

122101email.txt

----- Original Message -----

Subject: Allegiance, Covad, and Eschelon Reply re. Additional Testing  
Date: Fri, 21 Dec 2001 12:25:13 -0600  
From: "Powers, F. Lynne" <flpowers@eschelon.com>  
To: "'William Campbell'" <wmcampb@qwest.com>,"'Judith  
Schultz'"<jmschu4@qwest.com>  
CC: "'Ford, Laura'" <fordl@perkinscoie.com>,"'Jim  
Maher'"<jxmaher@qwest.com>,"'Terry Bahner'" <tbahner@att.com>,"'Liz  
Balvin'"<Liz.Balvin@wcom.com>,"'Tom Dixon'"  
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Beth'"<woode@perkinscoie.com>,"'Yeung, Shun (Sam)'"  
<qwestosscm@kpmg.com>,"'Mark Routh'" <mrouth@qwest.com>,"'Michael  
Zulevic'" <mzulevic@Covad.COM>,"Clauson, Karen L."  
<klclauson@eschelon.com>,"Stichter, Kathleen  
L."<klstichter@eschelon.com>,"Powers, F. Lynne" <flpowers@eschelon.com>

Attached is the Reply of Allegiance, Covad, and Eschelon to Qwest's  
Response to the Additional Testing Escalation.

Eschelon's Reply (December 21, 2001):

122101email.txt

<<escalatereplyDec21.doc>>

Attachment to Eschelon's Reply (MN Testimony):

<<Haar Ltr re Morrisette Testimony 12-19-01.doc>> <<Morrisette Sup  
Testimony 12\_19\_01 00-849.doc>>

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re Morrisette  
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Testimony 12\_19\_01  
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122101email.txt

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2ndemail.txt

----- Original Message -----

Subject: RE: Allegiance, Covad, and Eschelon Reply re. Additional Testing

Date: Fri, 21 Dec 2001 12:35:14 -0600

From: "Clauson, Karen L." <klclauson@eschelon.com>

To: "Powers, F. Lynne" <flpowers@eschelon.com>,"'William Campbell'" <wmcampb@qwest.com>,"'Judith Schultz'" <jmschu4@qwest.com>

CC: "'Ford, Laura'" <fordl@perkinscoie.com>,"'Jim Maher'" <jxmaher@qwest.com>,"'Terry Bahner'" <tbahner@att.com>,"'Liz Balvin'" <Liz.Balvin@wcom.com>,"'Tom Dixon'" <Thomas.F.Dixon@wcom.com>,"'Megan Doberneck'" <mdoberne@Covad.COM>,"'Evans, Sandy'" <sandra.k.evans@mail.sprint.com>,"'Gindlesberger, Larry'" <lgindles@Covad.COM>,"'Hines, LeiLani'" <LeiLani.Jean.Hines@wcom.com>,"'Lee, Judy'" <soytofu@pacbell.net>,"'Littler, Bill'" <blittler@integratelecom.com>,"'Menezes, Mitch'" <mmenezes@att.com>,"'Osborne-Miller, Donna'" <dosborne@att.com>,"'Quintana, Becky'" <becky.quintana@dora.state.co.us>,"'Rossi, Matt'" <mrossi@qwest.com>,"Stichter, Kathleen L." <klstichter@eschelon.com>,"'Travis, Susan'" <susan.a.travis@wcom.com>,"'VanMeter, Sharon'" <svanmeter@att.com>,"'Wicks, Terry'" <terry.wicks@algx.com>,"'Woodcock, Beth'" <woode@perkinscoie.com>,"'Yeung, Shun (Sam)'" <qwestosscm@kpmg.com>,"'Mark Routh'" <mrouth@qwest.com>,"'Michael Zulevic'" <mzulevic@Covad.COM>,"Stichter, Kathleen L." <klstichter@eschelon.com>

Just a note to indicate that, where it says Eschelon's Reply below, it should say Reply of Allegiance, Covad, and Eschelon. Thanks.

**REPLY OF ALLEGIANCE, COVAD, AND ESCHELON TO**  
**QWEST'S RESPONSE TO THEIR ESCALATION OF**  
**CR # PC100101-5 REGARDING**  
**ADDITIONAL TESTING AND RELATED ISSUES**

December 21, 2001

Qwest's Response to the joint escalation by Allegiance, Covad, and Eschelon of Qwest-initiated Change Request ("CR") #PC100101-5 is unsatisfactory. Qwest has cited no authority for its processes or rates, and it is evident from Qwest's Response that it has none. Qwest's proposal for resolution does not address the bulk of the issues raised by Allegiance, Covad, and Eschelon, and the proposal erroneously suggests that Qwest may nonetheless impose rates without a contract in place after January 31, 2002. Allegiance, Covad, and Eschelon once again place Qwest on notice that their individual interconnection agreements ("ICAs") control and that Qwest's conduct is in breach of those agreements. Qwest's CR and this escalation do not change that.

