Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Qwest Communications International Inc.'s Application for Authority to Provide In-Region, InterLATA Services in Minnesota	)	WC Docket No. 03-90

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May 8, 2003

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In the Matter of Qwest Communications International Inc.'s Application for Authority to Provide In-Region, InterLATA Services in Minnesota	))))))))))	WC Docket No. 03-90

REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") respectfully submits these reply comments in opposition to Qwest's application for authorization to provide in-region, interLATA services in Minnesota.

INTRODUCTION AND SUMMARY

The Minnesota Public Utilities Commission ("MPUC") has been a model of patience and forbearance in the state section 271 proceedings. The state commission has given Qwest every opportunity to come forward on its own, to admit to its errors in judgment, to rectify its misconduct, to level a playing field that has been tilted by surreptitious discounts and back-room deals and ultimately, to obtain the state's approval of its application. Qwest could easily have done so. Instead, Qwest threw down the gauntlet, gaming the proceedings and laying bare its contempt for the section 271 process. Time and again the MPUC encouraged, cajoled or reprimanded the company, on each occasion bending its rules to the breaking point in the hopes that Qwest would do the right thing: disclose the unfiled agreements, remove the illicit provisions, pay the fines, make a clean breast of it, and move on.

No longer. Based on its conclusion that Qwest cannot satisfy either the competitive checklist or the public interest requirement because of its unrivalled pattern of entering into and failing to file discriminatory and unlawful secret deals with selected CLECs, the MPUC has taken the wholly unprecedented step of filing comments recommending *denial* of Qwest's section 271 application. The MPUC should be commended, not given the back of the hand, for doing so.

The MPUC's negative recommendation cannot be ignored. The recommendation is based on a full and robust record, marred only by the brokered silence of Qwest's secret deals partners and Qwest's witnesses own dissembling. The MPUC's conclusion that Qwest's misconduct has deprived Minnesota consumers of a local telephone market that is open to competition is not based on past misconduct that has been brought to light and put to bed, and can therefore be brushed aside. It is based instead on Qwest's outright refusal to remedy past, present and continuing wrongs, and to take the corrective action that the MPUC has found is necessary to fully and irreversibly open Qwest's market to competition.

Qwest is not facing the impossible task of complying with vague, elastic or incomprehensible rules and regulations here. The Commission's prior orders make clear what must be done. Qwest is well aware of the Commission's requirements, but has chosen to follow its own course rather than the roadmap established by this Commission for putting its secret deals misconduct behind it. Qwest did not submit the secret deals to the state commission for approval or rejection as it should have. Qwest has refused to cooperate with the state's efforts to act on its misconduct. It has not accepted any compromise remedy that the MPUC has offered. And when the MPUC was left with no choice but to fashion a remedy without Qwest's cooperation, Qwest refused to comply and sought legal redress.

But the trouble with Qwest's Minnesota application neither begins nor ends with the checklist violations brought to light by the MPUC in connection with the secret deals. The record also reflects significant, continuing discrimination that pervades Qwest's OSS and interconnection practices. Qwest's past, present and continuing pattern of checklist violations, and its callous disregard for the public interest in the state of Minnesota precludes any finding by the Commission that the Minnesota local telephone market is open to competition. For these reasons, the Commission must reject Qwest's application.

In Section I, AT&T demonstrates that none of the Commission's justifications for dismissing the secret deals issue in prior orders is viable here. Based on Qwest's secret deals misconduct, three of the four participating MPUC commissioners have now recommended that Qwest's application be denied. The MPUC commissioners were scathing in their criticism of Qwest on the secret deals issue, and concluded that Qwest's clearly discriminatory practice precludes any finding that Qwest complies with the competitive checklist or that its application is in the public interest.

In its prior orders, the Commission has relied heavily on the relevant state commission findings, recommendations, and proposed remedies with respect to Qwest's secret deals misconduct. In particular, the Commission has concluded that "concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest's submission of those agreements." The Commission has also given significant weight to the fact that Qwest's secret deals misconduct did not prompt any of the commissions to make a negative recommendation on Qwest's application.[1] Here, no such conclusion is possible. Here,

[1] *Qwest 9-State 271 Order* ¶¶ 471, 486-87, 492; *Qwest 3-State 271 Order* ¶¶ 124, 127, 135.

the MPUC made a negative recommendation, based upon its findings of noncompliance with the competitive checklist and public interest requirements. Here, unlike any other state in the Qwest region, the state commission found that Qwest's discriminatory acts impeded full and fair local competition in Minnesota, that Qwest has flatly refused to take steps that the MPUC has concluded are necessary to make Qwest's markets fully open to competition, and that Qwest has not cured the competitive harm to the Minnesota market caused by its unlawful conduct. These findings plainly preclude any determination that there is no ongoing discrimination, or that the problem can be relegated to the past.

The Minnesota record also removes any basis for rejecting the claim that Qwest has used secret deals to buy the silence of CLECs in section 271 proceedings and thereby undermined the regulatory process. In its prior rulings, the Commission relied on the fact that none of the state commissions in the application states had found persuasive evidence of specific harm in the record or recommended denial on this basis.[2] Here, the MPUC specifically found that "[t]he record in the unfiled agreements proceeding in Minnesota demonstrates that *Qwest knowingly chose to act in an anti-competitive manner, for the specific purpose of buying the Section 271 silence of the two largest CLECs in Minnesota.*"[3] Given the unequivocal findings of the MPUC that Qwest's intentional manipulation of the 271 process in Minnesota disqualifies Qwest from satisfying the public interest requirement, it would be reversible error for the Commission to make a finding to the contrary.

Finally, in its *Qwest 9-State 271 Order*, the Commission rejected allegations that Qwest entered into and failed to file an oral agreement between it and McLeod, because "[n]one of the

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[2] *Qwest 9-State 271 Order* ¶ 492; *Qwest 3-State 271 Order* ¶ 137.

[3] MPUC Comments at 35 (emphasis in original); *see also id.* ("Qwest purposely cheated for the direct and specific purpose of obtaining 271 approval"); *id.* at 34 ("Qwest attempted to cheat its way to 271 approval").

nine application states have concluded that an oral agreements exists."[4] But unlike the 9 applicant states upon whose findings the Commission has relied, the MPUC has heard extensive evidence on this issue, including live testimony of Qwest witnesses, and has concluded that there *was* an oral discount agreement between Qwest and McLeod. As AT&T demonstrated in its opening comments,[5] the MPUC's finding that Qwest entered into and failed to file a discriminatory *oral* agreement renders invalid here the Commission's finding in its prior orders that Qwest cured its anticompetitive conduct on a going-forward basis by filing its discriminatory written agreements with state commissions.

In Section II, AT&T reviews the evidence demonstrating that Qwest is not providing nondiscriminatory access to its operations support systems ("OSS"). In contrast to state commissions that approved Qwest's OSS in previous section 271 proceedings, the MPUC has been *unable to conclude* that Qwest currently meets its OSS obligations. Instead, two of the four MPUC Commissioners – concurring with the findings of the MPUC's ALJ – conclude that Qwest still falls short of establishing compliance with checklist item two.

The record in the Minnesota proceeding amply supports this conclusion. The comments show that Qwest's OSS suffer from a number of problems that continue to deny CLECs a meaningful opportunity to compete in the local exchange market. Qwest, for example, does not provide adequate processes or documentation regarding billing completion notices ("BCNs"), which are critical to the CLECs' ability to bill customers accurately and to submit change orders without rejection. The Department of Justice ("DOJ"), although generally recommending

[4] *Qwest 9-State 271 Order* ¶ 491.

[5] AT&T Comments at 15-16.

approval of Qwest's application, cites BCNs as an issue that the Commission should scrutinize in determining whether Qwest has complied with section 271.

The comments also show that Qwest's OSS are plagued with a high rate of order rejections. Qwest's own reported data, for example, show that *more than 52 percent* of CLEC orders submitted via the EDI interface were rejected in March 2003. Similarly, the comments show that the rejection rates for orders submitted by AT&T and MCI in recent months have increased substantially since December 2002, to levels that are unreasonable by any standard. The DOJ, recognizing that the level of rejection rates is highly relevant to the issue of checklist compliance, has correctly urged the Commission to review Qwest's performance in this area.

