.

<<Qwest Agreement - 11-5-00.doc>>

Original copy of the letter will be mailed to you:  
Jim Gallegos, Laurie Korneffel and Audrey McKenney (Fedx overnight)  
Judy Tinkham and Judy Rixe (U.S. mail)

If you do not receive the original letters, please notify Richard Smith at (612) 436-6626.

Thank you.

Lori Wagner  
Eschelon Telecom, Inc.  
Business No. (612) 436-6492  
E-mail: lmwagner@eschelon.com

 - Qwest Agreement - 11-5-00.doc

November 5, 2000

Mr. Jim Gallegos  
Corporate Counsel  
Qwest  
1801 California Street, Room 3800  
Denver, CO 80202

Ms. Audrey McKenney  
Vice President – Wholesale Markets Finance  
Qwest  
1801 California Street, Room 2350  
Denver, CO 80202

Ms. Judy Tinkham  
Vice President – Wholesale and Diversified Markets  
Qwest  
200 South 5<sup>th</sup> Street, Room 2400  
Minneapolis, MN 55402

**Confidential - Subject to Federal Rule of Evidence 408**

Dear Mr. Gallegos, Ms. McKenney, and Ms. Tinkham:

[Trade Secret Data Begins

The purpose of this letter is to communicate the key business issues associated with our work on the business to business relationship that Eschelon/Qwest are attempting to construct on UNE-P and operating performance.

We have reviewed the documents that Ms. Korneffel/Mr. Gallegos forwarded to us over the past two (2) weeks and there are numerous revisions that our respective legal teams can bring to conclusion, but the following business issues will take some discussion which I would like to conclude over the next two (2) business days (by EOD on Tuesday, November 7, 2000):

1. The volume discount of 10% that we agreed to on Saturday, October 21<sup>st</sup>, has not been explicitly stated in the purchase agreement.
2. The \$13.00 per month per resale line payment that Qwest was to make to Eschelon effective October 1, 2000 if accurate switched access records are not delivered each month has not been included as we agreed to on Saturday, October 21, 2000. Sub issues/questions are provided as follows:
  - a) Can Qwest provide these records to Eschelon in the industry standard format? Our redline of the interconnection agreement amendment contemplates that by January 1, 2001, Qwest will be able to do this.
  - b) Does Eschelon have to provide daily resale line telephone number data to Qwest given that Qwest already has this information?

**NONPUBLIC DOCUMENT**

**CONTAINS TRADE SECRET DATA**

- c) Would Qwest be willing to bill the interexchange carriers for switched access for resale/UNE-P lines and remit their payments to Eschelon instead of delivering the raw records? This may be simpler for both parties.
3. Because our interconnection agreements start to expire soon, and because they are becoming dated, Eschelon requires the ability to continue to negotiate new agreements or to opt into the interconnection agreements of others.
4. We need to confirm that Qwest will make DSL available to Eschelon at the wholesale discount, contrary to the language in the interconnection agreement amendment we received. We also need to confirm that we will be able to provide voice mail to our platform customers. We understand that we will not receive the wholesale discount for voice mail.
5. Qwest needs to provide a list of features and Qwest's proposed TELRIC pricing of those features that are not included in Attachment 3.2 of the proposed Interconnection Agreement Amendment Terms.
6. Eschelon will give up regulatory dispute remedies only if we can continue to have all legal remedies available to us as agreed to on Saturday, October 21, 2000. Binding arbitration is acceptable as long as both parties agree.
7. The operating agreement/implementation plan is critical to establishing a solid business to business relationship with Qwest as "good economics" represent only part of a positive relationship. Without an improved level of service from Qwest – the economics do not matter. To accomplish this – we need to have a date certain (April 30, 2001) in which we will have an operating agreement/implementation plan agreed to including any necessary arbitration of issues. If we do not have this agreement, both parties should revert back to any/all legal remedies or regulatory remedies.

Regarding the last issue noted above (Item #7), we have ongoing concerns about Qwest's ability to improve service levels given the recent analysis completed by our Provisioning team for the period of October 17, 2000 to November 1, 2000. During this time, 42.7% of the migrations/hot cuts completed by Qwest had customer effecting problems. I understand and appreciate the recent activity and resource that Qwest has recently put on these issues, but they are not fixed and without a solid operating/implementation plan agreed to by both parties by April 30, 2001, the only effective alternative for Eschelon is to retain our regulatory remedies. If this plan is in place, Eschelon will be a vocal proponent of Qwest's Section 271 filings in all your jurisdictions.

The best and most enduring partnerships are those in which both sides help each other. So far we have concentrated on setting out how Qwest helps Eschelon economically and how Eschelon assists Qwest in achieving its 271 goals. I think we need to consider how we might help each other become more productive. Eschelon has a solid provisioning staff. Recently, in the context of preparing for 271, we've been using our best peoples' efforts to document problems with Qwest's wholesale service. What we would really like to do is use these people to analyze, document, and team with Qwest employees to improve our joint provisioning processes. I feel there is an opportunity to partner on process improvements. If we can develop this idea, put some teeth into it and incorporate it into our interconnection agreement and/or purchase agreement, we may also have a mechanism that makes it more difficult for any party to opt into our agreements.

NONPUBLIC DOCUMENT

CONTAINS TRADE SECRET DATA

At our meeting on Thursday, October 12, 2000, in Denver, we agreed to complete negotiations and have definitive agreements signed by EOD Sunday, October 22, 2000. We did not meet that commitment – would suggest that we set another one for EOD Sunday, November 12, 2000 and make that one, i.e. have definitive agreements executed by both parties. Once again, suggest that we sit face to face for one (1) day – believe that we can drive this to conclusion if we completed that session. Will call you tomorrow morning to establish another negotiating session.

Very truly yours,

Richard A. Smith  
President and Chief Operating Officer

RAS:lw

**Trade Secret Data Ends**

xc: L. Komeffel – Qwest  
xc: J. Rixe - Qwest  
xc: J. Oxley – Eschelon  
xc: File - Qwest

**NONPUBLIC DOCUMENT  
CONTAINS TRADE SECRET DATA**

Idaho Public Utilities Commission  
Office of the Secretary  
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AUG 16 2007

Boise, Idaho

**Deanhardt, C. - Exhibit 5**

**Case No. QWE-T-06-17**

**AT&T**

WCO-18

—Original Message—

From: Clauson, Karen L.  
Sent: Friday, December 08, 2000 4:35 PM  
To: 'jrix@uswest.com'; 'Kevin Saville'  
Subject: Escheion Implementation Teams/Issues

Enclosed is a revised version of the list that you requested of Escheion's team members with their titles and departments. All of the teams have met internally and are preparing for their first meetings with Qwest. If we find that some issues are not being covered by any team, we could add teams later. But, this appears to be a good start. It would be great if you could provide to us, at our meeting at 9am on Dec. 12th, a list of team members for Qwest's corresponding teams.

Also, in addition to the titles/departments, I have listed below some of the issues that the teams may address. While these are just examples, the issues should give you an idea of the expertise needed for the various teams. With the right people, the teams can reach business solutions to problems that can then be translated to an Implementation Plan and, ultimately, interconnection agreements.

When reading the issues below, a few themes re-occur as to Escheion's needs:

Vendor-customer relationship, with Qwest explaining and supporting its products fully.  
Better access to more knowledgeable contacts for obtaining information and resolving issues.

- Regular communication between both companies.
- Common sense, practical solutions.
- Streamlined, known, and reliable processes and procedures.
- Timeliness and accuracy.
- Project management for resolving large or one-time issues.

ISSUES:

Examples of issues that we would anticipate that the teams (including appropriate subject matter experts from both companies) address would include, for example:

BILLING (CONNECTIVITY BILLING)

**DISCONTINUING CERTAIN BILLING:** Our understanding of the agreement is that Qwest is not going to bill us for recip comp (local termination usage on UNE lines) and termination liability as of October 1, 2000. Has, or will, Qwest simply turn off the recip comp and termination liability so that we no longer get bills? This seems like a simple thing that could be done immediately, even before our first meetings. (For example, Bill Markert has already asked his group to turn off CABs billing for this usage.) Please confirm if that is your understanding as well and if this has/will be done.

**CREDIT:** With respect to the credit back to October 1, does Qwest have a plan as to how it will do this. If so, when will this payment show up and in what form? (We hope to receive it soon and by BAN, etc.). Are there issues we need to discuss about how this will work before we will see a credit?

**SYSTEM & PROCESS CHANGES:** The issues raised by Bill Markert in CICMP need to be resolved. Can the companies address those issues here (or can Qwest do so more quickly in CICMP)? The change requests are on Qwest's CICMP web site, at <http://www.uswest.com/wholesale/cicmp/changerequest.html>, and include:

- CR#5043134 Populate all Billmate fields/columns
- CR#5043176 Better explanations of OCCs on invoices
- CR#5043187 Payment history information on invoices

CR#5043197 Identification of PIC code in Billmate  
 CR#5043226 UNE invoice detail  
 CR#5110474 Provide calculation description of each termination penalty levied  
 CR# 5043086 Treatment of administrative lines/features/voicemail  
 CR#5043149 Billmate uniformity  
 CR#5043233 Continuing changes to rules  
 CR# 5043204 Rate change notification  
 CR# 5043162 Calling Plans  
 CR#5043209 Single billing platform  
 CR#5043125 Knowledge of bill inquiry staff

**SUPPORT:** We would like to establish a better process for using knowledgeable contacts at Qwest. Currently, the billing points of contact do not even have access to, or not familiar with, Eschelon-specific information (e.g., tariffs, bills). We need dedicated, knowledgeable Qwest contacts/ reps for: (1) daily usage feeds from Qwest (that we use to bill our customer); and (2) monthly bills from Qwest (that we pay to Qwest). For the first category, there is currently no Qwest rep. Eschelon must call a help desk, at which the people are unfamiliar with the issues and Eschelon-specific information. For the second category, Qwest has designated rep(s), but they are not knowledgeable and do not have access to, or not familiar with, Eschelon-specific information (e.g., invoices). The Qwest reps who deal with us need to be able to access Eschelon-specific information and understand it.

**ADJUSTMENTS:** Improved process for billing adjustments

**TERMINATION LIABILITY:** We want to go over the agreement reach and confirm that our understanding is the same as Qwest's. With respect to customer termination liability penalties, they are too high.