Allegiance, Covad, and Eschelon have made a reasonable request to Qwest to consider a collaborative effort, modeled after successful aspects of the one ultimately used to address collocation decommissioning, to address all of the issues raised in this escalation. Allegiance, Covad, and Eschelon continue to support and request use of such a process and suspension of the current one (including rates) in the interim. As we have said throughout this process, we are not opposed in principle to the type of testing at issue and encourage use of reasonable practices along these lines. We already conduct testing before submitting trouble tickets. The process and rates that Qwest has imposed, and the manner in which Qwest has approached this issue, however, are unacceptable. Our proposal for resolution, unlike the Qwest proposal, is not limited to rates or to one month. CLEC CRs are rarely, if ever, processed in a month or even a few months. We are willing, however, to dedicate resources to expedite a collaborative process.

**A Legitimate Process for Imposing Terms and Rates, That Recognizes Individual ICA Differences (including ICAs not Based on the SGAT), is Needed.**

Qwest seems to agree that the ICAs control over Change Management Process ("CMP") activities. In Colorado, Qwest said:

First of all, it has been addressed in these workshops by inserting language into the SGAT that indicated that the contract language controls over anything that could come out of the Change Management Process -- a contract is a contract, and I believe that's the same for any other ICA, as well.<sup>1</sup>

If that were the case, a reasonable expectation would be that Qwest's Response would have simply included citations to each ICA indicating the basis for each term and rate to which we objected. Not only does Qwest's response fail to cite a single contract

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<sup>1</sup> Transcript of CMP Workshop Number 6, Colorado Public Utilities Commission Docket Number 97I-198T (Aug. 22, 2001), p. 292, lines 8-13 (Andrew Crain of Qwest).

provision, but also Qwest states that the ICAs do not address all of the issues. For example, Qwest said in its Response that rates are not available in at least some situations, and that Qwest bills from the Statement of Generally Available Terms (“SGAT”) in those situations. (Qwest Resp. p. 4.) No SGAT provision has been opted into by Allegiance, Covad, or Eschelon, however. Qwest has no legal or good faith basis for imposing SGAT rates on Competitive Local Exchange Carriers (“CLECs”) that are not subject to the SGAT.<sup>2</sup>

Qwest defends its unilateral imposition of rates by stating that it started imposing rates and terms “only after several weeks’ notice and several meetings with CLECs.” (Qwest Resp. p. 2.) Qwest can not cite to a statute or contract authorizing imposition of new rates and terms based on notice of several weeks and several meetings, because one does not exist. The federal Act requires Qwest to negotiate with CLECs and, if agreement is not reached, to arbitrate the issue. In addition, state commissions have rules governing establishment of rates, and ICAs contain provisions regarding rates, terms, and dispute resolution. Despite all of these requirements, Qwest extended none of these processes to the terms and rates that it imposed here. Qwest used the CMP merely as a notice tool, rather than as a means to build consensus and reach agreement. As a basis for doing so, Qwest asserts in its Response that it is entitled to recover its costs. This is an argument properly made in negotiations or dispute resolution proceedings, or to an arbitrator or state commission, *before* imposition of a term or rate. In such situations, CLECs would be allowed to respond that Qwest is permitted cost recovery only when the applicable ICAs permit such recovery and charges are cost-based and approved by a state commission. Then, if the parties do not agree, an arbitrator or commission, with all the facts and evidence relating to the charges before it, would decide the issue. Qwest didn’t follow any such process. Instead, Qwest has unilaterally implemented its claimed entitlement to cost recovery — at the expense of the entitlement of CLECs to the process due to them under the laws and ICAs.

Qwest’s CR and its Response have demonstrated that Qwest applies a “one-size-fits-all” approach, despite differences in individual ICAs. For the actions subject to this particular escalation, Qwest needs to suspend its conduct and follow proper procedures before implementing new terms and rates. Overall, Qwest needs to establish a process to account for individual ICAs when using the CMP and before implementing processes.<sup>3</sup>

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<sup>2</sup> In footnote 3 on page 4 of its Response, Qwest states: “The SGAT rates are interim in nature until finally approved and may be subject to true-up upon approval, if a commission determines that is necessary.” Qwest cites no authority for this statement, and it is certainly not the case everywhere. For example, in Minnesota, the SGAT rates have not been adopted on an interim or any other basis. If Qwest is referring to a term of the SGAT that provides that the rates are interim and subject to true-up, the argument is circular. Just as the rate doesn’t apply because we haven’t opted in to any SGAT, the true-up provision in an SGAT doesn’t apply either. The rates Qwest is seeking to charge have not been approved by the state commissions for application to Allegiance, Covad, and Eschelon, none of which have opted in to an SGAT.

<sup>3</sup> In the CMP Re-Design meetings, CLECs have questioned whether Qwest may use CRs to establish rates at all.

## **Qwest is Recovering Costs, Without These Additional Charges.**

For the reasons discussed above, this is not the appropriate forum in which to argue cost recovery. Because Qwest has interjected that issue here, however, we will briefly point out that Qwest is currently recovering its costs, and perhaps double or triple recovering them in some instances.