Finally, the comments show that Qwest has failed to provide nondiscriminatory access to billing functions. As the ALJ and two commissioners of the MPUC have found, Qwest cannot establish that it provides accurate daily usage files ("DUFs") and wholesale bills to CLECs, because the performance data Qwest has made available fail to take into account Qwest's billing performance with respect to CLECs with which Qwest made secret agreements. Even if taken at face value, Qwest's own reported performance data (which undoubtedly overstate its true performance) show that, through March 2003, Qwest has failed to meet the parity standard for billing accuracy for five consecutive months.

Qwest's own data on billing accuracy simply confirm the other evidence of record demonstrating its poor billing performance. The evidence shows, and the ALJ and two commissioners of the MPUC have found, that Qwest fails to provide CLECs with the information which they need to bill Qwest for terminating access charges when a Qwest customer's intraLATA call terminates to a CLEC's customer served by that CLEC's switch. The record further shows that the DUFs provided by Qwest to CLECs are inaccurate and incomplete.

Finally, the comments of the CLECs show that Qwest's wholesale bills contain numerous inaccuracies, some of which Qwest has not resolved for more than a year after they were brought to Qwest's attention. In view of its proven failure to provide complete and accurate DUFs and wholesale bills, Qwest cannot reasonably be found to be in compliance with the checklist.[6]

I. QWEST'S DISCRIMINATORY SECRET DEALS REQUIRE THAT THE COMMISSION REJECT QWEST'S APPLICATION FOR SECTION 271 AUTHORITY IN MINNESOTA.

The comments confirm that Qwest's pervasive and undisputed secret deals discrimination requires that the Commission reject Qwest's application. As AT&T demonstrated in its opening Comments, (1) Qwest violated the core nondiscrimination requirements of the competitive checklist by entering into secret agreements giving price discounts and other preferential terms to selected CLECs, and (2) Qwest's illegal and anticompetitive conduct precludes any finding that its application is in the public interest.[7] Significantly, a majority of the MPUC has now recommended to the Commission that Qwest's application be denied. Commissioner Reha recommends denial based on her conclusion that Qwest cannot satisfy either checklist item 14 or the public interest requirement because of its secret deals misconduct. Commissioners Scott and Johnson recommend denial on these same grounds, and also based on their conclusion that Qwest cannot satisfy checklist item 2 because its billing accuracy is insufficient.[8]

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[6] AT&T also demonstrated in its opening comments that Qwest does not provide reasonable and nondiscriminatory access to interconnection. Specifically, Qwest does not satisfy checklist item one (interconnection) because under Qwest's Minnesota SGAT, Qwest unreasonably refuses to provide the interconnection trunks requested by the CLEC when Qwest's forecast of the CLEC's interconnection needs is lower than the CLEC's own forecast and the CLEC's usage on a statewide basis is less than 50% of the CLEC's trunks in service. *See* AT&T Comments at 24-26.

[7] *Id.* at 6-16.

[8] Chairman Koppendrayer recommends approval of the application, while Commissioner Gavin recused herself from the proceeding.

The MPUC's negative recommendation, and the specific findings underlying that recommendation, are fatal to Qwest's application. In the *Qwest 9-State 271 Order* and the *Qwest 3-State 271 Order*, the Commission ignored years of discrimination and anticompetitive conduct by Qwest, relying heavily on the relevant state commission investigations, findings, recommendations, and proposed remedies with respect to Qwest's misconduct.[9] In particular, the Commission concluded that "concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest's submission of those agreements."[10] The Commission gave significant weight to the fact that Qwest's secret deals misconduct did not prompt any of the commissions to make a negative recommendation on Qwest's application, or to make a finding that Qwest has not satisfied the competitive checklist or the public interest requirements.[11] Indeed, the Commission relied on statements from these state commissions that the discrimination inherent in Qwest's secret deals did not adversely affect Qwest's section 271 request, or that the harm from that discrimination could be remedied in another state docket.[12] The Commission also rejected the claims of AT&T and other commenters that Qwest's secret deals with favored CLECs distorted the regulatory process in section 271 proceedings on the grounds that there was no evidence of specific harm in any of the records, and that none of the state commissions in the application states found these concerns to

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[9] *See Qwest 9-State 271 Order* ¶¶ 486-87, 491 ("States are best equipped to resolve fact-specific issues" with respect to the secret deals), 496 ("we conclude that consideration of the state dispositions will serve the public interest"), 498 (waiving "complete-as-filed" rule based on conclusion that "state actions with respect to the unfiled agreements are important to consider"). *See also Qwest 3-State 271 Order* ¶¶ 127, 132, 135, 141.

[10] *Qwest 9-State 271 Order* ¶ 486; *Qwest 3-State 271 Order* ¶ 124.

[11] *Qwest 9-State 271 Order* ¶¶ 471, 486-87, 492; *Qwest 3-State 271 Order* ¶¶ 127, 135.

[12] *Id.*

be a basis for disapproval.[13] While the Commission acknowledged in the *Qwest 9-State 271 Order* the MPUC's finding of numerous violations and its then-pending penalty proceedings, and even expressly acknowledged the MPUC's finding "that the oral agreement did exist," it did not address these findings on the ground that Minnesota "is not one of the application states in the instant proceeding."[14]

The Commission's justifications for dismissing the secret deals issue in prior orders compel the opposite conclusion here. Its analysis in those cases, including its reliance on state findings, can only support the denial of Qwest's application in Minnesota. First and foremost, in stark contrast to the state commissions of the prior application states, a majority of the MPUC commissioners recommend that Qwest's application be denied, *because of Qwest's secret deals misconduct*.[15] These commissioners concluded, based on specific and detailed findings in its record, that Qwest cannot satisfy either the competitive checklist or the public interest requirement because of its illegal and anticompetitive secret deals conduct. In summarizing their position, Commissioners Scott and Johnson, who noted that their negative recommendation "is not made lightly," stated the following:

> Qwest attempted to cheat its way to 271 approval. If the FCC approves Qwest's application for Minnesota, Qwest will have succeeded. If the public interest standard is to have any meaning or effect, it must be applied to prevent Qwest's entry into long distance in Minnesota. If lying, cheating, and purposeful deception are not 'unusual circumstances that would make entry contrary to the public interest,' then the public interest standard is a sham.[16]

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[13] *Qwest 9-State 271 Order* ¶¶ 492-93; *Qwest 3-State 271 Order* ¶¶ 132, 136-37.

[14] *Qwest 9-State 271 Order* ¶¶ 467 n. 1699, 491 n. 1791.

[15] *See* DOJ Eval. at 2 ("three of the four participating Minnesota Public Utilities Commission ("Minnesota PUC") Commissioners have opposed Qwest's application based on its having entered into discriminatory interconnection agreements with certain CLECs").

[16] MPUC Comments at 31, 34.

In the same vein, Commissioners Scott and Johnson noted that Qwest "purposely cheated for the direct and specific purpose of obtaining 271 approval" and concluded that "[a]n unrepentant cheater is not entitled to wear the cloak of approval that comes with 271 entry."[17]

The rationale for the MPUC's negative recommendation is important. With respect to checklist item 14 (resale), the three commissioners who oppose Qwest's application agreed with the factual findings of an ALJ that Qwest engaged in discrimination via the secret deals, and that Qwest cannot be found to have met this checklist item unless and until it implements the remedial measures ordered by the MPUC (which it has refused to do).[18] As Commissioner Reha noted with respect to this checklist item, "[t]he MNPUC has developed a solid record of knowing and intentional violations by Qwest and of the company's actions for thwarting fair competition in Minnesota."[19]

With respect to the public interest requirement, the core concern of the commissioners is that Qwest's discriminatory acts impeded full and fair local competition in Minnesota and that Qwest has flatly refused to take steps that the MPUC has concluded are necessary to make its markets fully open to competition. In describing the impact of Qwest's secret deals misconduct, the commissioners found that Qwest "purposely distorted" the competitive "playing field" and opined that "but for Qwest's behavior, Minnesota would have a much more robust market."[20]

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[17] *Id.* at 35, 36. In this regard, it also is notable that Qwest, while seeking section 271 approval based on the UNE rates adopted by the MPUC, is simultaneously appealing those rates in federal district court, seeking much higher UNE rates. *See* Complaint for Declaratory Judgment and Injunctive Relief to Prevent Enforcement of Public Utilities Commission Orders, Civil File No. 03-2942 (D. Minn., filed April 23, 2003).