**SERVICE LEVELS, REMEDIES:** In our last meeting with Perry Hooks, we proposed that, at least until other service level guarantees and remedies are available post-Qwest's interLATA entry, at least the metrics and remedies relating to provisioning, billing, and repair that we agreed to in the MN merger case should apply in all states. After Qwest's interLATA entry, other metrics and remedies may be available, perhaps on an opt-in basis. At that time, Qwest could not agree to this proposal. We would like to re-visit this issue. We need guarantees relating to service in all of our states in the interim, as well as after Qwest enters the interLATA market.

## COLLOCATION

**TIME INTERVALS/AUGMENTS:** We have signed an amendment for 30-day intervals for augments, and Qwest has indicated it will adopt the 90-day intervals for collocation (though it is asking for some exceptions). We are willing to work on reasonable exceptions. In many routine cases, however, collocations are taking too long. This is particularly true with respect to augments. Qwest is requiring a 45-day feasibility period and has forecasting requirements even for the simplest of augments. We need shorter time intervals (upon which we can depend). Perhaps the teams can identify different kinds of augments that do not require the longer time frames (or, conversely, shorten the time intervals and identify exceptions). Either way, simple augments should not take 45 + 30 days or more.

**EXAMPLE:** We would like to bring more reality/practicality/flexibility to the collocation process. (If 45 days isn't needed, don't take 45 days, etc.) For example, we asked Qwest to apply the 30-day augment interval to 4 applications that were submitted on 10/19, after we signed the 30-day amendment but before Qwest signed it. (The applications are for Seattle Mutual for APOT; Seattle Mutual for cage; Tacoma Fawcett for power and APOT; and Vancouver North for power.) We've been told that this augment will take 120 days, even though Qwest then signed the amendment. Given that everyone recognizes that an augment can be done in 30 days

or less, why can't these applications be processed earlier? If it is a forecasting issue, we can sit down and talk about needs and priorities.

**PROJECT MANAGEMENT:** After a time, the 30-day interval process should work better (because some of the pre-requisites will be met, etc.). Once it is working more smoothly, some of the concerns about delay should be reduced. Eschelon cannot afford to wait, however, until then for existing collocation requests. Perhaps the issue of existing collocations can be taken aside and assigned to a knowledgeable Qwest project manager to work on these issues. Eschelon would sit down with the project manager with a list of existing projects, their status, and priorities, and work through the best way to address these collocations. Then, the teams could work out any adjustments to the process that may be needed on a going-forward basis (without bogging down the teams in the specifics of each collocation). Bill Fellman is helpful, but we are unclear whether he has the decision making authority to act as a project manager in this sense. He has also indicated that his job responsibilities may change after the first of the year.

**CLEC-TO-CLEC:** For CLEC-to-CLEC collocations, we understand (from the presentations in Denver) that Qwest has a new "product." We would like Qwest to explain this option (how it works, what it costs, etc.). In the meantime, Qwest had indicated that we had to order channel terminations on the ICDF instead of doing a CLEC-to-CLEC collo or ordering less expensive cross connections. Bill Markert has been following up on getting a bill adjustment for this. Going forward, we need to know the best, most cost effective method for these types of collocations. For that, we need an understanding of the different products/options that Qwest offers. The information on the website is inadequate. Other vendors give us presentations and work with/train us on using their products. We would like to work toward that kind of vendor-customer relationship with Qwest.

**ICDF/ALTERNATIVES:** More generally, we would like Qwest to explain use of the ICDF and other alternatives to the ICDF, such as going to the MDF or COSMIC. We understand that use of the ICDF is optional and would like to better understand Qwest's other offerings (including cost).

**QUALITY:** Quality issues (wiring problems, etc.): Improve the process to avoid, or better respond to, quality issues.

**SERVICE LEVELS, REMEDIES:** see above

## CUTOVERS

**TRIAL/PROCESS:** Qwest and Eschelon are conducting a trial to address several issues raised by Eschelon that generally fall into five categories: 1) Loop problems (e.g., no dial tone at customer premise after cut); 2) Cuts appear successful on the day of cut, but troubles occur the next day or two; 3) Cuts are scheduled, but Qwest cancels them on the scheduled date (often without notice to Eschelon); 4) Cuts are held by Qwest for facilities, but Qwest performs the translations disconnect anyway and customer goes out of service. Much time and effort is wasted restoring service; 5) Repairs are not performed or not performed adequately or in a timely manner. The teams will need to monitor the cutover trial and adjust, if needed, to issues that may arise. Initially, we need to resolve the issue that we have been discussing relating to our ability to contact the Implementer directly (for the trial). We agreed to accept the orders at a certain point based on the understanding that we could call the Implementer directly. Rather than re-visiting whether we should accept the orders, perhaps we can work something out with respect to Qwest's need for a ticket while still contacting the implementer. The normal process isn't working, and we've had serious problems again this week. So, we hope to resolve this issue soon. Ultimately, we need to assess whether the trial was successful and should be incorporated into the Implementation Plan (and interconnection agreements). If not, we'll need to develop alternative processes.

**NON-TRIAL:** The trial focuses, in many respects, on the day of cut. Therefore, it may not capture some of the problems that actually occur before the day of cut. If problems are occurring that are not being captured by the trial, they need to be identified and addressed.

**INTERVALS/OBJECTIVE:** Although improving the process is critical, it is not an end in itself. We need to agree upon achievable objectives, such as no more than 5 minutes per line of service disruption (including not only lack of dial tone but also an inability to receive inbound calls); on-time performance at rates at or above 90 percent; fewer than five percent of hot cuts resulting in service outages; and fewer than two percent of lines with reported installation troubles. Whatever the process, such goals need to be met so that we can rely on the process when dealing with our own customers.

**SERVICE LEVELS, REMEDIES:** see above

#### DSL

**UNE-E WITH DSL:** Eschelon and Qwest have started discussions of specific issues that will allow Eschelon to evaluate Qwest's UNE-E product (essentially the same as UNE-P, except for price and availability of DSL and voice mail with the platform) (as a potential alternative to COVAD). As with any vendor attempting to market its product to a customer, Qwest should provide enough information and training so that Eschelon can properly evaluate, order, and use this product. The list of issues from yesterday's meeting is enclosed. (Although the title refers to "Resale DSL," the references to resale should be references to "UNE-E" or "Platform," because we would be ordering per the agreement.) These are the types of issues that the teams will need to work through with respect to use of platform with DSL.

**PROJECT MANAGEMENT:** Platform with DSL may be another area for which a project manager would be useful to assist with actually transitioning to using Qwest as a provider. The teams could work on the higher-level process issues for going forward, and the project manager could work through the day-to-day issues of the transition.

**ON NET:** Eschelon will continue to provide on-net DSL (with Eschelon providing its own switching). Issues include better training for ordering and provisioning. When a loop is installed and the Qwest tester and technician are on the line, they often do not seem to know what information needs to be communicated. We need to know what information is required for a basic install with performance testing. Qwest should provide methods and procedures that all can follow consistently, including procedures for when test results are provided and which tests should be performed. One area of inconsistency is verbal acceptance. Some reps require it and others do not. This can affect whether Eschelon receives test results or not. Eschelon also needs loop make up information. These are the types of issues that the teams will need to work through with respect to use of DSL for on-net customers.

**OTHER PRODUCTS:** Eschelon would like product information training as to other Qwest products, such as IDSL and SDSL. If Eschelon is interested in other products, processes would be needed to order them, etc.

**SERVICE LEVELS, REMEDIES:** see above

#### HELD ORDERS (LACK OR RE-USE OF FACILITIES)

**PROCESS:** Eschelon and Qwest have been discussing held order issues, including issues relating to lack or re-use of facilities, for some time. A copy of a letter discussing these issues is enclosed. Also, Eschelon has recently submitted four Change Requests under the new "process" segment of CICMP relating to this subject. Can the companies address those issues here (or can Qwest do so more quickly in CICMP)? Please identify the decision maker with respect to these issues.

The four CRs (which may not yet have been assigned CR numbers), plus one to be submitted for next month, are:

#### CLEC-to-CLEC:

Qwest should change its process so that Qwest will re-use facilities for CLEC-to-CLEC carrier changes. When an end-user customer changes carriers from one CLEC to another, Qwest has indicated to Eschelon that CLECs must order new facilities, because Qwest does not allow a CLEC to request re-use of the same facilities used by the other CLEC to serve the same customer. In one situation, for example, Eschelon placed an order to change an end-user customer from the on-net facilities of another CLEC to the on-net facilities of Eschelon. Qwest indicated that Eschelon must order new facilities and, when Eschelon did so, Qwest placed the order in held status. The other CLEC provided its PONs to Eschelon for that CLEC's disconnect of its loops. Eschelon re-submitted the order, identified the PONs, and requested re-use of those facilities. Qwest responded that CLECs are not allowed to request re-use of CLEC facilities. Eschelon cancelled the order and resubmitted it later. The order again went in held status. The order is still in held status. (Eschelon has provided the specific information for this and other situations to its account manager.) Ordering new facilities, instead of re-using facilities, can result in delay, additional costs, and service disruption or downtime. Please modify Qwest's processes so that Qwest will re-use facilities for CLEC-to-CLEC carrier changes.

#### LOOP RECLAMATION:

Perform loop reclamation for CLECs and provide prior notice of Qwest's loop reclamation. Qwest has indicated that it will not perform loop reclamation to prevent a CLEC order from going into held status. In contrast, when Qwest "winsback" a customer from a CLEC, Qwest will perform loop reclamation and will do so without prior notice to the CLEC. For example, as shown in the example below, when Eschelon has placed a disconnect order on a UNE loop, Eschelon has received a rejection notice from Qwest indicating that Qwest has already disconnected the loop as a result of loop reclamation. Qwest disconnected the loop without prior notice to Eschelon. Because of this practice, an order will be processed (and not go into held status) for a Qwest retail customer, whereas a CLEC order would go into held status. The CLEC end-user customer would experience a delay (and possibly additional costs and service disruption), whereas the Qwest end-user would not. Please modify Qwest's processes to perform loop reclamation for CLECs and provide prior notice of Qwest's loop reclamation.