### **Cost Recovery Through Reciprocity.**

Much like cost recovery under a bill-and-keep compensation mechanism, Qwest has been compensated through charges that it has not had to pay CLECs to date. For example, when Qwest reports to a CLEC that there is No Trouble Found (“NTF”), the CLEC often dispatches its own technician to test and isolates the trouble to the Qwest network. Once Qwest admits that the trouble was, in fact, in Qwest’s network, Qwest must repair it, because the trouble is in Qwest’s network. Under both the ICAs and the SGATs, Qwest should not be able to charge CLEC in this situation, because the trouble was in Qwest’s network.<sup>4</sup> But, although the trouble was in Qwest’s network all along, the CLEC incurred the costs associated with the dispatch and trouble isolation/testing. Allegiance, Covad, and Eschelon do not currently recover these costs from Qwest. This is the reciprocity issue raised in the CR calls and in the Escalation. If Qwest is allowed to impose charges in these situations, CLECs will begin to charge Qwest as well. This would increase costs for all in recording and billing these charges among the parties. As long as CLECs are not charging Qwest in these situations, Qwest is recovering costs through these savings to Qwest. If Qwest is dissatisfied with the current arrangement, Qwest needs to commence negotiations, dispute resolution, or arbitrations. It cannot shift this burden to CLECs by simply ignoring the law governing proper procedures and begin unilaterally imposing processes and rates.

### **Cost Recovery Through Recurring Rate/Maintenance Expense.**

Qwest is also recovering costs through the recurring wholesale rates. Qwest is paid a recurring rate to deliver a working product that meets the specifications for that product. CLECs do not pay the full rate to buy a sub-standard or non-working product. If the product is not working properly or does not meet specifications, Qwest is over-recovering costs when receiving the full recurring rate. If Qwest had brought this issue to an appropriate forum for discussion of rates, cost studies would be available to show the components of the recurring rate. Not only do the recurring rates assume a working product, but also the loop cost includes an expense factor that is applied to the loop for

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<sup>4</sup> See, e.g., AZ Eschelon-Qwest ICA, Att. 5, ¶ 3.2.17.7 (providing that a charge “may” apply if Qwest dispatches to perform tests on an unbundled loop “**and the fault is not in Qwest’s facilities**”) (emphasis added); AZ SGAT 9.4.5.3.4 (“If this additional testing uncovers electrical fault trouble . . . in the portion of the network for which Qwest is responsible, CLEC will not be charged by Qwest for the testing.”). Although Qwest suggests in its Response that charges only apply when the trouble is not in Qwest’s network, the discussions about the CR have suggested otherwise. Moreover, in the escalation, Eschelon provided a specific example (with ticket number) of a situation in which the trouble was in Qwest’s network and yet Qwest charged Eschelon (at the SGAT rate) \$84.60 for “Maintenance Dispatch – No Trouble Found.” Qwest did not respond to this example.

maintenance. Because this cost recovery mechanism is already in the wholesale price, any additional charge for the same activity is a double recovery. By not providing any cost support for Qwest's charges and taking the discussion out of any context in which such data would be available, Qwest has prevented analysis of whether any of the costs it is claiming in these charges are already being recovered elsewhere.

### **Double or Triple Cost Recovery.**

In addition to double recovering costs already accounted for in the recurring rates, Qwest will double or triple recover rates if it charges for any of the same activities through what has now developed into at least three charges: (1) testing; (2) trouble isolation charge ("TIC"); and (3) maintenance and repair. As indicated in the Escalation of this issue, it was unclear when and how these charges would apply and whether there is more than one charge. Eschelon identified charges that have already appeared on Eschelon's bill (at SGAT rates) that Eschelon believed, based on Qwest's discussion of this CR to date, were associated with the additional testing issue. In its Response, Qwest said that those charges were not for testing but were for other charges that Qwest instituted in June. There was no ICA activity of any kind in June that would have resulted in new charges being applied to Eschelon's bill. Qwest unilaterally began charging Eschelon SGAT rates, even though Eschelon has not opted in to any SGAT. Eschelon has been left to attempt to identify and verify these charges to dispute them.

Because Qwest has provided no data whatsoever to support the new charges, CLECs are not in a position to determine whether any of the components of each charge overlap and constitute double or triple recovery. Qwest created this problem by attempting to impose rates without following the proper procedures, as discussed above. Applying the proper procedures would help resolve the mysteries created by Qwest's Response and explanations of this CR. When Qwest submitted its Additional Testing CR, Eschelon asked Qwest to provide a basis in its ICAs for the Additional Testing rates. Qwest could not provide citations to provisions of all of Eschelon's ICAs. For those for which Qwest claimed language did support the rates, Qwest pointed to a provision of Eschelon's ICA in AZ that allows a charge for *trouble isolation* when the fault is not in Qwest's network as the basis for the *testing* charge. (See AZ ICA, Att. 5, 3.2.17.7, cited in Qwest email by Dennis Pappas, copied in Escalation.) Therefore, in the Escalation, Eschelon challenged some of those charges. In its Response, Qwest said that Eschelon was mistaken, and those charges are something different. They relate to "Trouble Resolution" billing that Qwest implemented in June. (Qwest Resp. p. 3.) Qwest said that the Additional Testing charge is different from the "Maintenance of Service" charge. The latter charge "involves only labor, *including testing* and maintenance." (Qwest Resp. p. 3, emphasis added). This explanation certainly raises the possibility that the testing charge and the labor charge will both have some of the same components, resulting in double recovery. Similarly, Qwest refers to a "*test* to achieve Trouble Isolation." (Qwest Resp. p. 3, emphasis added). Now, there is some fancy footwork. How is trouble typically isolated, if not through testing? Yet, Qwest has at least two separate charges that it plans to apply: (1) testing; and (2) trouble isolation. Attempting to find the components of each charge begins to feel like a shell game. At a minimum,



the confusion allows for mistakes in application that result in double or triple recovery. Rates and processes should not be imposed in this manner.