[18] *Id.* at 26 ("The Unfiled Agreements case also shows that Qwest has not corrected its price and service discrimination. I am convinced that Qwest cannot be found to have met the provisions of Checklist Item #14 until it has implemented the remedial measures ordered by the MNPUC") (Commissioner Reha); *id.* at 33 ("the unfiled agreements show price and service discrimination among CLECs"; "Qwest cannot be found to have met this checklist item until it has implemented the provisions ordered by the MNPUC").

[19] *Id.* at 26.

[20] *Id.* at 35, 37-38; *see also id.* at 28 (finding that Qwest needs to "rectify its anti-competitive conduct" in order to

The Commissioners noted that the remedial measures ordered by the MPUC in its *Penalties Order*,[21] are "intend[ed] to level the playing field."[22] Specifically, "[t]he intention of this relief was to give competitors the benefit of that which Qwest secretly gave only to Eschelon and McLeod."[23]

Because the purpose of the remedies ordered by the MPUC is to cure the specific competitive harm caused by Qwest's unlawful secret deals, the necessary result of Qwest's outright refusal to implement the remedies, or even to acknowledge any wrongdoing, is that the competitive harm is unremediated and no finding can be made that the Minnesota local market is open to competition. As two of the commissioners stated:

> A denial of wrong-doing, combined with Qwest's failure to implement the ordered remedy, makes Qwest's conduct very much in the PRESENT, not the past. This behavior is clear evidence that Qwest is not yet committed to opening its markets to competition.[24]

Indeed, because Qwest has not implemented the relief ordered by the MPUC, these commissioners specifically warn that "[t]he FCC must not shrug this conduct off as past conduct being dealt with in another docket."[25]

Thus, the Commission's principal justification for overlooking Qwest's secret deals misconduct in prior dockets – that the state commission dispositions cured any problem going-

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"level[] the competition field").

[21] Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements, Order Assessing Penalties, Minnesota Public Utilities Commission, Docket No. P-421/C-02-197 (Feb. 28, 2003) (Attachment 1 to AT&T Comments).

[22] MPUC Comments at 35.

[23] *Id.*

[24] *Id.* at 36; *see also id.* at 28 ("Until Qwest implements the restitution, it has not leveled the competition field and has not fully addressed my concerns related to the public interest") (Commissioner Reha).

[25] *Id.* at 35.

forward – cannot apply here. The MPUC concluded, based on a thorough analysis of the impact of Qwest's misconduct on the Minnesota market, that the problem has not been cured, and will not be cured unless and until Qwest implements the required remedies. As distinct from the Commission's prior grants of section 271 authority, the state commission in Minnesota has expressly stated that it cannot defer appropriate action to another docket. While the Commission's prior grants to Qwest relied on state commission conclusions that the secret deals no longer adversely impact checklist requirements for nondiscrimination and the openness of Qwest's local market,[26] the Minnesota PUC has found squarely that, at least in Minnesota, discriminatory effects and a less than irreversibly open market remain as a result of Qwest's secret deals. As a result, the Commission cannot make a reasoned finding that Qwest has opened its local market to competition. Any such finding could not survive judicial review because it would directly contradict the MPUC's contrary finding, with respect to a matter that is at the core of the MPUC's expertise.[27]

The Commission likewise cannot simply "shrug off" the MPUC's considered judgment that it would not be in the best interest of Minnesota consumers to have Qwest enter the long

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[26] For example, in approving Qwest's 271 application for New Mexico, the Commission expressly noted that the New Mexico commission "did not find that the unfiled agreements at issue had the effect of significantly frustrating Congress' intent that the local markets be open to competition." *Qwest 3-State 271 Order* ¶ 128 (internal quotation omitted). The Commission also expressly relied on the fact that the secret deals were submitted to and ultimately approved by the New Mexico commission. *Id.* ¶ 129. *See also id.* at ¶ 134 (noting that the New Mexico commission "ultimately found that the unfiled agreements issue does not warrant a denial of Qwest's section 271 application, and that any past noncompliance with section 252 should be addressed in a separate enforcement proceeding").

[27] The DOJ states that the MPUC "understandably has been troubled" by Qwest's secret deals and "does not dispute the Minnesota PUC's expert assessment of the underlying facts," but urges the Commission to approve the application based on the Commission's determination in prior orders "that Qwest's 'knowing and intentional' violations relate to past practices and should be dealt with in separate enforcement proceedings outside the Section 271 process." DOJ Eval. at 2-3, 9-10. As demonstrated in text, such a ruling is unsustainable in light of the MPUC's contrary findings and negative recommendation. The DOJ treats the MPUC and FCC conclusions as alternative resolutions of the same issue. The DOJ fails to understand that the FCC's resolution had as a necessary component the state commission conclusions that Qwest's discrimination had been remedied, or could be remedied in a separate docket. The MPUC has reviewed the record evidence in Minnesota, and found exactly the opposite, requiring the FCC itself to reach a different result.

distance market. Indeed, approving Qwest's application would be tantamount to overruling the conclusions of the MPUC with respect to a matter that is at the core of the agency's expertise and mission. In effect, the Commission would be allowing Qwest to enter the long-distance market in Minnesota when the MPUC has unequivocally stated – in its role as guardian of the interests of Minnesota consumers – that Qwest has not earned the right to do so.

The MPUC developed and considered a far more extensive record on the secret deals issue than any other state commission, and based its negative recommendation on other circumstances that are unique and specific to Minnesota. For example, the MPUC commissioners considered Qwest's pattern of anticompetitive conduct in Minnesota and its corporate attitude. In Minnesota, to a greater extent than in any other state, Qwest refused to cooperate in the state proceedings initiated by the state's Department of Commerce, the ALJ and the MPUC to uncover, prosecute and remedy Qwest's pervasive and discriminatory misconduct. All of the commissioners who opposed Qwest's application cited and described several recent instances in Minnesota in which the MPUC found that Qwest acted anticompetitively (*inter alia*, by violating its interconnection agreement with AT&T and failing to cooperate in a market entry test), and also noted other outstanding complaints against Qwest in Minnesota.[28] Two of the commissioners also cited the ALJ's finding – based on testimony in the Minnesota secret deals hearing – that one of Qwest's executives lied to the MPUC about the existence of the oral secret deal and engaged in conduct that raised questions about "respect . . . for the regulatory process."[29] The commissioners concluded that Qwest's pattern of anti-competitive behavior in Minnesota has a direct bearing on the public interest determination whether Qwest's market is

[28] MPUC Comments at 28-29; 36-37.

[29] *Id.* at 36.

open to competition.[30] As one commissioner concluded, Qwest's overall record "signal[s] Qwest's intent to frustrate fair competition in Minnesota."[31]

The thorough record in Minnesota also undermines the Commission's other justifications for dismissing Qwest's secret deals discrimination. For example, in its prior orders, the Commission "reject[ed]" the claim that Qwest's applications were not in the public interest because it had used secret deals to buy the silence of CLECs in section 271 proceedings and had thereby undermined the regulatory process.[32] The Commission concluded that "there is no persuasive evidence of specific harm in our record" and relied on the fact that none of the state commissions in the application states recommended denial on this basis.[33] In this instance, the MPUC has expressly found that the record in the state proceeding was harmed. The MPUC has recommended denial of Qwest's application, and has done so based on the specific ground that Qwest cannot satisfy the public interest requirement because "[t]he record in the unfiled agreements proceeding in Minnesota demonstrates that *Qwest knowingly chose to act in an anti-competitive manner, for the specific purpose of buying the Section 271 silence of the two largest CLECs in Minnesota.*"[34] As two of the MPUC commissioners stated in no uncertain terms: "If lying, cheating, and purposeful deception are not 'unusual circumstances that would make entry contrary to the public interest,' then the public interest standard is a sham."[35] Given the unequivocal findings of the MPUC that Qwest's intentional manipulation of the 271 process in

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[30] *Id.* at 37-38.