#### INSTALLATION OF ADEQUATE FACILITIES AND REDUCTION IN NUMBER OF HELD ORDERS:

Modify Qwest's processes to ensure installation of adequate facilities and reduction in the number of held orders. Through recurring rates, Qwest is being compensated for expanding its network to account for new growth. Qwest will build facilities for its own retail customers. (In Arizona arbitrations, for example, Qwest reported that it installs 3 lines per customer to anticipate growth.) However, Qwest will not do so for CLECs in similar situations. Qwest has rejected orders from Eschelon for the stated reason that "no jobs planned in the near future for this area." (Examples of such rejections were provided to Eschelon's account team on August 30, 2000.) The orders are placed in held status indefinitely, with no date for completion. When asked about these rejections, Qwest indicated that it believes it has no obligation to build. (This policy was confirmed by Qwest at the last CICMP meeting.) As indicated, however, Qwest is being compensated for such growth and would build for its own retail customer in the same situation. Please modify Qwest's practices to build in these situations and to provide notice to CLECs as to when held orders will be completed. In the meantime, until such processes are in place, please institute a process to provide to CLECs (perhaps through a website) a list of those areas for which Qwest has jobs planned, a list of

areas for which no jobs are planned, and a description of the nature of the jobs planned. Because Qwest has access to this information for its planning purposes, parity requires that CLECs also have access to the same information for their planning purposes.

#### FACILITIES AND PROCESS WHEN QWEST USES IDLC:

Modify Qwest's processes to provide facilities, despite Qwest's use of integrated pair gain (IDLC). Currently, Qwest's IRRG states:

Unbundled Loops can only be established on copper or Universal Digital Loop Carrier (UDLC). Integrated Digital Loop Carrier (IDLC) cannot be used for an Unbundled Loop service at this time. ***Qwest has chosen not to unbundle IDLC because of the expense of providing equipment to "groom" the DSO lines.*** During the Unbundled Loop facility assignment, an attempt will be made to Line and Station Transfer (LST) the IDLC loop to UDLC or copper. If there are no facilities available to complete the LST, the Co-Provider will be notified that the order has been placed into a held status. (Emphasis added.)

The FCC has said that "[t]he BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses [IDLC] technology . . ." (BellSouth Second Louisiana 271 Order, ¶187 and SBC Texas 271 Order, ¶248.) The processes outlined in Qwest's IRRG are not consistent with this requirement. In some cases, Qwest does not identify that IDLC is being used until the day of cut. When the discovery is made, Qwest may not dispatch a technician. Instead, Qwest delays the order or places it in held status. Qwest does so for all lines, even though facilities may be available for some of the lines. Please modify Qwest's processes to be consistent with the FCC's order. Also, please modify Qwest's processes to identify earlier (before the day of cut) that IDLC is being used. If use of IDLC is not identified until the day of cut, ensure that a technician is available to resolve the issue that day (rather than delaying the order). If Qwest indicates that it does not have facilities for all lines, change Qwest's processes so that the lines for which facilities are available may be installed (when the line configuration supports doing so).

#### UNIVERSAL DIGITAL CHANNELS ("UDCs") (to be submitted):

Eschelon will submit a process CR to CICMP asking Qwest to establish and distribute a process for UDC, including a process for using UDS as an alternative when Qwest asserts lack of facilities. Eschelon will ask that Qwest ensure that, if UDC is used, the customer will not experience a degradation in quality of service. If degradation in quality does occur, a process for removing the UDC and installing facilities is needed.

SERVICE LEVELS, REMEDIES: see above

#### INTERCONNECTION TRUNKING/NETWORK:

##### CAPACITY SHORTAGES

ORDERING: Qwest cancels an order if the order form contains a minor problem instead of working out this issue.

SUPPORT: The Qwest network planner is spread too thin and appears insufficiently knowledgeable about the network. Website information is often out-dated and incorrect. A website can be a helpful tool but it cannot replace product training and support. Qwest needs to provide sufficient information to allow Eschelon to make informed purchasing decisions.

SPOP: Eschelon and Qwest are attempting to resolve an issue in Bellevue. If resolved satisfactorily, the teams may be able to work out procedures to avoid this issue going forward.

SERVICE LEVELS, REMEDIES: see above

#### OPERATIONS SUPPORT SYSTEMS (OSS)

The teams may need to discuss whether some OSS issues can not be dealt with on a company-to-company basis because, for example, region-wide system changes are needed. In such cases, perhaps interim solutions can be worked out. OSS issues include, for example:

IMA-GUI UPTIME: Unplanned system outages and IMA downtime need to be addressed.

IMA-GUI TRAINING: Training has been inadequate. Perhaps training tailored for Eschelon's needs could be arranged.

IMA-GUI FUNCTIONALITY: Some of these issues have been raised in CICMP. They are listed in the CICMP Change Request log at <http://www.uswest.com/wholesale/cicmp/changerequest.html>.

EDI: Some of these issues have been raised in CICMP. They are listed in the CICMP Change Request log at <http://www.uswest.com/wholesale/cicmp/changerequest.html>. Also, the process is too manual, even when an EDI system will be in place.

OTHER QWEST SYSTEMS: These include issues relating to unplanned system outages (such as of LSMS) and access to information in Qwest's systems.

TROUBLE ADMINISTRATION/REPAIR: Database accuracy is a concern.

LOOP DATABASE: Better loop make up information is needed (and needed in bulk form, not line-by-line).

SERVICE LEVELS, REMEDIES: see above

#### REPAIR

CONVERSIONS/MIGRATIONS: Many repair issues carry over from conversions/migrations (e.g., conversions to Eschelon on-net). If these problems are resolved earlier, they should not reach repair.

POST-CUT: Post-cut issues include problems dealing with issues such as pair gain or the distribution frame. Some post-cut issues are related to modems, fax machines, or credit cards. Eschelon needs to know the cause of these problems. For example, have pair gain levels not been adjusted or was the testing improper?

SUPPORT: In addition to physical troubles, issues can relate to communication gaps. Eschelon needs access to knowledgeable contacts. If Qwest has a large project (such as a big switch conversion), Qwest should notify Eschelon and provide a special point of contact for that project. We need to know who to call and how to escalate issues.

TOO MANUAL: Please provide information about electronic tools for repair. For example, if Eschelon could access information electronically, some calls and communication gaps could be avoided. If other CLECs are using less manual processes, please provide Eschelon information about such options.

**TIMELINESS:** Timeliness is a critical issue in repair, and improvement is needed.

**SERVICE LEVELS, REMEDIES:** see above

**UNE-P (NOW UNE-E)**

**AGREEMENT:** Because the companies have only recently reached agreement, Eschelon believes it would be useful to get together and confirm our understanding of how the agreement works. For example, will we be assigned a different USOC for ordering, or will ordering be the same as for resale, etc. We are developing and rolling out products based on our understanding of the agreement, and we need Qwest to inform us if it has a different view. An early meeting should be scheduled to walk through the specifics of the agreement: (ordering, pricing, billing, etc.), with subject matter people who can address the nuts and bolts of ordering, provisioning, and billing UNE-E.

**AIN:** At that meeting, Qwest could address AIN features under the new agreement. For the AIN features that Eschelon orders now with resale (such as Remote Access Forwarding), will Qwest make them available with UNE-E and at what price. If not, how will AIN features be addressed for existing orders and on a going forward basis?

**SERVICE LEVELS, REMEDIES:** see above

**SUMMARY:** These are just examples of issues. They should give you a better idea, however, of the types of expertise needed for the various teams. See you on Tuesday morning.



Implementation phone

list.doc



DSLQuestions.doc



heldord.doc

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

Eschelon/Quest I Implementation Teams

**Billing (Connectivity Billing) Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6625
Honnila	Kay Honnila	CABS Manager	Accounting Department	(612) 436-6014
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	* Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	Management Information Systems	(612) 436-6616

**Collocation Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Bocke	Gerry Bocke	Director of Switch Operations	Network Operations	(612) 436-6614
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Hanser	* Paul Hanser	Director of Switch Engineering	Engineering & Network Implementation	(612) 436-6405
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

**Cutover (Loop Cutovers/Hotcuts) Team**

Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Schiller	* Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

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**Eschelon/Qwest Implementation Teams**

**DSL Team**

Fleming	* Steve Fleming	Product Manager	Marketing	(612) 436-6450
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Kolar	Steve Kolar	VP of Technology IP Services	Network Operations	(612) 436-6478
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Solbrack	Steve Solbrack	Executive Vice President	Administration	(612) 436-6452
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Provisioning	(612) 436-6453

**Held Orders (Lack or Reuse of Facilities) Team**

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	* Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

**Interconnection Trunking Team**

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hal Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Florek	Bruce Florek	Operations Manager, P1X/SLC	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukaruppan	Renga Muthukaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	* Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

**OSS Team**

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Goldberg	** Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	** Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

\* Team Leader for EDI      \*\* Team Leader for GUI/Provisioning

\*\*\* Team Leader for GUI/Provisioning

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C

Eschelon/Quest I Implementation Teams

**Repair Team**

Brolsma	* Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Cluck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685

**UNE-P Team**

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secrest	* Jonathan Secrest	Director of Product Marketing	Marketing	(612) 436-6049

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Idaho Public Utilities Commission  
Office of the Secretary  
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Boise, Idaho

**Deanhardt, C. - Exhibit 6**

**Case No. QWE-T-06-17**

**AT&T**

WCD-19

000 06750

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In agreement paragraph 3 of the "Confidential Amendment to Confidential/Trade Secret Stipulation" between Eschelon and Qwest (Q110041 - Q110045), Eschelon agrees to provide "consulting and network services" to Qwest in exchange for "an amount that is ten percent (10 percent) of the aggregated billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005." Please answer the following with respect to this agreement:

- a. Describe in detail the nature of the consulting services actually provided by Eschelon, including whether those services relate to issues outside of the provisioning of telecommunication services to Eschelon.
- b. Identify any other CLEC to which Qwest has offered the opportunity to provide consulting services in exchange for billing refunds in Minnesota.
- c. Identify, by name and title, the consultants Eschelon has provided for Qwest.
- d. Identify, by name and title, the person at Qwest charged with responsibility for the Eschelon consulting relationship.
- e. Identify the amount of money paid to Eschelon by Qwest to date under the terms of this agreement.
- f. Identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with billing refunds in exchange for services provided by the CLEC to Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please see Response to Request 66. In addition and in response to the particular questions of Request 67:

- a. Eschelon has provided wide ranging consulting services with respect to the creation of a UNE Star product reflected in its interconnection amendment dated November 15, 2001. Development of this product involved substantial effort by Qwest, and Qwest has used consulting services from Eschelon in an effort to make this product useful to CLEC customers and to improve Qwest's delivery of this product. UNE Star is something that is included in Qwest's interconnection agreement with Eschelon and is available to any CLEC wishing to opt-in to all of its terms. Attached as Trade Secret Attachment C is a list of consulting teams from Eschelon that performed work from Qwest. Those teams include:

1. OSS Team -- Responsible for evaluating and suggesting modification to operational support systems in connection with UNE Star.
  2. UNE-P Team - Assisted and made recommendations for delivery and determining USOCs for features associated with UNE Star.
  3. Billing Team - Assists and makes recommendations to Qwest regarding appropriate billing for UNE Star products given applicable Commission orders and decisions in multiple states and assisting in resolving issues associated with billing for UNE Star.
  4. Collocation Team - Assists and suggests modifications for processes for addressing collocation issues in order to improve those processes.
  5. Cutover Team - Studied and suggested changes to customer processes in order to decrease Qwest cutover times.
  6. DSL Team - Assists Qwest in developing processes and methods for providing re-sale of DSL.
  7. Held Order Team - Worked with Qwest in an effort to evaluate Qwest processes to reduce held orders.
  8. Network/Interconnection Tracking Team - Assisted in working with Qwest on issues regarding how traffic is routed in the Seattle and Portland markets.
- b. See the McLeod Agreement.
  - c. Please see Attachment C.
  - d. Kevin Saville and Steve Sheenan
  - e. Qwest is gathering this information and will provide it as soon as it is available.
  - f. The consulting arrangement with Escheion uses bill refunds as a surrogate for hourly or other payments that might otherwise be paid to a consultant entering into an arrangement with Qwest. Accordingly, this agreement is not an exchange of a billing refund for services provided by the CLEC. Because this involves consulting services as opposed to an interconnection arrangement, this agreement term has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 65.

**SUPPLEMENTAL RESPONSE 12/20/01:**

For the period of 11/19/00 through 08/31/01, the amount due to Escheion is \$2,540,017.

**Escalation Implementation and Consulting Teams**

**Billing (Connectivity Billing) Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6625
Honnilla	Kay Honnilla	CABS Manager	Accounting Department	(612) 436-6014
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	Management Information Systems	(612) 436-6616

**Collocation Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Hanser	Paul Hanser	Director of Switch Engineering	Engineering & Network Implementation	(612) 436-6405
Kunde	Dave Kunde	VP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Regulatory Compliance Manager	Engineering & Network Implementation	(612) 436-6226
Tiwari	Satish Tiwari	Network Engineer	Engineering & Network Implementation	(612) 436-6669

**Cutover (Loop Cutovers/Hotcuts) Team**

Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	VP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

• Team Leader

•• Team Leader for FDI

••• Team Leader for CIPP Provisioning

## Eschelon Implementation and Consulting Teams

### DSL Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Fleming	• Steve Fleming	Product Manager	Marketing	(612) 436-6450
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Kolar	Steve Kolar	VP of Technology IP Services	Network Operations	(612) 436-6478
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Solbrack	Steve Solbrack	Executive Vice President	Administration	(612) 436-6452
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Provisioning	(612) 436-6453

### Held Orders (Lack or Reuse of Facilities) Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	• Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

### Network (Interconnection, Trunking, etc.) Team

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hil Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Florek	Bruce Florek	Operations Manager, P1X/S1C	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	• Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

• Team Leader

•• Team Leader for FID

••• Team Leader for GIP/Provisioning

## Escalation Implementation and Consulting Teams

### OSS Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Goldberg	•• Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	••• Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

### Repair Team

Brolsma	• Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Chuck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685

### UNE-P Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secrest	• Jonathan Secrest	Director of Product Marketing	Marketing	(612) 436-6049

Idaho Public Utilities Commission  
Office of the Secretary  
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AUG 16 2007

Boise, Idaho

**Deanhardt, C. - Exhibit 7**

**Case No. QWE-T-06-17**

**AT&T**



WCD-3

Greg Casey  
Executive Vice President  
Wholesale Markets

November 15, 2000

CONFIDENTIAL AGREEMENT

VIA ELECTRONIC MAIL AND FACSIMILE

Richard A. Smith  
President and Chief Operating Officer  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, Minnesota 55402

Re: Escalation procedures and business solutions

Dear Rick:  
Trade Secret Data Begins

As a result of ongoing discussions between Eschelon and Qwest in recent days, the parties have addressed numerous proposals intended to better the parties' business relationship. In principle, the parties have agreed to: (1) develop an implementation plan by which to mutually improve the companies' business relations and to develop a multi-state interconnection agreement; (2) arrange quarterly meetings between executives of each company to address and/or anticipate business issues; and (3) establish and follow escalation procedures designed to facilitate and expedite business-to-business dispute solutions.

1. IMPLEMENTATION PLAN

By no later than December 31, 2000, the parties agree to meet together (via telephone, live conference or otherwise); and as necessary thereafter, to develop an implementation Plan. The purpose of the Implementation Plan ("Plan") will be to establish processes and procedures to mutually improve the companies' business relations and to develop a multi-state interconnection agreement. Both parties agree to participate in good faith and dedicate the necessary time and resources to the development of the Implementation Plan, and to finalize an implementation Plan by no later than April 30, 2001. Any necessary escalation and arbitration of issues arising during development of the Plan must also be completed by April 30, 2001.

During 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 Section 271 approval or to file complaints before any regulatory body concerning issues arising out of the Parties' interconnection Agreements. Both before and after April 30, 2001, Eschelon reserves the right, and agrees to Qwest, to participate in regulatory cost proceedings or dockets regarding the reestablishment of rates. Notwithstanding any other provision of this agreement, if no Plan is agreed upon by April 30, 2001, the Parties will have all remedies available at law and equity in any forum.

Q110036

## QUARTERLY MEETINGS

Beginning in 2001 and continuing through the end of 2005, the parties agree to attend and participate in quarterly executive meetings, the purpose of which will be to address, discuss and attempt to resolve unresolved business issues and disputes, anticipated business issues, and issues related to the Parties' Interconnection Agreements, Implementation Plan, and other agreements. The meetings will be attended by executives from both companies at the vice-president and/or above level.

## 3. ESCALATION PROCEDURES

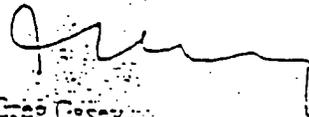
The parties wish to establish a business-to-business relationship and agree that they will resolve any and all business issues that may arise between them, including but not limited to, their Interconnection Agreements and Amendments, in accordance with the escalation procedures set forth herein. The parties agree, subject to any subsequent written agreement between the parties, to: (1) utilize the following escalation process and time frames to resolve such disputes; (2) commit the time, resources and good faith necessary to meaningful dispute resolution; (3) not proceed to a higher level of dispute resolution until either a response is received or expiration of the time frame for the prior level of dispute resolution; (4) grant to one another, at the request of the other party, reasonable extensions of time at Levels 1 and 2 of the dispute resolution process to facilitate a business resolution; and (5) complete Levels 1, 2 and 3 of dispute resolution before seeking resolution through arbitration or the courts.

<u>Level</u>	<u>Participants</u>	<u>Time frame for discussions</u>
LEVEL 1	Vice Presidents (Judy Timihany/Dave Kunde, Lynne Powers, Bill Markert, or successors)	10 business days
LEVEL 2	Senior Vice Presidents (Greg Casey/Rick Smith, or successors)	10 business days
LEVEL 3	CEOs (Joe Nacchio/Rick Smith, or successors)	10 business days
LEVEL 4	Arbitration according to the provisions of the Parties' Interconnection Agreements and/or other agreements (to be expedited and completed within 90 days, upon request of one of the Parties)	
LEVEL 5	CEOs (Joe Nacchio/Rick Smith, or successors)	10 business days

**LEVEL 6** If a dispute is not resolved in Levels 1 through 5, either party may initiate litigation in federal or state court, with all questions of fact and law to be submitted for determination to the judge, not a jury. The parties agree that the exclusive venues for civil court actions initiated by Eschelon are the United States District Court for the District of Minnesota or a court of the State of Minnesota and the exclusive venues for civil court actions initiated by Qwest are the United States District Court for the Districts of Minnesota or Colorado or the courts of the State of Minnesota or Colorado. When a court issues a final order, no longer subject to appeal, the prevailing party shall be awarded reasonable attorneys' fees and expenses. In the event that either party files an action in court, the parties waive: (a) primary jurisdiction in any state utility or service commission; and (b) any tariff limitations on damages or other limitation on actual damages, to the extent that such damages are reasonably foreseeable and acknowledging each party's duty to mitigate damages.

If the parties agree with the terms set forth above, they will each execute a copy of this letter in the signature spaces provided on the last page. Upon signature of both parties, the parties will be bound by the terms set forth herein. This letter agreement may be executed in counterparts and by facsimile.

Very truly yours,



Greg Casey  
Executive Vice President  
Wholesale Markets

TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST CORPORATION

*[Handwritten signature]*

[name]

*[Handwritten signature]*

[title]

11-15-00

[date]

Approved as to legal form

NOV 15 2000

*[Handwritten signature]*

ESCHELON TELECOM, INC

[name]

[title]

[date]

TERMS OF LETTER AGREEMENT ACCEPTED BY:

QWEST CORPORATION

[name]

[title]

[date]

ESCHELON TELECOM, INC.

  
[name]

[title]

11/15/00  
[date]

Idaho Public Utilities Commission  
Office of the Secretary  
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AUG 16 2007

Boise, Idaho

**Deanhardt, C. - Exhibit 8**

**Case No. QWE-T-06-17**

**AT&T**

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 06/20/2001

Date Response Due: 07/02/2001

REQUEST:

a. Provide a list of every written contract, agreement or letter of understanding between Qwest and a CLEC that operates or has operated in MN in the last five years. However, do not include any agreement, etc. filed with the Minnesota Public Utilities Commission. Include each agreement, etc. entered into, whether or not it is still in effect.

b. Provide a copy of the items listed in part a.