**If a Compliance Problem Exists, Qwest Needs to Address the Compliance Issue with the Non-Complying CLECs.**

Qwest claims that it submitted its Additional Testing CR “because CLECs were not consistently complying with the requirement to provide test results prior to opening a trouble ticket.” (Qwest Resp. p. 2.) Aside from whether there is such a requirement in every ICA of Allegiance, Covad, and Eschelon,<sup>5</sup> Qwest’s statement raises two additional issues: (1) Qwest has not shown that there is a compliance problem; and (2) Qwest has not explained why Qwest did not deal directly with the non-complying CLECs.

**Qwest has Provided No Evidence of a Compliance Problem.**

When CLECs submit CRs to CMP, Qwest consistently requires CLECs to provide data and extensive examples to prove that a problem exists before Qwest will provide a solution. Qwest does not simply take the CLEC, a customer, at its word. Yet, in submitting and clarifying its CR, Qwest has provided no data to support its assertion of a compliance problem. CLECs are supposed to take Qwest at its word. In its Response, Qwest does not even attempt to quantify the magnitude of the alleged problem. Qwest’s approach in addressing this problem with a CR applicable to all CLECs is akin to using a sledgehammer to kill a fly.

Although the data did not come to us through CMP, we are aware of related claims that Qwest has made in the wholesale service quality docket in Minnesota (docket number P-421/AM-00-849). In that proceeding, Qwest submitted an exhibit (number 38) that purports to show the percentage of CLEC trouble tickets that Qwest coded with a trouble resolution code of “No Trouble Found.” Presumably, the claim is related to Qwest’s position in this Escalation that there is a compliance problem. Attached is a copy of Eschelon’s testimony that refutes the accuracy of Qwest’s information. As indicated in the attached testimony, a sampling of the Qwest data showed that 54% of Qwest’s results (where Qwest claims NTF) did not match the resolution code Eschelon used in closing the ticket. Specifically, Eschelon’s records show that 28.8% of those tickets were closed with trouble found; 10.9% were closed with a resolution code of “came clear with testing (CCWT),” which means that Qwest saw trouble on the line initially, but the trouble cleared while testing; 6.5% were closed without a call back from Qwest with a trouble resolution code to Eschelon; and 8.7% of the reports do not match trouble tickets in Eschelon’s records. The remaining 45.7% of those tickets were closed

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<sup>5</sup> Qwest claims that it submitted its Additional Testing CR to “notify” CLECs that it was “tightening adherence to existing requirements.” (Qwest Resp. p. 2.) As indicated, Qwest has not shown that there were such existing requirements in each ICA of Allegiance, Covad, and Eschelon. When Eschelon asked for Qwest’s authority for its position that the CR merely “clarified” existing requirements, Qwest could produce no ICA requirement in three states and no rates in several states. The language Qwest did provide does not support all of Qwest’s conduct and rates, and the parties disagree about its application. Whether there is a requirement to provide test results prior to opening a trouble ticket (for these CLECs, which have not opted into an SGAT) is discussed below.

by Qwest with trouble resolution code of “test OK, no trouble found (TOK/NTF).” Of the remaining 45.7% of the tickets, there is also reason to doubt the accuracy of their trouble resolution code. As discussed in the attached testimony, the reason relates to errors in orders written by Qwest order writers that result in closure of the trouble ticket and issuance of a new service order. Because Qwest does not count service order errors in its trouble report data, Qwest’s trouble report data will tend to overestimate the percentage of trouble tickets coded as TOK/NTF.

Qwest has not established that a compliance problem exists, particularly with respect to Allegiance, Covad, and Eschelon. An alleged compliance problem that may not even relate to these CLECs is not a sound basis for imposing new terms and rates on Allegiance, Covad, and Eschelon.

### **Qwest Should Deal Directly With the Non-Complying CLECs, if Any.**

If a compliance problem does exist, Qwest’s Response did not address whether Qwest has attempted to deal directly with the non-complying CLECs to gain compliance. CLECs generally have enforcement and dispute resolution provisions in their ICAs. If these really are existing ICA requirements, Qwest has ample basis to approach a CLEC on a non-compliance issue. Qwest did not even claim in its Response that it had tried to do so and was unsuccessful. If Qwest did so, Qwest did not say what happened and why a CR is a better solution. If Qwest did make this attempt and has reasons why a CR is a better approach, such data should have been part of the presentation and clarification of the CR. Without such supporting data, using a CR to address a compliance issue appears to be further evidence of Qwest’s “one-size-fits-all” approach and the problems it creates.