[31] *Id.* at 29.

[32] *Qwest 9-State 271 Order* ¶ 492; *Qwest 3-State 271 Order* ¶¶ 136-37.

[33] *Qwest 9-State 271 Order* ¶ 492; *Qwest 3-State 271 Order* ¶ 137.

[34] MPUC Comments at 35 (emphasis in original); *see also id.* ("Qwest purposely cheated for the direct and specific purpose of obtaining 271 approval"); *id.* at 34 ("Qwest attempted to cheat its way to 271 approval").

[35] *Id.* at 34.

Minnesota disqualifies Qwest from satisfying the public interest requirement, it would be reversible error for the Commission to make a finding to the contrary.

In its prior orders the Commission did not address the issue of whether Qwest's secret deals affected the accuracy and reliability of Qwest's reported commercial performance data. The effect of the secret deals on those data was disclosed only during the evidentiary proceedings before the Minnesota PUC – and confirmed in the subsequent findings of the ALJ. As AT&T demonstrated in its opening comments, the ALJ and two of the MPUC commissioners specifically found that Qwest's reported performance data on billing accuracy and DUF accuracy may have been impacted by these secret agreements.[36] For example, they found that Qwest's data on DUF accuracy were unreliable because Qwest had used a manual process to provide usage information for "UNE-Star" service (which was the UNE product that Qwest offered to Eschelon and McLeod, two large CLECs with whom it had secret deals), rather than use its normal process for generating and transmitting DUFs. In addition, the ALJ found that Qwest's data on billing accuracy improperly excluded the manual adjustments that were made in the course of billing "UNE-Star" service.[37] In light of the specific evidence and findings in Minnesota that Qwest's secret deals skewed Qwest's reported performance data, the Commission cannot make a reasoned finding that Qwest has met the requirements of the competitive checklist.

Finally, the Commission gave the back of its hand to allegations that Qwest entered into and failed to file an oral agreement between it and McLeod, stating in its *Qwest 9-State 271 Order* that "[n]one of the nine application states have concluded that an oral agreements

[36] *See* AT&T Comments at 22 & n. 71; Finnegan Decl. ¶ 50.

[37] *Id.*

exists."[38] The MPUC, of course, heard extensive evidence on this issue, including live testimony of Qwest witnesses, and concluded that there *was* an oral discount agreement between Qwest and McLeod.[39] The MPUC further assessed the maximum allowable penalties based on its conclusion that the oral discount agreement had the potential to cause "the most serious damage to competition."[40] As AT&T demonstrated in its opening comments,[41] the MPUC's finding that Qwest entered into and failed to file a discriminatory *oral* agreement renders invalid here the Commission's finding in its prior orders that Qwest cured its anticompetitive conduct on a going-forward basis by filing its discriminatory written agreements with state commissions. Since Qwest has never come clean with respect to whether it entered into and failed to file other secret *oral* agreements, the Commission cannot make a reasoned finding on the record in this proceeding that there is no ongoing discrimination.

II. THE COMMENTS DEMONSTRATE THAT QWEST DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS.

The comments demonstrate that Qwest has failed to meet its obligation under the competitive checklist to provide nondiscriminatory access to its OSS.[42] Significantly, in contrast to state commissions in previous section 271 proceedings, the MPUC has *not* recommended that Qwest be found in compliance with its OSS obligations, because the four participating members of the MPUC were equally divided on the issue.[43] Commissioners Scott and Johnson, agreeing

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[38] *Id.* at ¶ 491.

[39] *See, e.g., Penalties Order* at 5.

[40] *Id.*

[41] AT&T Comments at 15-16.

[42] *See* MPUC Comments at 32-33 (comments of Commissioners Scott and Johnson); AT&T Comments at 17-24; WorldCom Comments ("MCI Comments") at 1-3.

[43] MPUC Comments at 2.

with the presiding Administrative Law Judge of the MPUC, found that Qwest has not met its burden of proving that its provides accurate and complete billing information to CLECs.[44]

The comments of the CLECs similarly show that the numerous deficiencies in Qwest's OSS deny CLECs a meaningful opportunity to compete in the local exchange market in Minnesota.[45] AT&T, for example, has shown that its entry into the residential market in Minnesota has been impeded by (*inter alia*) Qwest's inadequate procedures and documentation regarding billing completion notices, the unique design of Qwest's parsed customer service record, Qwest's requirement that CLECs insert certain additional information (not required by other RBOCs) into its interfaces in order to retrieve a customer service record, the defective test environment that Qwest makes available to CLECs, and Qwest's requirement that CLECs differentiate on the LSR between "retained" features and features that the customer is taking for the first time from the CLEC.[46]

MCI confirms that Qwest's flawed OSS have "caused significant problems for MCI in entering the local market."[47] MCI states that its ability to "compete efficiently and effectively" in that market has been adversely affected by such obstacles as: (1) Qwest's failure (until last month) to implement migration by telephone number and street address number and to enable CLECs to place "migration-as-specified" orders pursuant to industry standards; (2) the incorrect daily usage files ("DUFs") that Qwest provides; (3) Qwest's failure to provide CLECs with an acceptable way to obtain the customer codes that Qwest has required them to enter on local service requests ("LSRs"); and (4) Qwest's failure to provide CLECs with an acceptable means

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[44] *Id.* at 32-33 (comments of Commissioners Scott and Johnson).

[45] AT&T Comments at 17-18; MCI Comments at 1-3.

[46] *See* AT&T Comments at 17-18 & Finnegan Decl. ¶¶ 7-18.

[47] MCI Comments at 1.

of provisioning blocking options. These problems have "lengthened development time and required far more work on MCI's part than should have been necessary."[48]

Thus, whatever the record may have shown in the *9-State 271* or *3-State 271* proceedings, the record in *this* proceeding shows that the deficiencies in Qwest's OSS *preclude* a finding of checklist compliance. Even leaving aside those defects in the OSS that the Commission previously found not to be violations of the checklist, Qwest currently denies CLECs parity of access to ordering, provisioning, and billing functions.[49]

Ordering and Provisioning. The comments show that Qwest fails to provide nondiscriminatory access to ordering and provisioning functions. *First*, far from meeting its obligation to "provid[e] competing carriers with order completion notices in a timely and accurate manner," Qwest impedes – rather than facilitates – the receipt of billing completion notices ("BCNs") by CLECs.[50] Qwest still has not provided CLECs using the EDI interface with documentation describing the modifications that they need to make in their own systems in order to receive and process BCNs.[51]

Furthermore, Qwest vitiates the BCN by generating a BCN for each separate service order that it generates for a particular LSR. A BCN is critical to a CLEC's ability to compete, because it advises a CLEC when it may properly begin billing a customer for service and when it can submit a change order on a customer's account without risking the possibility of order rejection. However, Qwest's "multiple-BCN" process – which no other RBOC appears to follow

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[48] *Id.* at 2-3.

[49] *See* AT&T Comments at 17-24; MCI Comments at 1-4; MPUC Comments at 31-32 (comments of Commissioners Scott and Johnson).

[50] *See New York 271 Order* ¶ 187; AT&T Comments at 19-21.

[51] AT&T Comments at 20. As DOJ states, "Qwest admits that no CLECs are receiving BCNs via EDI." DOJ Eval. at 7 n.24.

– creates the risk of confusing the CLEC, with the resulting possibility that the CLEC's customer will be double-billed or underbilled (with resulting competitive harm to the CLEC). This is plainly a denial of parity, because Qwest's retail operations do not experience such risks.[52]

The DOJ correctly cites the evidence of Qwest's deficient BCN performance as a matter for the Commission's attention, "given the critical importance of timely and accurate BCNs to the CLECs' ability to bill end-user customers."[53] Indeed, until Qwest implements AT&T's pending change request for a "single-BCN" system and provides adequate documentation, it cannot reasonably be found to be in compliance with its OSS obligations.[54]

Although AT&T needs BCNs to the extent that it serves customers through the UNE platform, to date AT&T's provision of service through the UNE-P has primarily involved service to business customers – and the volumes of UNE-P orders that it submitted were relatively limited at the time of the prior Qwest 271 proceedings. Such limited volumes could not justify the expenditures necessary to modify AT&T's systems to receive and process BCNs.[55] With

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[52] AT&T Comments at 20-21.