RESPONSE:

Qwest objects to this IR because it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of relevant information, and seeks the disclosure of confidential agreements. Qwest resolves numerous issues with CLECs on a daily basis and to provide every written memorialization of such agreements would require a review of all company interactions with each CLEC in the last five years. Furthermore, requiring Qwest to disclose this information would discourage resolution of disputes on an informal basis and would be, therefore, contrary to public policy. To the extent agreements have been reached that impact interconnection terms, those agreements have been filed with the MPUC. Further answering, Qwest objects that the request is beyond the scope of the investigation the DOC explained to the Commission it was engaging: "there were five issues that were set out that we're concerned about. I think it's page 10 of the staff briefing papers. That's the direction we're going. We're not asking for this to be a general fishing expedition, we're looking at those five issues, we think that that sets it out." (VOL II p. 35-36)

Respondent: Legal

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to provide 90 percent of Covad's Firm Order Confirmation (FOC) dates within 48 hours of receipt of a properly completed service request for POTS unbundled loop services. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to provide 90 percent of the CLEC's FOC dates within 48 hours of receipt of a properly completed service request for POTS unbundled loop services. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

As stated in the agreement that is the subject of this Request, Qwest's predecessor, U S WEST Communications, and Covad Communications Company agreed to a settlement of Covad's intervention and adversarial position to the Qwest/U S WEST merger in 2000. (See page Q110107: "Based on U S WEST's commitment to meet these service performance standards, Covad commits to withdrawing its opposition to the U S WEST/Qwest merger."). This agreement therefore stands as a settlement and business compromise of pre-existing disputes and of pending litigated actions. Sections 251 and 252 do not include within their scope agreements in which a settlement of pre-existing litigated positions is the primary bargained-for term or condition. Further, the provision that is the subject of this Request is integrated with all of its other terms and conditions, including the withdrawal of Covad's opposition of the merger. And, due to the integrated nature of and all of the agreement's covenants, the agreement is unique to Covad and Qwest.

Without waiving any of its positions, including those addressed above, Qwest states in Response to this Request No. 44 that the Eschelon and FirstCom interconnection agreements filed with and approved by the Minnesota Commission contain the following provisions:

Eschelon - approved by the Minnesota Commission on June 26, 2000:

2.4 U S WEST will provide FOCs (Firm Order Commitments) to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders. The FOC assumes that there is sufficient network capacity to meet the request in the standard interval. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB orders will reflect an ICB FOC date.

FirstCom - approved by the Minnesota Commission on April 20, 2001:

1.3.4 Qwest will provide FOCs to CLECs within a reasonable time, no later than 48 hours after receipt of complete and accurate orders for Regular POTS or Simple Business end-users. The FOC interval for all other complex orders will be within a reasonable time, no later than 8 business days from receipt of complete and accurate orders. The FOC for ICB orders will reflect an ICB FOC date.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "US WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to notify Covad of any facilities shortage issues for DSL capable, ISDN capable and DS1 capable services within 48 hours. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to notify the CLEC of any facilities shortage issues for DSL capable, ISDN capable and DS1 capable services within 48 hours. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to provide 90 percent of Covad's FOC dates within 72 hours of receipt of a properly completed service request for DSL capable, ISDN capable and DS1 capable unbundled loop services. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to provide 90 percent of the CLEC's FOC dates within 72 hours of receipt of a properly completed service request for DSL capable, ISDN capable and DS1 capable unbundled loop services. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 1 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, as part of the 72 hour FOC commitment referred to in the previous RFI, to dispatch a technician to verify the existence of suitable facilities prior to providing Covad with an FOC date. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to dispatch a technician to verify the existence of suitable facilities prior to providing the CLEC with an FOC date. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

In addition, the Fourth Amendment to the interconnection agreement with New Edge Networks, filed with the Minnesota Commission on November 20, 2000 and approved on December 22, 2000, states the following:

Section 1, part C, para.6. As part of the FOC process for 2-wire non loaded unbundled loop service where CLEC indicates that they intend to use the 2-wire non loaded unbundled loop for the provision of SDSL service, ISDN-, DS 1- or DSL-capable (excluding ADSL-capable) unbundled loop services, when requested to do so by CLEC, Qwest will dispatch a technician to verify the existence of suitable facilities prior to providing CLEC an FOC date.

---

CLEC is willing to limit the above provision to the following market areas: Vancouver, WA; Tucson; Omaha; Cedar Rapids; Albuquerque; Colorado Springs; Minneapolis; Boise; Salt Lake City (Ogden); Eugene; Salem; Spokane, and Des Moines.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 3 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees to reduce the incidence of failure on new Covad circuits to less than 10 percent failure within the first 30 calendar days following installation. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to reduce the incidence of failure on new CLEC circuits to less than 10 percent failure within the first 30 calendar days following installation. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - 0110107), U S WEST agrees to complete line conditioning paid for by Covad within 24 days or less 90 percent of the time. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to complete line conditioning paid for by the CLEC within 24 days or less 90 percent of the time. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, in those situations where the end-user customer is served by digital loop carrier or pair gain, to notify Covad and provide it with the option of submitting a service request for an ISDN capable loop compliant with TR-393 standards and U S WEST Technical Publication 77399. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees, in those situations where the CLEC's end-user customer is served by digital loop carrier or pair gain, to notify the CLEC and provide it with the option of submitting a service request for an ISDN capable loop compliant with TR-393 standards and U S WEST Technical Publication 17399. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

In addition, the Fourth Amendment to the interconnection agreement with New Edge Networks, filed with the Minnesota Commission on November 20, 2000 and approved on December 22, 2000, states the following:

Section 1, part C, para.5. In those situations where the end user customer is served by digital loop carrier or by pair gain, Qwest will notify CLEC of that situation and provide it the option of submitting a service request for an ISDN capable loop compliant with TR-303 standards and Qwest Technical Publication 77399. Qwest will, where technically feasible, either install an appropriate ISDN card for those end user customers served by digital loop carrier, or provide another ISDN option for those served off of pair gain. Where it would not impact a current customer, Qwest will perform a line station transfer in order to provision a CLEC service request.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

F421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, in those situations where the end-user customer is served by digital loop carrier or pair gain, and where it is technically feasible, to either install an appropriate ISDN card for those end-user customers served by digital loop carrier or provide another ISDN option for those served off pair gain in 10 days or less 90 percent of the time. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees, in those situations where the end-user customer is served by digital loop carrier or pair gain, and where it is technically feasible, to either install an appropriate ISDN card for those end-user customers served by digital loop carrier or provide another ISDN option for those served off pair gain in 10 days or less 90 percent of the time. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 4 of the "U S WEST Service Level Agreement with Covad Communications Company" (Q110105 - Q110107), U S WEST agrees, where it would not impact a current end-user customer, to perform a line and station transfer in order to provision a Covad service request in 10 days or less 90 percent of the time. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees, where it would not impact a current end-user customer, to perform a line and station transfer in order to provision a CLEC's service request in 10 days or less 90 percent of the time. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please See Response to Request No. 44.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 7 of the "Confidential/Trade Secret Stipulation Between ATI and U S WEST" (Q110035), U S WEST/Qwest agrees that reciprocal compensation for terminating internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed by USWC as of the date of that agreement. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest ad a CLEC in which Qwest agrees that reciprocal compensation for terminating Internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed by U S WEST/Qwest. Please provide a copy of the relevant pages(s) from the identified ICA.

RESPONSE:

The entire provision referenced in this data requests is as follows:

Cady has asserted that USWC must pay reciprocal compensation for internet related terminating traffic under its Interconnection Agreements and under applicable state and federal law, USWC has asserted that it has no legal obligation to pay reciprocal compensation for such traffic. Notwithstanding these differences and without waiving their positions, the parties agree for settlement purposes that reciprocal compensation for terminating internet traffic shall be paid at the most favorable rates and terms contained in an agreement executed to date by USWC. The parties will develop a full implementation plan of these reciprocal compensation issues by March 31, 2000. Further, the parties agree that for purposes of applying these rates and terms and conditions they will work cooperatively to develop a means of by which ISP traffic will be broken out in the least costly manner practicable.

Thus, the provision referenced in the Request is one dependent part of several compromises of legitimate legal and factual disputes between the parties, including disputes referenced throughout the agreement. It is also part of a settlement of past disputes relating to the delivery of internet related traffic, and Qwest submits that it is not within the scope of sections 251 and 252 of the Telecommunications Act, as addressed in Qwest's Responses to Request No. 40 and 44.

Without waiving Qwest's positions on this matter as stated above in this Responds, Qwest answers this Request by stating that ATI and US West never reached agreement regarding the percent internet usage discussed in this agreement and therefore did not resolve this issue until a full implementation plan and interconnection agreement amendment were reached on November 13, 2000.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraphs 11 and 12 of the "Confidential/Trade Secret Stipulation Between ATI and U S WEST" (Q110029 - Q110035), U S WEST/Qwest agrees to provide ATI with a dedicated provisioning team, located at ATI, to assist in solving provisioning problems. Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to provide a dedicated provisioning team to the CLEC under the same terms. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The dedicated provisioning team clause is integrated with the other covenants contained in this settlement agreement. Thus, please see Response to Requests 54 and 55.

Without waiving Qwest's positions on these matters as addressed above, Qwest responds to this Request by referencing the Minnesota DOC to the Eschelon amendment dated November 15, 2000 (Attachment B to Information Request No. 56), which states:

2.10 For at least a one-year period, Eschelon agrees to pay Qwest for the services of a Qwest dedicated provisioning team to work on Eschelon's premises.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 14 of the "Confidential/Trade Secret Stipulation Between ATI and U S WEST" (Q110035), U S WEST/Qwest agrees to dispute resolution terms that are "in addition to the dispute resolution mechanism provided under the Interconnection Agreement." Please identify at least one ICA approved by the MPUC between U S WEST/Qwest and a CLEC in which Qwest agrees to the same dispute resolution mechanism as set forth in paragraph 14. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The dispute resolution provisions of the ATI/Qwest settlement agreement apply to non-251 or 252 business disputes that arise between the parties. And, this dispute resolution procedure is "in addition to the one that applies under the Interconnection Agreement." Accordingly, this provision is not applicable to interconnection services and network elements, because the Interconnection Agreement applies to such disputes.