### **The CR and Related Terms and Charges are New Requirements and Not Simply Clarifications of Existing Requirements.**

In reality, although Qwest has tried to present its CR as a “clarification” of “existing” requirements, Qwest is imposing *new* terms and rates through this CR and related charges that have been discussed as part of this Escalation.<sup>6</sup> Qwest cites no authority in the ICAs for its claim. None of our ICAs contain all of the Additional Testing, Trouble Isolation, and Maintenance terms at the rates and in the manner in which Qwest is implementing them. Some of our ICAs have some of the requirements to which Qwest refers, and some have none at all. For example, the Minnesota AT&T/WCOM ICA, into which both Allegiance and Eschelon have opted, has *no* provision requiring the

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<sup>6</sup> A similar language issue involves Qwest’s change from “additional testing” (the term used in the initial CR) to “optional testing” (the term used in Qwest’s Response). Qwest appears to be emphasizing the allegedly optional nature of the testing to counter objections about the rates. Given that Qwest will reject a trouble ticket without testing or acceptance of a unilateral, unapproved rate, this is not a truly “optional” situation. Moreover, CLECs cannot conduct testing in certain situations involving pair gain, but the documentation makes no exception for such circumstances. Although Bill Campbell seemed to suggest on a call that an exception would be acceptable to Qwest, this has not been confirmed or documented. Such issues could be dealt with in the CLEC-proposed collaborative process. Even assuming the testing is truly optional, however, an optional rate is also subject to the requirements that rates be based on cost and approved by the commissions.

CLEC to provide test results to Qwest (before opening a trouble ticket or otherwise). Qwest cannot “clarify” a term that is not in the ICA. Even when the CLEC is required to provide test results, the rates imposed by Qwest are not supported by the ICAs. Qwest is imposing new terms, without first following processes required by the ICAs and the law.

Instead of citing any basis in the ICAs for the testing “requirement,” Qwest argues that CLEC testing is important and efficient. (Qwest Resp. p. 1.) Qwest also argues that testing is an industry standard.<sup>7</sup> (Qwest Resp. p. 1.) As with Qwest’s cost recovery argument, these are arguments properly made in negotiations or dispute resolution proceedings, or to an arbitrator or state commission, *before* imposition of a term or rate. For example, Qwest negotiated language for inclusion in the SGAT that states that “CLEC will perform trouble isolation on the Unbundled Loop and any associated ancillary services prior to reporting trouble to Qwest.” *See, e.g., AZ SGAT 9.2.5.1.* Allegiance, Covad, and Eschelon have not opted in to the SGAT. Before imposing this requirement on them, Qwest needs to negotiate a similar requirement with them in each of their states. All three have said that they in principle agree with this concept, but they want input into how the concept is applied in practice. Instead of coming to the table to negotiate such terms, Qwest is unilaterally imposing its own requirement by rejecting trouble tickets that do not have test results.

In its Response, Qwest states that “In each meeting, Qwest offered to negotiate an amendment to a CLEC’s interconnection agreement if it disagrees with the rates Qwest has proposed for Optional Testing.” (Qwest Resp. p. 2.) This is not the case. Allegiance, Covad, and Eschelon had representatives at the meetings, and this offer was not made at each meeting. To the contrary, Qwest presented the CR as a “clarification” of “existing” requirements, making an amendment unnecessary. At the monthly process CMP meeting in November, Terry Wicks of Allegiance asked Bill Campbell of Qwest whether Qwest had checked everyone’s ICAs to be sure the CR was consistent with those ICAs. Bill Campbell said yes. This response certainly suggested that no amendment was necessary. In fact, an agreement with CLECs is necessary, but Qwest failed to obtain one.

**Qwest Has No Authority to Proceed on a “Notice-And-Go” Basis, As it Has Done Here.**

Although Qwest entitled the document at issue a “CR,”<sup>8</sup> it is actually a simple a notice of intent. Qwest essentially acknowledges this in its Response, in which Qwest

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<sup>7</sup> Qwest provides no documentation or citations to standards to support this statement.

<sup>8</sup> On page 2 of its Response, Qwest states that it submitted its CR based on its “good faith interpretation” of the interim process. In footnote 2 on the same page, Qwest states that “disagreement” has since arisen in CMP Re-Design about the applicability of the interim process to this type of CR. Both Qwest and CLECs agreed that Qwest would submit Qwest-initiated changes as CRs in Product/Process CMP. This mutual understanding is shown by the fact that Qwest submitted this CR. The fact that Qwest has since withdrawn other Qwest-initiated CRs from the Product/Process CMP and seems to indicate in the Response that it would like to do the same with this one, demonstrates a *reversal in position* by Qwest, not a disagreement. Although there is now substantial disagreement about the interim process, that does not change that fact that Qwest has changed course on this issue.

states that the purpose of its CR was to “formally notify” CLECs of the change.<sup>9</sup> (Qwest Resp. p. 2.) Qwest’s CR stated Qwest’s policy,<sup>10</sup> and Qwest announced a date for implementation. Qwest did not seek consensus or approval at the time, nor did it suspend its plans upon CLEC objection. Although Qwest states in its Response that it answered all questions about the CR (Qwest Resp. pp. 1-2), Qwest omits that several CLECs objected repeatedly to the process and rates and that Qwest answered many questions and objections in the negative. Covad believed that the process had been ceased after a call held during a Re-Design meeting, because of the universal and extensive nature of the objections. But, it turns out that Qwest announced only a slight delay in implementation of the billing, and it proceeded with implementation of the processes over objection. At this time, Qwest is rejecting trouble tickets without testing in states where our ICAs do not require us to test prior to submitting a trouble ticket. Qwest has also said that it will impose SGAT rates when there is no rate in the ICA. As indicated in the Escalation, Qwest is already billing Eschelon SGAT rates, even though Eschelon has not opted in to the SGAT, though Qwest now claims those bills are not for testing. They are for yet another charge or charges.