[53] DOJ Eval. at 7 n.24.

[54] *See* AT&T Comments at 20-21.

[55] The DOJ questions "whether the difficulties of which AT&T complains account for CLECs' apparent lack of interest in receiving BCNs via EDI," citing the fact that AT&T did not previously raise this issue in the proceedings before the MPUC or in prior Qwest 271 proceedings before this Commission. DOJ Eval. at 7 n.24. AT&T clearly does not "lack interest" in a BCN, as evidenced by its filing of a change request for a single-BCN system. *See* AT&T Comments at 20-21. AT&T has not previously requested Qwest to provide BCNs because of the considerable costs that would be required to incur to be able to receive and process BCNs within its own systems, and the relatively low volumes of UNE-P orders that AT&T was submitting. Under Qwest's business rules, if a CLEC wishes to receive a BCN, it must also receive all other "status updates" related to service orders – work provisioning notices, "hold" notices, and error notices advising the CLEC that the order has fallen out for manual processing – regardless of whether the CLEC wishes to receive the other status updates. *See* EDI Disclosure Document – Version 12.0, Ch. 59, at 2-3, *available at* http://ww.qwest.com/disclosures/netdisclosures409/12/chapter59.pdf. *See also* Notarianni/Doherty Decl. ¶ 314. Moreover, as in the case of the BCN, Qwest transmits a "status update" for each service order that it generates for a particular LSR. Considerable developmental work, and dedication of substantial time and resources, would be required to modify AT&T's systems to receive and manage all of these status updates (including eliminating the updates that AT&T does not need and identifying the particular service order and LSR associated with a particular status update).

AT&T's forthcoming entry into the residential market on a mass-market basis, however, AT&T expects that it will submit vastly higher volumes of UNE-P orders to Qwest in the near future. These expected volumes, together with the benefits that a BCN provides, now justify the incurrence of the necessary development costs.

Second, the comments show that Qwest's OSS reject an unreasonably high percentage of CLEC orders, both on a regionwide level and for individual CLECs. Qwest's rejection rates for orders submitted via the EDI interface during the first three months of 2003 were substantially higher than the rate for such orders in December 2002. In March 2003, more than *52 percent* of all EDI orders were rejected.[56] In addition to the increase in the regionwide rejection rate, the comments demonstrate that since December, the rejection rates for AT&T and MCI increased dramatically, to levels well above those that the Commission had previously found to be reasonable.[57]

Qwest has offered no viable evidence in its Application or its subsequent *ex parte* filings to support its contention that the increase in rejection rates is due to "CLEC errors," rather than to deficiencies in its OSS.[58] Instead, in the *ex parte* submission that it filed last week, Qwest suggests that the Commission already found in its *Qwest 3-State 271 Order* that Qwest's rejection rates do not violate Section 271.[59] Qwest's reliance on that order, however, is

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[56] *See ex parte* letter from Richard E. Young (Sidley Austin Brown & Wood LLP) to Marlene H. Dortch, filed April 29, 2003, at 2-4 ("AT&T April 29 *ex parte*").

[57] AT&T Comments at 21 & n.67 (citing rejection rate of 42.1 percent for orders that AT&T submitted in February 2003 via EDI); *ex parte* letter from Lori E. Wright (MCI) to Marlene H. Dortch in *3-State Qwest 271* proceeding, dated April 10, 2003, at 2 (incorporated by reference in MCI Comments at 2) (stating that 55.6 percent of MCI's orders were rejected for the week ending April 4, 2003).

[58] *See* DOJ Eval. at 2 n.5; AT&T April 29 *ex parte* at 4 (describing the flaws in Qwest's argument that the high rejection rate in January 2003 was due to a software error by a particular CLEC); *ex parte* letter from Richard E. Young to Marlene H. Dortch, filed April 30, 2003 ("AT&T April 30 *ex parte*"), at 2 (same).

[59] *See ex parte* letter from Melissa E. Newman (Qwest) to Marlene H. Dortch, dated May 1, 2003 ("Qwest May 1 *ex parte*").

misplaced. As the DOJ recognizes, in contrast to the *Qwest 3-State 271* proceeding, Qwest has not presented in *this* proceeding sufficient evidence to show that the high levels of rejection rates through March are due to reasons not involving its own OSS performance.[60] Moreover, the rejection rates for orders submitted via EDI during the first quarter of 2003 are substantially higher than those previously reported at the time Qwest filed its 3-State application last January 15.

Like its previous submissions in this proceeding, Qwest's May 1 *ex parte* fails to demonstrate that the high rejection rates in recent months are due to "CLEC error." Qwest's April 22 *ex parte* letter stated that the substantial increase in the rejection rate for orders submitted via EDI in January 2003 was attributable to a "software error" by a CLEC that resulted in more than 30,000 rejects. Now, however, Qwest's May 1 *ex parte* acknowledges that Qwest did not even mention this CLEC, or the CLEC's EDI orders, in either (1) a table in its Application describing volumes of EDI orders submitted in January by individual CLECs or (2) the attachment to its April 22 *ex parte*, which described the rejection rates of individual CLECs.[61]

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[60] *See* DOJ Eval. at 2 n.5. The *Qwest 3-State 271 Order* is also inapplicable because it simply rejected claims by WorldCom that the rejection rates for WorldCom's orders were due to flaws in Qwest's documentation and other specific flaws in the OSS. *See Qwest 3-State 271 Order* ¶¶ 55-62. Although AT&T filed an *ex parte* letter in that proceeding describing the increase in rejection rates for AT&T's orders in January and February 2003, the *9-State Order* did not discuss the issues raised in that letter. Instead, the Commission cited the letter only to support its conclusion that the rejection rate for UNE-P orders submitted by AT&T in its Minnesota trial with Qwest "shows that other competitive LECs have been able to successfully develop an EDI interface for ordering UNE-platform . . . using Qwest's documentation and technical assistance." *Id.* However, as AT&T explained in that *ex parte* letter and in its opening comments in this proceeding, the "low reject rates" that AT&T achieved in the Minnesota trial show nothing of the sort, because all of the test lines used in the trial were installed at the same address – thereby eliminating the possibility of address-related rejections. *See Qwest 3-State 271 Order* ¶ 55 & n.174; AT&T Comments at 21 & Finnegan Decl. ¶ 48; *ex parte* letter from Richard E. Young to Marlene H. Dortch in WC Docket No. 03-11, dated April 8, 2003, at 3-4.

[61] Qwest May 1 *ex parte* at 3. *See also* AT&T April 30 *ex parte* at 2-3; AT&T April 29 *ex parte* at 4.

Qwest asserts that these omissions occurred because its reporting mechanism had included the rejections from the CLEC in question in an "Unknown" category, due to the CLEC's mistaken use of its ACNA, rather than its RSID, on its LSRs.[62] Qwest, however, does not explain why it did not even mention these 30,000 LSRs – even if classified as "unknown" – in the table in its Application (which described even CLECs that submitted *de minimis* order volumes), or why it apparently took nearly three months to determine the identity of the CLEC who submitted the rejected orders.[63] Qwest's explanation for the rejections of this CLEC's orders is also highly suspect because the CLEC's alleged "software error" should have been detected in Qwest's test environment if – as Qwest has consistently claimed – the test environment mirrors commercial production.[64]

Qwest's explanation in its May 1 *ex parte* for the 49.16 percent "auto-reject" rate for orders submitted via EDI in March 2003 is equally inadequate. Qwest attributes this high rate to a corresponding increase in order volumes (and rejections) by a different CLEC. The May 1 *ex parte*, however, makes clear that Qwest has not determined – and cannot explain – *why* that CLEC's orders were rejected. Instead, Qwest offers rationalizations that are inconsistent, unsupported, and illogical. Qwest initially suggests that the rejections occurred because "this particular CLEC had difficulties implementing its side of the OSS interface," but offers no basis to support this theory.[65] Nor does Qwest explain whether the alleged "difficulties" experienced

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[62] Qwest May 1 *ex parte* at 3.