This dispute resolution provision is tailored to the specific corporate structures and business interests of ATI and Qwest. That is, the procedures match the corporate structures and hierarchies of the companies and the methods by which they wish to resolve disputes among themselves.

Further, a dispute resolution clause is not the provision of interconnection services or network elements. It necessarily follows that this clause is not subject to Sections 251 and 252 of the federal Communications Act ("Act"). And, Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and ATI's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to

the settling parties. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs. And, CLECs should have the ability to determine whether such an agreement would be of greater benefit to their business interests. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such agreements to allow Qwest to resolve such matters amicably and cooperatively with its wholesale customers.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In Section 2 of the "Confidential Agreement" set forth in a November 15, 2000 letter from Greg Casey at Qwest to Richard Smith at Eschelon Telecom, Inc. (Q110038), Qwest and Eschelon agree to hold quarterly executive meetings to be attended by representatives at the Vice-President or above levels. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to hold quarterly executive meetings, to be attended by representative at the Vice-President or above levels, with the CLEC. Please provide a copy of the relevant pages from the identified ICA.

RESPONSE:

The November 15, 2000 letter from Greg Casey to Richard Smith was created in the context of addressing "numerous proposals intended to better the parties' business relationship." These include "an implementation plan by which to mutually improve the companies' business relations."

The clause that is the subject of this Request, an agreement to arrange quarterly meetings to be attended by representatives at the Vice President or above levels, applies to business dispute that arise between the parties. This dispute resolution provision is tailored to the specific corporate structures and business interests of ATI and Qwest. That is, the procedures parallel the corporate structures and hierarchies of the companies and the methods by which they wish to resolve disputes among themselves.

Further, a dispute resolution clause is not the provision of interconnection services or network elements. It necessarily follows that this clause is not subject to Sections 251 and 252 of the federal Communications Act ("Act"). And, Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide

an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the parties. Further, an inability to resolve matters that frequently arise and that are far removed from sections 251 and 252, such as dispute resolution provisions for non-251 items, would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers:

In any event, the November 15, 2000 letter agreement arose in the context of interconnection amendments that were filed for approval with the Minnesota Commission. The interconnection amendments allowed for combinations of network elements that were new Qwest wholesale products. Qwest agreed to develop a new UNE platform product, referred to as UNE Star, in order to provide an alternative to Eschelon. The terms and conditions of that new product were set forth in an amendment to the interconnection agreement signed on November 15 and filed with the Commission on December 6, 2000.

Importantly, Section 1.3 of the amendment filed with the Commission set forth an understanding that the companies would work together on a business-to-business basis and develop escalation procedures.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In Section 3 of the "Confidential Agreement" set forth in a November 15, 2000 letter from Greg Casey at Qwest to Richard Smith at Eschelon Telecom, Inc. (Q110036 - Q110038), Qwest and Eschelon agree to new, six-level escalation procedures to resolve any and all issues between them. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to the same, six-level escalation procedures to resolve any and all issues between it and the CLEC. Please provide a copy of the relevant pages from the identified ICA.

RESPONSE:

Please See Response to Request 62.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In Section 3 of the "Confidential Agreement" set forth in a November 15, 2000 letter from Greg Casey at Qwest to Richard Smith at Eschelon Telecom, Inc. (Q110038), Qwest and Eschelon agree, as part of Level 6 of new escalation procedures, to waive "any tariff limitations on damages or any other limitation on actual damages." Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to waive "any tariff limitations on damages or any other limitation on actual damages." Please provide a copy of the relevant pages from the identified ICA.

RESPONSE:

Please See Response to Request 62.

Further, the clause referenced in the Request, a waiver of tariff limitations as part of Level 6 of the escalation procedures, reflects the specific corporate structures and business interests of Eschelon and Qwest. That is, the procedures match the corporate structures and hierarchies of the companies and the methods by which they wish to resolve disputes among themselves.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In agreement paragraph 3 of the "Confidential Amendment to Confidential/Trade Secret Stipulation" between Eschelon and Qwest (Q110041 - Q110048), Eschelon agrees to provide "consulting and network services" to Qwest in exchange for "an amount that is ten percent (10 percent) of the aggregated billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005." Please answer the following with respect to this agreement:

- a. Describe in detail the nature of the consulting services actually provided by Eschelon, including whether those services relate to issues outside of the provisioning of telecommunication services to Eschelon.
- b. Identify any other CLEC to which Qwest has offered the opportunity to provide consulting services in exchange for billing refunds in Minnesota.
- c. Identify, by name and title, the consultants Eschelon has provided for Qwest.
- d. Identify, by name and title, the person at Qwest charged with responsibility for the Eschelon consulting relationship.
- e. Identify the amount of money paid to Eschelon by Qwest to date under the terms of this agreement.
- f. Identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with billing refunds in exchange for services provided by the CLEC to Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Please see Response to Request 66. In addition and in response to the particular questions of Request 67:

- a. Eschelon has provided wide ranging consulting services with respect to the creation of a UNE Star product reflected in its interconnection amendment dated November 15, 2001. Development of this product involved substantial effort by Qwest, and Qwest has used consulting services from Eschelon in an effort to make this product useful to CLEC customers and to improve Qwest's delivery of this product. UNE Star is something that is included in Qwest's interconnection agreement with Eschelon and is available to any CLEC wishing to opt-in to all of its terms. Attached as Trade Secret Attachment C is a list of consulting teams from Eschelon that performed work from Qwest. Those teams include:

1. OSS Team -- Responsible for evaluating and suggesting modification to operational support systems in connection with UNE Star.
  2. UNE-P Team - Assisted and made recommendations for delivery and determining USOCs for features associated with UNE Star.
  3. Billing Team - Assists and makes recommendations to Qwest regarding appropriate billing for UNE Star products given applicable Commission orders and decisions in multiple states and assisting in resolving issues associated with billing for UNE Star.
  4. Collocation Team - Assists and suggests modifications for processes for addressing collocation issues in order to improve those processes.
  5. Cutover Team - Studied and suggested changes to customer processes in order to decrease Qwest cutover times.
  6. DSL Team - Assists Qwest in developing processes and methods for providing re-sale of DSL.
  7. Held Order Team - Worked with Qwest in an effort to evaluate Qwest processes to reduce held orders.
  8. Network/Interconnection Tracking Team - Assisted in working with Qwest on issues regarding how traffic is routed in the Seattle and Portland markets.
- b. See the McLeod Agreement.
  - c. Please see Attachment C.
  - d. Kevin Saville and Steve Sheahan
  - e. Qwest is gathering this information and will provide it as soon as it is available.
  - f. The consulting arrangement with Eschelon uses bill refunds as a surrogate for hourly or other payments that might otherwise be paid to a consultant entering into an arrangement with Qwest. Accordingly, this agreement is not an exchange of a billing refund for services provided by the CLEC. Because this involves consulting services as opposed to an interconnection arrangement, this agreement term has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 66.

**SUPPLEMENTAL RESPONSE 12/20/01:**

For the period of 11/15/00 through 08/31/01, the amount due to Eschelon is \$2,540,017.

**Eschelon Implementation and Consulting Teams**

**Billing (Connectivity Billing) Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6241
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6021
Copley	Ellen Copley	Cost & Revenue Analysis Manager	Accounting Department	(612) 436-6621
Honnilla	Kay Honnilla	CABS Manager	Accounting Department	(612) 436-6012
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	* Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Tomlinson	Melissa Tomlinson	Network Services Billing Manager	Management Information Systems	(612) 436-6616

**Collocation Team**

Ahlers	Dennis Ahlers	Senior Attorney	Regulatory, Law & Policy Department	(612) 436-6249
Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Hanser	* Paul Hanser	Director of Switch Engineering	Engineering & Network Implementation	(612) 436-6405
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukkaruppan	Renga Muthukkaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

**Cutover (Loop Cutovers/Hotcuts) Team**

Brolsma	Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Schiller	* Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

\* Team Leader

\*\* Team Leader for EDI

\*\*\* Team Leader for GIU/Provisioning

## Eschelon Implementation and Consulting Teams

### DSL Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Fleming	* Steve Fleming	Product Manager	Marketing	(612) 436-6450
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Kolar	Steve Kolar	VP of Technology IP Services	Network Operations	(612) 436-6478
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Solbrack	Steve Solbrack	Executive Vice President	Administration	(612) 436-6452
Walberg	Loren Walberg	Director of IP Provisioning & Technical	Provisioning	(612) 436-6453

### Held Orders (Lack or Reuse of Facilities) Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	* Bonnie Johnson	Network Provisioning Manager	Network Operations	(612) 436-6218
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
Schiller	Tina Schiller	Manager of Test & Turn Up	Provisioning	(612) 436-6401

### Network (Interconnection Trunking, etc.) Team

Boeke	Gerry Boeke	Director of Switch Operations	Network Operations	(612) 436-6614
Burdsall	Hal Burdsall	Operations Manager, WA & OR	Network Operations	(503) 793-9576
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Florek	Bruce Florek	Operations Manager, PHX/SLC	Network Operations	(602) 776-9053
Frey	Doug Frey	Manager of Network Facilities Eng.	Engineering & Network Implementation	(612) 436-6219
Gavin	Ellen Gavin	Outside Counsel	Regulatory, Law & Policy Department	(612) 866-7876
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Muthukaruppan	Renga Muthukaruppan	Network Engineer	Engineering & Network Implementation	(612) 436-6226
Nandakumar	* Kris Nandakumar	Director of Network Performance Eng.	Engineering & Network Implementation	(612) 436-6441
Patterson	David Patterson	Director of Resale Operations	Engineering & Network Implementation	(612) 436-6603
Tiwari	Satish Tiwari	Vice President	Engineering & Network Implementation	(612) 436-6669

\* Team Leader

\*\* Team Leader for EDI

\*\*\* Team Leader for GI/Provisioning

## Escalation Implementation and Consulting Teams

### OSS Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Goldberg	** Arlin Goldberg	Vice President Information Technology	Management Information Systems	(612) 436-6611
Johnson	*** Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642