Qwest’s handling of this CR is very similar to its initial handling of its collocation Release Notifications (“RNs”), in which Qwest announced process changes to collocation that were different from ICA provisions governing collocation. Covad objected to Qwest’s practice of unilaterally changing terms without regard to Covad’s ICAs. Covad (as well as other CLECs, such as AT&T, XO, and ELI) testified as to the inappropriateness of the RNs during section 271 proceedings in Arizona, Colorado, and Washington. The RNs were introduced into evidence as well. As a result, Qwest had to suspend that process<sup>11</sup> and recognize that it cannot unilaterally announce a change that amounts to a modification to an ICA. Qwest needs to have the same realization here and pursue a different course in this case. Overall, Qwest needs to recognize that it has no authority for a “notice-and-go” approach to changes that affect CLECs. Blanket notifications that do not account for differences in individual ICAs, whether in the form of a CR or RN, are unauthorized and unenforceable.<sup>12</sup>

Qwest’s handling of this CR has highlighted many issues for resolution in CMP Re-Design. Not only does the Core Team need to re-address the process for Qwest-initiated CRs in Product/Process CMP, but also the Core Team needs to re-address the systems issues with respect to such CRs. For example, Qwest has indicated that it will

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<sup>9</sup> Qwest represents that CLECs requested notice. *See id.* CLECs have consistently requested that Qwest submit CRs to ***build consensus and gain approval***, not simply to notify CLECs of unilateral changes. Whether, when, and to what extent agreement or approval is needed, and the process for obtaining it when needed, are all issues that remain for discussion in the CMP Re-Design sessions. In the meantime, the ICAs require agreement.

<sup>10</sup> The one-paragraph CR is quoted in its entirety in the Escalation.

<sup>11</sup> Instead, Qwest and CLECs entered into a collaborative process that, despite the unfortunate circumstances leading to its development, ultimately proved successful and satisfactory to CLECs and Qwest. As discussed below, Allegiance, Covad, and Eschelon have suggested using the successful aspects of the collocation decommissioning process as model for resolution here.

<sup>12</sup> Qwest has claimed, in the Re-Design sessions, that under its existing CMP (formerly CICMP) procedures for Product/Process, Qwest may make such changes through RNs only. Qwest’s experience with the collocation decommissioning RNs shows that the contrary is true.

modify its systems to make billing changes. (Qwest Resp. p. 4.) Although Qwest has apparently been planning this change for some time, and Eschelon raised its concerns about the billing aspects of this CR immediately, Qwest has not submitted a systems CR to accomplish such changes. Until such issues can be addressed, in particular, Qwest needs to review and respect each CLEC's ICAs.

**Billing Process and Verification Issues Remain Unclear and Unsatisfactory.**

In its Response, Qwest states that “a unique line item will be available on each bill for the CLEC.” (Qwest Resp. p. 4.) Qwest indicates that it is making this change “in direct response to the Eschelon concern for line item identification.” (Qwest Resp. p. 4.) Eschelon does need line item identification and sufficient information to identify the basis for each charge. We believe the best method for doing this should be discussed among those affected. Qwest is not making line item identification available immediately. In its Response, Qwest states that it will be providing a paper bill in the interim until a systems modification can be made. Qwest has an obligation to provide an electronic bill (an obligation which has existed since 1996). Nonetheless, Qwest has planned this change without coordinating timing of a systems change. Paper bills place CLECs at a significant disadvantage. Bill validation is virtually impossible using paper bills. Eschelon's paper bills, for example, are hundreds and sometimes more than a thousand pages long. At a minimum, if Qwest intends to use paper bills for these charges, Qwest must use a separate Billing Account Number (“BAN”) for these charges, so that we can try to find these charges in all of that paper.

More information on the bill is only a part of the request made by Allegiance, Covad, and Eschelon in their joint Escalation. With respect to billing, we also asked Qwest to “Ensure that CLECs receive notification, at the time of the activity, if a charge will be applied, because CLECs should not have to wait until the bill arrives to discover that Qwest charged for an activity.” (Joint Suppl. Escalation, p. 9.) As Eschelon said at the most recent CMP meeting, the CLEC needs to know at the time of the event that a charge will apply. Immediately after the work is completed, Qwest needs to send CLEC a statement of services performed, testing results, and applicable charges (by telephone number) that will appear on CLEC's next invoice. If Qwest is claiming that a charge was authorized, a process should also be in place to provide timely documentation as to who authorized the charge. If CLECs must wait until the bill is received, it will be a huge task to go back and analyze what happened in each situation and whether a charge should have been applied. All of these kinds of issues should be discussed and reviewed jointly before implementation.

**The CLEC-Proposed Collaborative Process Should be Used to Resolve the Issues.**

In the Joint Escalation, we stated as the “Desired CLEC Resolution:”

“Suspend implementation of Qwest-initiated CR #PC100101-5 (process and rates).

Review any steps that Qwest has taken to make system changes, train people, or otherwise implement this CR universally at Qwest to ensure compliance with particular interconnection agreements (*e.g.*, interconnection agreements with Eschelon, Covad, and Allegiance in each state). This includes re-training, etc., as to the differences among various interconnection agreements, as well as difference from the SGAT. (Eschelon, Covad, and Allegiance each has an interconnection agreement with Qwest, and none of these CLECs has opted into the SGAT.)