[63] CLECs are required to include on every LSR the name and telephone number of the person who submitted the order. Thus, Qwest can readily determine from an LSR the particular CLEC who submitted the order, even if the LSR does not include the proper RSID.

[64] *See* AT&T April 29 *ex parte* at 4 & n.8. If the CLEC in question was erroneously using its ACNA, rather than its RSID, that error would have been relatively simple to correct once it was detected in the test environment. Even if the error somehow escaped detection in the test environment, Qwest does not explain why that CLEC submitted more than 30,000 orders, with the resulting rejections, before Qwest resolved the problem with the CLEC.

[65] Qwest May 1 *ex parte* at 3.

by the CLEC in question were caused by shortcomings in Qwest's OSS performance, or by some error made by the CLEC.

Qwest then states – inconsistently with its suggestion that the rejections were due to flawed implementation by the CLEC on its side of the interface -- that some of the CLEC's EDI orders "may" have been rejected in March because the CLEC "was submitting the same rejected LSRs multiple times, perhaps in an effort to correct its EDI interface." According to Qwest, it is "further" investigating this "possibility."[66] This latter explanation, by itself, is not only speculative but illogical, because a CLEC would not – and could not – correct problems on its side of the interface by resubmitting previously-rejected orders. In any event, Qwest's baseless and conflicting "explanations" only reconfirm that Qwest has not shown in this proceeding that the high rate of order rejections should not be attributed entirely to Qwest itself.

High rejection rates deny CLECs parity of access because they impose substantial costs on CLECs not experienced by Qwest itself, impairing the CLECs' opportunity to compete.[67] The Commission cannot reasonably find Qwest to be in compliance with its OSS obligations in the face of the evidence of the high rejection rates experienced by orders submitted via EDI. That is why the DOJ, concerned with this evidence of excessive rejection rates and the absence of a sufficient explanation by Qwest, has recommended that the Commission "review this and subsequent months' performance data to ensure that Qwest's OSS remains checklist compliant." DOJ Eval. at 2 n.5.

Billing. The comments show that Qwest is not meeting its obligation to provide nondiscriminatory access to billing functions. The Minnesota PUC has declined to find that

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[66] *Id.* at 3 & n.14.

[67] AT&T Comments at 21.

Qwest has complied with its obligation, because two of the four participating commissioners of the MPUC conclude that "Qwest has not shown by a preponderance of [the] evidence that its billing accuracy in Minnesota is sufficient to support a finding of compliance with checklist item No. 2."[68] Commissioners Scott and Johnson adopt "the ALJ's well-considered decision" on the issue, which they describe as follows:

> The ALJ found that Qwest has not demonstrated by a preponderance of the evidence that it provides nondiscriminatory access to network elements because of Qwest's reliance on UNE-Star as its unbundled network element product to the two largest CLECs in Minnesota. [ALJ Decision] at ¶ 97. The record in this proceeding, according to the ALJ, shows conclusively that UNE-Star does not meet the standards for a UNE-P offering, particularly with respect to billing accuracy. The ALJ concluded that *Qwest's application for Sec. 271 approval in Minnesota should not be approved until Qwest has demonstrated that all UNE-Star lines have been converted to UNE-P and that its billing system is capable of meeting the appropriate performance measures for wholesale billing and providing accurate daily usage files (DUF) records to allow CLECs to appropriately charge for switched access.* *Id.* at 104, Conclusion of Law No. 5.[69]

Commissioners Scott and Johnson further state that Qwest's billing systems cannot be found to be in compliance with section 271 unless, and until, its existing performance metrics are modified to provide a more meaningful measure of its performance. These modifications include

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[68] MPUC Comments at 33 (comments of Commissioners Scott and Johnson).

[69] *Id.* at 32 (emphasis added). Eschelon, which purchased UNE-Star from Qwest, has not yet converted its full UNE-Star customer base to UNE-P. In a filing that Eschelon made only last week in the Arizona Corporation Commission's Section 271 proceeding, Eschelon described, *inter alia*, problems that (according to information provided by Qwest) could be experienced in converting Eschelon's existing UNE-Star ("UNE-E") customer base to a mechanized billing system. *See* Eschelon's Reply to Qwest's "Comments of Eschelon" Regarding UNE-E Mechanization and Accurate Billing, filed April 30, 2003, in ACC Docket No. T-00000A-97-0238, at 6-11 (attached hereto as Attachment 1). Eschelon's filing makes clear that full conversion of its UNE-Star customers to UNE-P has not yet occurred. *See, e.g.*, *id.* at 1 ("Eschelon has a right to order UNE-E through the end of 2005 under its interconnection agreement. Eschelon needs to order UNE-E for Off-Net customers whenever Qwest makes functionality (such as voice mail or AIN features) unavailable with UNE-P"); *id.* at 26 (stating that one of the unresolved issues in connection with the conversion of UNE-E customers to a mechanized billing system is whether Qwest will "agree to provide voice mail and AIN features ... with UNE-P, to reduce the amount of lines that need to be on UNE-E if doing so would eliminate the requirement in any states where it does so to bill accurately for any

revision of Qwest's existing billing accuracy metric (BI-3A) to (1) reflect the actual percentage of CLEC bills that were in error, and (2) ensure that adjustments for billing errors are included in the reported data for the month in which the bill was issued – not for the month in which Qwest actually made the adjustment. In addition, Commissioners Scott and Johnson find that Qwest can obtain section 271 approval only after it has implemented, and passed, a new metric to measure the completeness of DUFs.[70]

The findings of Commissioners Scott and Johnson are eminently correct and fully supported by the record. Qwest's reported data on billing accuracy cannot be regarded as reliable, because they fail to include the manual adjustments and manual processes that were performed in connection with Qwest's provisioning and billing of "UNE-Star."[71] Furthermore, the record amply supports the commissioners' finding that Qwest does not provide CLECs with information that fully enables them to charge toll carriers – including Qwest -- for switched access. As AT&T has previously described, and as the MPUC's ALJ found, Qwest fails to provide CLECs with the information that they need to bill Qwest for terminating access charges

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remaining UNE-E lines").

[70] MPUC Comments at 32-33. Commissioners Scott and Johnson concluded that Qwest should be required to include the four most recent months of data for BI-3A, as revised, with any subsequent application for Section 271 authority. They also found that the DUF should be audited, using two or three months of recent data, to ensure that the accuracy of the DUF before Qwest receives Section 271 approval. *Id.* at 32.

[71] *See* AT&T Comments at 22 & n.71 & Finnegan Decl. ¶ 50; Notarianni/Doherty Decl. ¶¶ 508-510, 515, 517; *Findings of Fact, Conclusions of Law and Recommendations*, Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14, Minnesota Public Utilities Commission, Docket No. P-421/C1-01-1371 (Jan. 24, 2003) ¶¶ 96, 303-324 ("ALJ Decision"). The DOJ states that, although the ALJ's Decision was issued after this Commission issued the *Qwest 9-State 271 Order*, "the difference in time appears to reflect a difference in process rather than in the underlying facts reviewed." DOJ Eval. at 8. As previously discussed, however, the MPUC developed and considered a much more extensive record on the secret deals issue than any other state commission. Furthermore, although the DOJ suggests that all "UNE-Eschelon/UNE-Star" billing issues were resolved in the *Qwest 9-State 271 Order*, the *Order* only addressed Eschelon's challenges to the accuracy of its own bills. The *Order* did *not* address the effect of the secret deals on the reliability of Qwest's reported data on billing accuracy. *See* DOJ Eval. at 8 & n.29; *Qwest 9-State 271 Order* ¶ 130 & n.481.

when an intraLATA call from one of Qwest's customers terminates to a CLEC's local exchange customer served by a CLEC's switch.[72]

Moreover, the comments of CLECs in this proceeding amply support the conclusions of the two commissioners that Qwest has not shown that it provides accurate DUFs and wholesale bills to CLECs. MCI, for example, states that the DUF records it receives from Qwest continue to be incorrect.[73]

Qwest has also failed to provide accurate wholesale bills to CLECs. The performance data for March 2003 that Qwest recently submitted in this proceeding show that Qwest once again failed to meet the parity standard for wholesale billing accuracy in March – the *fifth consecutive month* in which it has failed to do so.[74] In addition, AT&T has previously shown that its wholesale bills contain numerous errors, some of which Qwest has still not resolved more than a year after AT&T first brought them to Qwest's attention. For example, electronic BOS/BDT wholesale bills that AT&T receives from Qwest continue to be out of balance, nearly nine months after Qwest first began sending such bills.[75]

Given the unreliability of Qwest's reported data on billing accuracy, and the CLECs' evidence demonstrating the unreliability of its DUFs and wholesale bills, Qwest cannot show that it provides "complete, accurate, and timely (1) reports on the service usage of competing

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[72] AT&T Comments at 23 & Finnegan Decl. ¶¶ 53-55; ALJ Decision ¶¶ 314-319.