### Repair Team

Brolsma	* Patrick Brolsma	Director of Customer Implementation & Support	Network Operations	(612) 436-6230
Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Korthour	Mary Korthour	Local Service Product Manager	Marketing	(612) 436-6093
Kunde	Dave Kunde	EVP of Operations & Engineering	Network Operations	(612) 436-6691
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Powers	Lynne Powers	Vice President	Provisioning and Network Repair	(612) 436-6642
St. Peter	Chuck St. Peter	Senior Communications Analyst	Network Operations	(612) 436-6685

### UNE-P Team

Clauson	Karen Clauson	Director of Interconnection	Regulatory, Law & Policy Department	(612) 436-6026
Johnson	Jessica Johnson	Project Manager	Provisioning	(612) 436-6671
Markert	Bill Markert	Director of COA & Network Economics	Accounting Department	(612) 436-6265
Morrisette	Garth Morrisette	Regulatory Compliance Manager	Regulatory, Law & Policy Department	(612) 436-6223
Secret	* Jonathan Secret	Director of Product Marketing	Marketing	(612) 436-6049

\* Team Leader

\*\* Team Leader for EDI

\*\*\* Team Leader for GUI/Provisioning

State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152), Qwest and Eschelon agree to an audit of the switched access minutes reported by Qwest and Eschelon to determine whether Qwest accurately recorded switched access minutes on UNE-P lines leased by Eschelon. Please answer the following with respect to this agreement:

- a. Identify at least one ICA approved by the MPUC between Qwest and a CLEC that permits the CLEC to request the same type of audit. Please provide a copy of the relevant page(s) from the identified ICA.
- b. According to the letter, the parties agreed to use the results of the audit to negotiate the terms and conditions of any subsequent analysis or procedures to be followed and for resolution of future discrepancies in the switched access minutes reported by Qwest. Please provide copies of any terms and conditions negotiated by the parties in accord [sic] with this agreement.
- c. Identify at least one ICA approved by the MPUC between Qwest and a CLEC that contains the same terms and conditions, if any, as agreed to by Qwest and Eschelon for resolution of discrepancies in the switched access minutes reported by Qwest. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

- a. The contractual provision that is the subject of this data request is one of the integrated covenants of an agreement the purpose of which was to settle potential litigation over alleged measuring discrepancies and underpayments, and similar matters that are not subject to Sections 251 and 252 of the federal Communications Act ("Act"). The provision for an audit of switched access minutes arose because of a dispute between the parties to determine the accuracy of recorded switched access minutes.

The agreement is integrated; in other words, all of the terms of the agreement, such as the audit and Qwest's agreement to pay an interim amount, were necessary and inextricable parts of the bargained-for exchange. The agreement is unique to Eschelon and Qwest given their business relationship under the particular circumstances existing at the time of the agreement. Further, the agreement, including the contractual provisions containing the audit commitment, represents compromises of legitimate legal and factual disputes and a resolution of the parties' respective negotiating positions regarding those billing disputes.

This is a settlement of the calculation of switched access minutes, which relates to interexchange services, not local exchange services. Also, a

compromise of the parties' positions of a past billing dispute in the context of a unique business relationship does not constitute terms or conditions for the provisioning of an interconnection service or network element within the scope of sections 251 and 252. It necessarily follows that the audit provisions and the agreement as a whole are not subject to Sections 251 and 252 of the Telecommunications Act. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the settling parties. Further, an inability to resolve disputes that frequently arise and that are far removed from sections 251 and 252, such as audits of a pending dispute, would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. And, CLECs should have the ability to determine whether an expeditious settlement would be of greater benefit to their business interests than a potentially lengthy litigation before a judicial or regulatory tribunal. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

- b. Qwest and Eschelon have not reached a final resolution of the issue addressed by this agreement.
- c. See Response to B.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152, Qwest states that it has been paying Eschelon an interim amount equal to the difference between \$13.00 per line per month and the amount Eschelon was able to bill IXCs for switched access, per line, based upon the switched access minutes reported to Eschelon by Qwest. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to make payments of the same kind and amount to the CLEC. Please provide a copy of the relevant page(s) form the identified ICA.

RESPONSE:

Please See Response to Request 74.

In addition, this agreement was a temporary resolution of a billing issue, not an interconnection agreement term, and it was subject to a true-up once the audit was completed. Therefore, the Request's characterization of this provision is not complete or accurate. This provision has not been included in an interconnection agreement amendment for the reasons set forth in response to Request 74(A).

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152), Qwest agrees to increase the amount it will pay Eschelon to the difference between \$16.00 per line per month and the amount Eschelon was able to bill IXCs for switched access, per line, based upon the switched access minutes reported to Eschelon by Qwest. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to make payments of the same kind and amount to the CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Responses to Requests 74 and 75.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In a letter dated July 3, 2001 from Audrey McKenney (Qwest) to Richard Smith (Eschelon) (Q110150 - Q110152), Qwest identifies an issue relating to access records for Qwest's intraLATA toll traffic terminating to customers served by an Eschelon switch and agrees that, until the issue is resolved, Qwest will pay Eschelon \$2.00 per line per month for such traffic. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Responses to Requests 74 and 75.

Further, this letter is a temporary resolution of a dispute that is ongoing between the parties regarding switched access billing. The parties are continuing to negotiate in an attempt to resolve this issue. The temporary agreement has not been filed for the reasons set forth in response to 74(a).

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

Please identify at least one ICA approved by the MPUC between Qwest and a CLEC containing the same terms as the Trial Agreement between Qwest and Eschelon (Q110153 - Q110166). Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Section 2.10 of the Interconnection Agreement Amendment signed on November 15, 2000 and filed with the Commission on December 6, 2000.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 2.1 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees to establish a service account team for Eschelon. Please identify at least one ICA approved by the MPUC between Qwest and CLEC in which Qwest agrees to provide a service account team with the same obligations described in paragraph 2.1. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The agreement referenced in this data request includes the implementation of service account teams for a wholesale customer. This agreement reflects the individual business practices of Eschelon and Qwest and is unique to their cooperate structures and their business relationships. It is standard operating procedure for Qwest to establish some form of a service account team for customers. An agreement to provide a service account team is not a term or condition for the provisioning of an interconnection service or a network element. It necessarily follows that the agreement is not subject to Sections 251 and 252 of the Telecommunications Act. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements for the provision of "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that it is in the public interest to allow companies such as Qwest and Eschelon to confer and agree on establishing business relationships that suit the particular needs and structures of their respective companies. Any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of matters that are unique to the parties. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs. Qwest suggests that the Minnesota DOC should encourage, not discourage, the

use of such arrangements to allow Qwest to work cooperatively with its  
wholesale customers.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

Paragraph 2.2 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353) refers to an escalation chart and escalation process set forth in Attachment 2 to the Implementation Plan. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest provides the same escalation chart and process to a CLEC. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

Section 1.3 of the amendment to the interconnection agreement executed on November 15, 2000 and submitted for approval by the Minnesota Commission provides for the parties to develop an escalation process. It says:

1.3 The Parties wish to establish a business-to-business relationship and have agreed that they will attempt to resolve all differences or issues that may arise under the Agreements or this Amendment under an escalation process to be established between the Parties.

The letter that is the subject of this Request letter sets forth the specifics associated with that process.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

Please identify Dana Filip (referred to in paragraph 2.3 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353)).

RESPONSE:

Dana Filip is a Senior Vice President at Qwest.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

In paragraph 2.3 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees that Dana Filip and/or her designee will meet with Rick Smith of Eschelon on a Quarterly basis to review the status of Eschelon's service-related issues. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide a person of equal or greater title to meet with the CLEC on a quarterly basis to review the status of service-related issues. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

This provision refers to an agreement to meet on a regular basis with the customer to confer about service-related issues. It serves the same purposes and is subject to the same analysis as the meetings addressed in Qwest's Response to Request 62. Therefore, please see Request 62.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 3.1 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees to calculate local usage charges associated with UNE-P switching in accordance with the procedures set forth in Attachment 3 to the Implementation Plan. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The contractual provision that is the subject of this data request is one of the integrated covenants of an agreement the purpose of which was to settle potential litigation over possible billing discrepancies. Furthermore, Attachment 3 constitutes a formula for implementing a process for measuring switched access minutes based on Eschelon's particular traffic characteristics. Such a calculation is unique to the business interests of Eschelon.

Qwest has not submitted this agreement to the MPUC because the Telecommunications Act does not require Qwest to do so. Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements for the provision of "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). In contrast, Attachment 3 to this agreement address the procedures for calculation of access services, not local exchange services. The FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Not only is there no statutory requirement that Qwest submit such settlement agreements for the MPUC's approval and make them available to other carriers, but imposing such a requirement would be contrary to public policy. Such a requirement would make it difficult or impossible for Qwest to reach settlements of such matters and would lead to unnecessary litigation before the federal or state courts or before the MPUC. Qwest is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such agreements to resolve disputes amicably and to address the CLEC's specific and unique business interests.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraphs 4.1 through 4.3 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest and Eschelon agree to track and report performance measures designed to monitor Qwest's levels of service; hold monthly meetings to review and discuss the measurements; and develop a joint action plan to facilitate improvements in service. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the same level of performance measurement-related services to a CLEC. Please provide a copy of the relevant page(s) for the identified ICA.

RESPONSE:

Qwest provides the same performance measurement related services to CLECs in connection with the performance indicator definitions it has developed through the Regional Oversight Committee process. Those materials are available by web and available for anyone.

Qwest is willing to meet with any customer regarding performance measurements and to facilitate improvements in service. Such willingness is not a term or condition of interconnection and has not been included in an interconnection agreement amendment. See generally, Response to Request 62.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 11/27/2001

Date Response Due: 12/17/2001

REQUEST:

Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to track the same performance measurements that were developed as described in paragraph 4.1 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353). Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

See Response to Request 92.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraph 8 of the "Qwest/Eschelon Implementation Plan" (Q110339 - Q110353), Qwest agrees to coordinate UNE-P conversions with Eschelon. Please identify at least one ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with the same services for coordination of UNE-P conversions. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

The agreement referenced in this data request includes Qwest's practice to coordinate UNE-P conversions with CLEC customers. It is a coordinated plan in accordance with the specific needs of the CLEC. This procedure is not a term or condition for the provisioning of an interconnection service or a network element. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements for the provision of "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that it is in the public interest to allow companies such as Qwest and Eschelon to coordinate business relationships that suit the particular needs and structures of their respective companies. Any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and Eschelon's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of matters that are unique to the parties. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such arrangements to allow Qwest to work cooperatively with its wholesale customers.