Provide documentation showing that Qwest has trained its personnel and taken other steps to ensure compliance with individual interconnection agreements, including differences in those agreements as compared with the SGAT.

Begin a collaborative effort (similar to that used for collocation decommissioning) to develop an improved process and, when possible, gain consensus before implementation. Ensure that part of the process is to provide accurate bills that reflect interconnection agreement rates and provide sufficient information for bill verification. Ensure that CLECs receive notification, at the time of the activity, if a charge will be applied, because CLECs should not have to wait until the bill arrives to discover that Qwest charged for an activity. If no consensus can be reached, Qwest should then be responsible for escalation before implementation.

Ensure reciprocity so that CLECs may recover their costs in the same circumstances in which Qwest is allowed to recover its costs for such testing.

Explain the rates being charged before December 1, 2001 for loop maintenance and testing and explain how these rates and their application differ, if at all, from the procedures after December 1, 2001.”

These items continue to be the CLEC desired resolution.<sup>13</sup> At the December Product/Process CMP meeting, Allegiance, Covad, and Eschelon made a reasonable request to Qwest to consider a collaborative effort, modeled after successful aspects of the one ultimately used to address collocation decommissioning, to address all of the issues raised in this escalation. That process involved, for example:

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<sup>13</sup> In addition, on December 7, 2001, Eschelon sent an email to Qwest (Judy Schultz) stating: The mailout below relates to "Optional Testing" and states that "there were no comments returned to Qwest regarding this change." The change relates to Qwest-initiated CR# PC100101-5. Given the number of communications, written and oral, about this issue, as well as the pending joint escalation, Eschelon does not understand how the notice can indicate that no comments were returned to Qwest.

Eschelon asks Qwest to consider, as part of the "Desired CLEC Resolution" section of the Escalation of CR# PC100101-5, a request to suspend these PCAT changes.

In addition, for purposes of Re-Design, Eschelon asks Judy Lee to add an action item to discuss a process for ensuring that the administrator of these mailouts is notified of comments made through CMP, account teams, etc.

- CLEC opportunity to express desires with respect to the new "product offering."
- Qwest review of CLEC input; proposed "product offering" at the next meeting.
- Meetings (approx. 2 months)
- Presentation to CMP; Posting for 30 days on the WEB for CLEC comment
- Contract amendments to the participating CLECs (option to agree to amend per the new product, negotiate specific changes based upon individual needs, or not do anything until need for the offering).

Although not all aspects of the collocation product were agreed upon, much progress was made in approximately two months of meetings. In addition to this example, the parties have gained experience and learning from Qwest's handling of the appointment scheduler issue. That experience showed that the process works more smoothly if information is provided in advance of action. Qwest's initial announcement of its plan to implement an appointment scheduler in a point release received a substantial adverse reaction. Because Qwest provided so little information about its plans and did not work together with CLECs to confirm what would really meet CLEC needs, Qwest encountered strong opposition. After Qwest incorporated CLEC feedback and provided more information, Qwest met with substantially less resistance. CLECs have asked that, in the future, Qwest take the consensus building approach first, before "announcing" a change. If Qwest comes in with a proposal (a true request for a change, as opposed to notice of one), the parties can work together to develop a workable process/product and minimize disputes.

Allegiance, Covad, and Eschelon continue to support and request use of a thorough collaborative process and suspension of the current process (including rates) in the interim. As we have said throughout this process, we are not opposed in principle to the type of testing at issue and encourage use of reasonable practices along these lines. We already conduct testing before submitting trouble tickets. The process and rates that Qwest has imposed, and the manner in which Qwest has approached this issue, however, are unacceptable. Our proposal for resolution, unlike the Qwest proposal, is not limited to rates or to one month. The collaborative process needs to deal with the processes associated with the trouble isolation and maintenance charges as well, to be clear when each applies. We are willing to dedicate resources to expedite a collaborative process, and we ask Qwest to re-consider this request.

If Qwest agrees, the following representatives will be the points of contact for each of our companies in the collaborative process:

Terry Wicks  
LEC Account Manager  
Allegiance Telecom, Inc.  
469-259-4438

Michael Zulevic  
Covad  
Director-Technical/Regulatory Support  
520-575-2776

Loren Walberg  
Director of Repair  
Eschelon Telecom, Inc.  
612-436-6453



December 19, 2001

Burl Harr, Ph.D.  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh Place East  
St. Paul, MN 55101-2147

RE: In the Matter of Qwest Wholesale Service Quality Standards  
Docket No. P-421/AM-00-849

Dear Dr. Haar:

Enclosed is an original and fifteen (15) copies of Supplemental Testimony by Garth Morrisette. The purpose of Mr. Morrisette's testimony is to respond to inaccurate trouble report data presented by Qwest in Exhibit 38. Since Qwest Exhibit 38 was presented by Qwest late in the afternoon on the last day of the evidentiary hearing, Eschelon is responding with this testimony at this time.