[73] MCI Comments at 3. *See also ex parte* letter from Lori E. Wright to Marlene H. Dortch in *3-State 271* proceeding, *supra*, at 6.

[74] *Ex parte* letter from Melissa E. Newman (Qwest) to Marlene H. Dortch, dated April 30A, 2003, attachment at 19-20 (BI-3A).

[75] AT&T Comments at 22-24; AT&T April 29 *ex parte* at 1-2. In response to the evidence of billing errors presented by AT&T, the DOJ cites Qwest's testimony that it is "continuing to work on its BOS offering and continues to implement improvements now and in the coming months." DOJ Eval. at 8 n.31 (quoting Notarianni/Doherty Decl. ¶ 458). Whatever "improvements" Qwest has implemented, however, clearly have not worked. Moreover, Qwest's promises of future improvements are irrelevant to the issue of its current compliance with section 271. *Michigan 271 Order* ¶¶ 55, 179.

carriers' customers and (2) wholesale bills."[76] Qwest's evidentiary failings in this case stand in stark contrast to Verizon's showing in the *Pennsylvania 271* proceeding, where billing issues made Verizon's application a "close call."[77] Under the Commission's precedents, this deficiency, by itself, requires the denial of Qwest's application.[78]

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[76] *See Maryland 271 Order* ¶ 26.

[77] *Pennsylvania 271 Order* ¶¶ 15, 37. In the *Pennsylvania 271* proceeding, Verizon generally did not rely on its reported performance data to show that it was providing nondiscriminatory access to billing functions, because the data were unreliable – as Verizon itself acknowledged. Thus, the Commission did not rely on Verizon's billing accuracy metrics in assessing its section 271 showing. *Id.* ¶¶ 26 n.85, 41 n.157. The Commission, however, nonetheless found Verizon's showing on its wholesale billing performance to be "minimally sufficient" based on several months of wholesale billing results that Verizon presented for the period preceding the filing of its application (as well as for the month in which the application was filed), in which Verizon's performance was found to be both stable and improving. *Id.* ¶¶ 26, 37. *See also id.* ¶¶ 37-42. In this proceeding, by contrast, Qwest has presented no data comparable to that presented by Verizon. Instead, Qwest relies only on its reported performance data – which not only are unreliable but, even if accurate, show that Qwest does not provide parity to CLECs. Qwest Application at 82; Notarianni/Doherty ¶ 513-518 (relying exclusively on reported performance data, including data for BI-3, to demonstrate that Qwest provides complete and accurate billing information).

[78] *See, e.g., Pennsylvania 271 Order* ¶ 23 (finding that accurate and timely wholesale bills "represent a crucial component of OSS," and that inaccurate or untimely bills "can impede a competitive LEC's ability to compete in many ways"); *Second Louisiana 271 Order* ¶ 101 (finding that BellSouth "has not met its OSS obligations" until it provides CLECs with adequate usage data, because "Competing carriers unable to provide their customers with complete and accurate bills for all services they offer because of BellSouth's failure to provide complete and accurate billing information are at a competitive disadvantage").

CONCLUSION

For the foregoing reasons, and for those provided in AT&T's opening comments, Qwest's application for authorization to provide in-region, interLATA services in Minnesota must be denied.

Respectfully submitted,

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May 8, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2003, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: May 8, 2003
Washington, D.C.

/s/ Peter M. Andros

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ATTACHMENT 1

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238**

ESCHELON'S REPLY TO
QWEST'S "COMMENTS OF ESCHELON"
REGARDING UNE-E MECHANIZATION AND ACCURATE BILLING

ESCHELON TELECOM, INC.

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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238**

ESCHELON'S REPLY TO QWEST'S "COMMENTS OF ESCHELON" REGARDING UNE-E MECHANIZATION AND ACCURATE BILLING

Eschelon Telecom, Inc. ("Eschelon") files these Reply Comments in response to the "Responses to Comments of Eschelon" that Qwest filed with the Commission on April 23, 2003 in this matter ("Qwest's Response").[1]

I. INTRODUCTION

The inaccuracy of UNE-E bills remains a significant issue. Eschelon has a right to order UNE-E through the end of 2005 under its interconnection agreement. Eschelon needs to order UNE-E for Off-Net customers whenever Qwest makes functionality (such as voice mail or AIN features) unavailable with UNE-P. Even when Eschelon has tried to move a line to another product, it has had to move the line back to UNE-E as soon as

[1] In the title to Qwest's filing, Qwest refers to "Comments of Eschelon." In the body, Qwest states that it is responding to emails sent to the email distribution list in this matter on March 11, 2003 and April 9, 2003. In those emails, Eschelon gave Qwest an opportunity to withdraw its Comments on this issue and attempt to resolve the issue with Eschelon directly. Qwest did not attach copies of Eschelon's emails to its filing. Copies of those emails are attached to these Reply Comments as Eschelon Exhibit E-U. Note that the

the customer requests such functionality. In light of the FCC's Triennial Review decision, Eschelon and other Competitive Local Exchange Carriers ("CLECs") may also find other reasons to order UNE-E as well. In addition, Qwest has represented to the FCC that it will make UNE-E available to other providers on a residential basis (even though Eschelon's Amendment is for business customers only).[2] UNE-E is not extinct, as Qwest would suggest, and there is an ongoing need for accurate UNE-E bills per the interconnection agreement. *See* AZ Qwest-Eschelon ICA Att. 5, ¶4.3.6 & UNE-E Amendment ¶ 1.8. Adoption of Staff's recommendation with respect to this issue is needed to incent Qwest to provide accurate UNE-E bills, instead of the bills that it currently provides (which show the resale discount instead of the UNE-E rates listed in the interconnection agreement amendment, *see, e.g.*, Ex. 1 to Ex. E-13).

Eschelon apologizes for burdening the record with additional exhibits. It certainly did not want to have to expend the resources to do so. Eschelon asked Qwest to withdraw its Response to attempt to avoid this result, but Qwest did not do so. Unfortunately, it is relatively easy, and takes little time, to assert unfounded allegations. More time and resources are required to document the actual facts. Responding to such allegations also requires going into more detail than one would have thought necessary at this point in the proceeding – after the Staff has already made a recommendation on this issue. Because Qwest made its filing and placed the unfounded allegations in the record, however, Eschelon must again point to the facts which show that the Staff's Recommendation on this issue is well grounded in fact.

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actual date of the earlier email in Ex. E-U is March 12, 2003. Because Qwest refers to this as the March 11 email, Eschelon will use that date to avoid further confusion.

[2] Qwest Ex Parte Letter to FCC, Docket No. 02-148 (June 25, 2002), available at http://www.qwest.com/about/policy/ldReentry/Fed271/jun13/exprate/062502.pdf.