State Of Minnesota  
Department of Commerce  
INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation  
Information Requested By: Ferguson, Sharon  
Date Requested: 11/27/2001  
Date Response Due: 12/17/2001

REQUEST:

In paragraphs 3, 3.a, 3.b, 3.c, and 3.d of the "Confidential Stipulation Between Small CLECs and U S WEST" (Q110022 - Q110027), Qwest sets forth terms and conditions pursuant to which it will permit the small CLEC parties to opt into the terms of any effective ICAs that were voluntarily negotiated and entered into by U S WEST and CLECs in any other state in U S WEST's operating territory. Qwest and the small CLECs further agree to implement these terms in ICA amendments to be filed on March 17, 2002. Please answer the following with respect to this agreement:

- a. Why do the terms of these paragraphs not become effective until March 17, 2002?
- b. Have any ICAs between Qwest and any of the small CLECs that are parties to this agreement been amended to incorporate these pick and choose terms to date?
- c. Identify any ICA approved by the MPUC between Qwest and a CLEC in which Qwest agrees to provide the CLEC with the same pick and choose provisions as set forth in this agreement. Please provide a copy of the relevant page(s) from the identified ICA.
- d. Please produce any documents in which Qwest agrees to provide, to a CLEC operating in Minnesota (other than the small CLECs that are party to this agreement), immediately or in the future, the same pick and choose provisions as set forth in this agreement.

RESPONSE:

- a. The terms of this paragraph become effective on March 17, 2002, because that is the date that the current AT&T interconnection agreement will expire.
- b. No.
- c. Please see Responses to Request 99(A) and (B). Pursuant to agreement of the small CLECs and Qwest, such amendments will be effective on March 17, 2002, and will be filed with the Minnesota Commission on March 17, 2002. Further, this is a settlement agreement arising out of the parties' adversarial positions relating to the Qwest/U S WEST merger. Provisions agreeing to enter into an interconnection agreement on a future date and to settle pre-existing litigation are not terms or conditions for the provision of an interconnection service or network element and therefore not subject to sections 251 and 252 of the Telecommunications Act. Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so.

Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and the small CLECs unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the settling parties. Further, an inability to resolve disputes that frequently arise and that are far removed from sections 251 and 252 would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. And, CLECs should have the ability to determine whether an expeditious settlement would be of greater benefit to their business interests than a potentially lengthy litigation before a judicial or regulatory tribunal. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

d. None.

State Of Minnesota  
 Department of Commerce  
 INFORMATION REQUEST

P421/DI-01-814

Information Requested From: Qwest Corporation

Information Requested By: Ferguson, Sharon

Date Requested: 12/03/2001

Date Response Due: 12/14/2001

REQUEST:

In paragraph 1.d of the "Confidential Settlement Document" dated April 25, 2000 between US WEST and McLeodUSA (Q110100-Q110104), US WEST and McLeodUSA agree that all interim rates, except reciprocal compensation rates, will be treated as final; that any final commission orders will be applied prospectively and not retroactively, and that neither party will not bill each other for any true-ups between interim prices and those ordered as final by a commission. Please identify at least one ICA approved by the MPUC between US WEST/Qwest and a CLEC in which Qwest agrees that all interim rates, except reciprocal compensation rates, will be treated as final; that any final commission orders will be applied prospectively and not retroactively, and that neither party will not bill each other for any true-ups between interim prices and those ordered as final by a commission. Please provide a copy of the relevant page(s) from the identified ICA.

RESPONSE:

As stated in the agreement that is the subject of this Request, Qwest's predecessor, U S WEST Communications, and McLeod USA agreed to a settlement of a myriad of billing disputes as well as McLeod's intervention and adversarial position to the Qwest/U S WEST merger in 2000.

This agreement therefore stands as a settlement and business compromise of pre-existing disputes and of pending litigated actions. Sections 251 and 252 do not include within their scope agreements in which a settlement of pre-existing litigated positions is the primary bargained-for term or condition. Further, the provision that is the subject of this Request is integrated with all of its other terms and conditions, including the withdrawal of McLeod's opposition of the merger. And, due to the integrated nature of and all of the agreement's covenants, the agreement is unique to McLeod and Qwest.

Additionally, the agreement is unique to McLeod and U S WEST given their business relationship under the particular circumstances existing at the time of the agreement. Further, the agreement represents compromises of legitimate legal and factual disputes and a resolution of the parties' respective negotiating positions regarding various billing disputes.

Qwest has not submitted this agreement to the MPUC, because the Telecommunications Act does not require Qwest to do so. Section 252 of the Act, by its terms, requires the submission of agreements to state commissions for approval only with respect to agreements relating to "interconnection, services, or network elements pursuant to section 251." 47 U.S.C. § 252(a)(1); see also § 252(b) and (e)(1). Consistently, the FCC recognized that parties could simultaneously negotiate matters subject to sections 251 and 252 as well

as non-251 or 252 matters, and that such an approach to negotiations is consistent with the duty under section 251 to "negotiate in good faith." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, § 153 (1996), subsequent history omitted.

Qwest suggests that any regulatory obligation to file this agreement and allow carriers who are not party to Qwest's and McLeod's unique business relationship to opt-into provisions of the agreement would be contrary to public policy. Such obligations would preclude, or at the very least provide an enormous disincentive and barrier to, the ability of ILECs and CLECs alike to reach satisfactory and beneficial business resolution of disputes that are unique to the settling parties. Further, an inability to resolve disputes that frequently arise and that are far removed from sections 251 and 252, such as billing disputes, would lead to unnecessary and voluminous litigation before the federal or state courts or before the MPUC. Qwest, as shown by this agreement, is committed to working collaboratively with its wholesale carrier customers to satisfy their needs rather than proceeding to litigation. And, CLECs should have the ability to determine whether an expeditious settlement would be of greater benefit to their business interests than a potentially lengthy litigation before a judicial or regulatory tribunal. Qwest suggests that the Minnesota DOC should encourage, not discourage, the use of such settlements to allow Qwest to resolve such disputes amicably and cooperatively with its wholesale customers.

Without waiving its objections, Qwest states the parties filed the first amendment to their ICA on June 30, 2000 and the MPUC approved the amendment on September 13, 2000.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendraye

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Merger of the Parent  
Corporations of Qwest Communications  
Corporation, LCI International Telecom  
Corp., USLD Communications, Inc., Phoenix  
Network, Inc. and U S WEST  
Communications, Inc.

ISSUE DATE: April 28, 2000

DOCKET NO. P 3009, 3052, 5096, 421,  
3017/PA-99-1192

ORDER AFTER RECONSIDERATION  
WITHDRAWING REFERRAL FOR  
CONTESTED CASE PROCEEDINGS

PROCEDURAL HISTORY

On March 7, 2000, the Commission issued a Notice and Order for Hearing referring this merger petition to the Office of Administrative Hearings for contested case proceedings.

The parties at that time were the petitioners (U S WEST/Qwest), the Minnesota Department of Commerce (the Department), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), the Northwestern Bell/U S WEST Retiree Association (the Retiree Association), AT&T Communications of the Midwest (AT&T), Rhythms Links, Inc., Covad Communications Company (Covad), Cady Telemanagement, Inc. (Cady), McLeodUSA Telecommunication Services, Inc. (McLeod), and ten competitive local exchange carriers appearing jointly as "Small CLECs."

On March 17, 2000, U S WEST Qwest filed a request for reconsideration, arguing that the issues in the case could be resolved without evidentiary hearings. Reconsideration was opposed by the Department, the Small CLECs, the Retiree Association, McLeod, Covad, AT&T, and the RUD-OAG.

On March 22, April 5, and April 11, 2000, the Administrative Law Judge issued scheduling and prehearing orders setting filing deadlines, hearing dates, and discovery procedures.

Between March 2, 2000 and April 25, 2000, U S WEST/Qwest reached settlement agreements with all parties to the case except the Retiree Association. The Department, the RUD-OAG, and the petitioners reached a comprehensive joint settlement agreement.

On April 25, 2000, U S WEST/Qwest's petition for reconsideration came before the Commission. At that time the only party still opposing reconsideration was the Retiree Association. The other parties urged the Commission to reconsider and reverse its decision sending the case to the Office of Administrative Hearings for evidentiary proceedings.

### FINDINGS AND CONCLUSIONS

The Commission finds that there is no current need for evidentiary hearings on the issues outlined in the March 7 Notice and Order for Hearing.

As the record of this case has developed, all 15 intervening telecommunications carriers have found common ground with U S WEST/Qwest. They have stipulated to the facts relevant to their claims and have negotiated outcomes acceptable both to themselves and to U S WEST/Qwest. One of the main purposes of the evidentiary hearings – to probe these parties' claims that the merger might impair their ability to compete – is therefore gone.

Even more significantly, the two public agencies charged with representing the public interest and consumers' interests in utility matters have negotiated a comprehensive settlement with U S WEST/Qwest. The agencies state that this settlement adequately protects and affirmatively promotes the public interest, consumers' interests, and the interests of the competitive market. These agencies, too, have stipulated (with U S WEST/Qwest) to the facts relevant to their claims.

Finally, at hearing the Retiree Association clarified that its claims, although linked with the proposed merger in a practical sense, do not depend upon the merger for their validity or enforceability. Should Commission jurisdiction over these claims be established, it is possible that an independent inquiry would be a better procedural vehicle for resolving them than this docket. That issue will be examined after the final comment period referred to below.

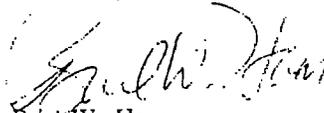
For all these reasons, the Commission reconsiders and rescinds its March 7, 2000 Order referring this case for contested case proceedings. Before deciding the merits of this merger application, the Commission will solicit, by separate notice, a final round of comments from parties and interested persons.

The Commission will so order.

ORDER

1. The Commission hereby reconsiders its Order of March 7, 2000, withdraws its referral of this case to the Office of Administrative Hearings for contested case proceedings and rescinds its Notice and Order for Hearing.
2. By separate notice the Commission will establish a final comment period on the merits of the merger application.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burt W. Haar  
Executive Secretary

(S E A L)

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