Sincerely,

Dennis Ahlers  
Senior Attorney  
Eschelon Telecom, Inc.  
(612) 436-6249

DDA:tlg  
Enclosure  
cc: Service List

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayner  
Phyllis Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Qwest Wholesale Service  
Quality Standards

DOCKET NO. P-421/AM-00-849

**SUPPLEMENTAL TESTIMONY OF  
GARTH MORRISETTE FOR ESCHELON TELECOM, INC.**

**December 19, 2001**

1 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND TITLE.**

2 A. My name is Garth Morrisette and I am the Director of Regulatory Affairs for  
3 Eschelon Telecom, Inc. (Eschelon). My business address is 730 Second Avenue  
4 South, Suite 1200, Minneapolis, MN 55402.

5 **Q. HAVE YOU BEEN PREVIOUSLY SWORN IN AS A WITNESS IN THIS**  
6 **PROCEEDING?**

7 A. Yes.

8 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

9 A. The purpose of my supplemental testimony is to correct the record with respect to  
10 Eschelon specific data contained in Qwest Exhibit 38.

11 **Q. PLEASE DESCRIBE QWEST EXHIBIT 38.**

12 A. Qwest Exhibit 38 purports to show the percentage of CLEC trouble tickets that  
13 Qwest coded with a trouble resolution code of "no trouble found." Qwest Exhibit  
14 38 contains confidential and trade secret information regarding trouble report  
15 rates on 73 CLECs, including Eschelon, in Qwest's 14 state service territory. The  
16 exhibit is titled "Percent Trouble Tickets for Which No Trouble Was Found -  
17 Qwest Region - September 2001." Qwest refers to the exhibit in its Reply Brief  
18 in criticizing the Coalition's proposal for MN-6 (Trouble Rate). Qwest implies  
19 that the Coalition's proposed standard for MN-6 of no more than 2.5 trouble  
20 reports per 100 access lines is not attainable for Qwest because the trouble report  
21 rate for CLECs is biased upward as a result of CLECs submitting trouble reports  
22 when no trouble is found. Qwest's brief states: "The record shows the percentage  
23 of CLEC trouble reports result in no trouble being found." Qwest Reply Brief at

1 p. 31. Qwest supports that statement by referring to Exhibit 38, which was  
2 introduced by Qwest late in the afternoon on the last day of the evidentiary  
3 hearings. Because the exhibit was introduced so late in the hearing, Eschelon did  
4 not have a chance at hearing to refute or rebut the accuracy of the data. Qwest  
5 Witness Mr Inouye stated that the data used for Exhibit 38 came from Qwest's  
6 Network Department and that he was not sure whether the data had been audited  
7 by Liberty Consulting Group as part of the PID auditing process. TR Vol. 9, p.  
8 14.

9 **Q. DOES ESCHELON HAVE EVIDENCE THAT REFUTES THE**  
10 **ACCURACY OF THE RESULTS IN EXHIBIT 38?**

11 A. Yes. Eschelon personnel reviewed trouble tickets for the months of July-October  
12 2001 for which Qwest claims the Trouble Tickets were closed with a resolution  
13 code of "Test OK, No Trouble Found" (TOK/NTF). Our analysis indicates that  
14 54% of those results reported did not match the resolution code Eschelon used in  
15 closing the ticket. Specifically, Eschelon's records show that 28.8% of the tickets  
16 were closed with trouble found; 10.9% were closed with a resolution code of  
17 "came clear while testing" (CCWT) which means that Qwest saw trouble on the  
18 line initially, but the trouble cleared while testing; 6.5% were closed without a  
19 call back from Qwest with a trouble resolution code, which means that Qwest did  
20 not report the trouble resolution code to Eschelon; and 8.7% of the reports do not  
21 match trouble tickets in our records. The remaining 45.7 percent of the tickets  
22 were closed by Qwest with trouble resolution code of "test OK, no trouble found"  
23 (TOK/NTF).

1 **Q. IS THERE ANY REASON TO DOUBT THE ACCURACY OF THE**  
2 **TROUBLE RESOLUTION CODE FOR THE REMAINING 45.7% OF THE**  
3 **TROUBLE TICKETS IN QUESTION?**

4 A. Yes. Eschelon has experienced significant increase in the number of errors on  
5 orders attributable to Qwest that result in features being dropped or omitted from  
6 Eschelon's UNE Platform orders. In some cases, PIC changes were not processed  
7 on the orders. I was told by a Qwest representative that as many as 70% of  
8 Eschelon's orders written by Qwest order writers in November were corrected for  
9 these types of errors. I have also been told by Qwest representatives and  
10 Eschelon repair personnel that these types of feature/translation issues would be  
11 classified by Qwest with the TOK/NTF resolution code. When Qwest closes the  
12 ticket with trouble resolution code of TOK/NTF it directs Eschelon to issue a new  
13 service order (LSR) to add the feature, or change the PIC on the line. Since  
14 Qwest does not count service order errors in its trouble report data, Qwest's  
15 trouble report data will tend to overestimate the percentage of trouble tickets  
16 coded as TOK/NTF.

17 **Q. BASED ON YOUR TESTIMONY, DO YOU THINK EXHIBIT 38**  
18 **ACCURATELY REFLECTS THE PERCENTAGE OF CLEC TROUBLE**  
19 **REPORTS THAT RESULT IN NO TROUBLE FOUND?**

20 A. No, at least not with respect to the Eschelon data.

21 **Q. DOES THAT CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

22 A. Yes.