II. DISCUSSION

A. ESCHELON'S POSITION HAS NOT SUDDENLY CHANGED, UNLIKE QWEST'S POSITION.

Eschelon's position with respect to UNE-E mechanization and accurate billing has ***not*** suddenly changed, as Qwest suggests in its Response. In the November 2000 UNE-E Amendment, Qwest agreed to provide not only accurate, mechanized UNE-E billing but also a mechanized conversion (using an IT tool) from resale to the billing process in a manner that was transparent to the end user customers. A transparent conversion is one that the end user customers do not see by virtue of service affecting problems such as outages, feature loss, or changes in functionality. Qwest failed to provide that conversion. Today, Qwest has acknowledged that it has disbanded work on the IT "tool" that would have resulted in internal billing changes only and has said that it will implement another alternative to convert the lines to UNE-E accurate billing. Eschelon's position remains that Qwest has not yet provided sufficient information to address Eschelon's concerns about the "options" that Qwest has presented for finally converting lines to accurate UNE-E billing, but Eschelon is willing to discuss the Qwest "options" further and work toward a solution. Eschelon still needs information from Qwest to do so. Whenever the parties start to get down to specifics that might actually result in a conversion, however, Qwest balks.

This is particularly true with respect to discussions of whether and to what extent Qwest's plan for providing accurate UNE-E bills will adversely impact the end user customers' service (including conversion outages and feature loss as well as differences in functionality before and after the conversion). While it can be easy, when convenient,

for Qwest to make vague statements suggesting that a risk should be minimal, it more difficult to provide facts that demonstrate whether this is really the case. The devil is in the details. Eschelon is still attempting to get an explanation of those details from Qwest. Eschelon needs accurate UNE-E bills and will proceed with a UNE-E project to convert to accurate billing. Eschelon owes it to itself and its end user customers, however, not to do so without a thorough understanding of the plan and without making efforts to avoid adverse results.

The position that ***has*** changed is Qwest's position. Previously, Qwest and Eschelon have had many exchanges in which Qwest has admitted the real possibilities of non-record work changes and adverse impact to end user customers presented by its recent plan to provide accurate UNE-E bills. In contrast, Qwest is now willing to make unqualified statements such as these:

> "Qwest's proposal to convert the embedded base of the customers would ***not*** result in adverse impacts to Eschelon's end user customers. The lines would ***not*** be taken out of service -- the ***only*** change would be to the records within Qwest's systems."

See Qwest's Response, p. 3 (emphasis added). In addition, in an email dated April 21, 2003, Qwest now says that the process will be "***completely*** transparent to Eschelon's end users." *See* Ex. E-V (emphasis added). Qwest also said it is offering to move lines to accurate UNE-E billing "in a way that is invisible to the end users." *Id.* Qwest said that this "solution involves only record changes, not line changes. . . ." *Id.*

Naturally, Eschelon is willing to proceed, as it always has been, with a plan that actually conforms to these promises. Eschelon has said that, if Qwest can deliver on these promises, let's do it and go ahead with the plan to obtain accurate billing. Unfortunately, Eschelon has learned the hard way that such broad statements do not

always stand up when probed as to how Qwest intends to deliver on such promises, as discussed below.

B. THE ARIZONA STAFF'S OSS REPORT HAS PROVIDED QWEST WITH THE NEEDED INCENTIVE TO FINALLY PROVIDE ACCURATE UNE-E BILLING.

Before moving to that discussion, there is the reason for Qwest's shift in position to consider. The question naturally arises as to why Qwest would make a shift, however subtly it attempts to do so, from ensuring that Eschelon has reason to worry about service impacting problems to downplaying those problems. The intervening event is the filing of the Comments on the Report on the July 30-31, 2002 Workshop (Report One -- Operations Support System Related Issues) ("Staff OSS Report") by the Arizona Corporation Commission Staff ("Staff") on February 25, 2003 in this matter. In its report, the Arizona Staff made the following recommendation:

> Until the issue with embedded accounts is resolved, Qwest should be required to count these as an error or an inaccurate bill for purposes of calculating its billing measurements. Qwest and Eschelon should be required to provide the Commission Staff with additional information regarding the issues involved with converting Eschelon's embedded accounts and provide a mutually agreed upon resolution within 90 days.

See Staff OSS Report, p. 47, ¶ 216. The Staff's approach provides the proper incentive to Qwest to finally address the problem.

Previously, Qwest unilaterally claimed its bills were accurate in its performance reporting without actually providing accurate UNE-E bills. It had its cake and could eat it too. Now, due to the Staff's recommendation, Qwest has an incentive to actually provide accurate UNE-E bills, to avoid having to "count these as an error or an inaccurate bill for purposes of calculating its billing measurements." *See id.* As proof that this is

such an incentive, Qwest is now making the kinds of statements noted above to incent Eschelon to proceed with its plan for providing accurate billing. Eschelon has been asking for such assurances for a long time. Eschelon has made it clear that it is very concerned about adverse impact to its end user customers, particularly because such a risk was not part of the original deal. By refusing to provide such assurances and by describing the types of customer affecting situations that could occur, Qwest preyed on Eschelon's known concerns about adverse customer impact. Now, when the Staff has given Qwest a reason to make the move happen, Qwest is finally willing to state affirmatively that, during the move, the lines will not be taken out of service, and the ***only*** change will be to the records within Qwest's systems. *See* Qwest's Response, p. 3. Eschelon has been, and remains, willing to proceed on that basis. Due to the force of necessity and absence of alternatives, Eschelon may also have to proceed on a somewhat lesser basis, if Qwest cannot deliver on these promises, but then Qwest needs to provide specific facts about how any problem areas are nonetheless adequately addressed.

C. ESCHELON'S CONCERNS ARE REASONABLE, AND QWEST SHOULD PROVIDE THE DETAILED INFORMATION NECESSARY TO ADDRESS THOSE CONCERNS.

Eschelon wants to proceed on the basis described by Qwest in its Response. Eschelon has well grounded concerns, however, as to whether Qwest can and will deliver on its representations that the lines will not be taken out of service and the only change will be to the records within Qwest's systems. Eschelon's concerns are not hypothetical. They are based upon information provided by Qwest itself, including conflicting information that creates valid concerns. The specific facts that Qwest's business personnel have provided to Eschelon about the way in which Qwest's plan will work do

not mesh with the general representations made by Qwest's policy folks in Qwest's Response and email (*see* Ex. E-V). This needs to be sorted out, because the quality of service affected end user customers receive is at stake.

1. Qwest's Plan, On its Face, Admits There is Risk to the End User's Service.

Perhaps the best place to start is by describing Qwest's current plan for finally providing accurate UNE-E billing. Qwest refers to this plan as its "proposal" or "Revised Option 2."[3] After Eschelon pointed out deficiencies in the first three "options" that Qwest presented for providing accurate UNE-E billing before and during the July Workshop, Qwest presented a "Revised Option 2" after that workshop. *See* Ex. E-W.[4] Qwest withdrew the other options and presented Revised Option 2 as the only option. "Revised Option 2" is Qwest's current "proposal" for providing accurate UNE-E bills.

a. Revised Option 2 States There is On-going Risk.

On August 7, 2002, Qwest provided a matrix comparing Qwest's "Original Option 2" to its "Revised Option 2." *See* Ex. E-W. Under "Qwest Impacts – Process," Qwest listed no impacts at all for "Original Option 2." *See id.* Under the current "Revised Option 2," however, Qwest ***added*** the following impacts:

> Going forward, there is a risk that inaccurate orders may flowthrough IMA, complete and post. Qwest is still investigating the potential impacts of this on-

[3] Eschelon is not selecting an "option." Qwest and Eschelon entered into a contractual agreement in the filed UNE-E Amendment that required Qwest to provide UNE-E at specified rates and that incorporated Qwest's obligation to provide accurate bills. (*See, e.g.*, AZ ICA Att. 5, ¶4.3.6 & UNE-E Amendment ¶ 1.8.). Qwest has breached that Agreement, and Eschelon is left to suffer the consequences of the breach. Eschelon is doing its best to ensure the situation does not get even worse. Eschelon is not waiving any claims.

[4] Although Qwest initially marked this document confidential and proprietary, Eschelon questioned the designation on August 26, 2002, because the information was not confidential and needed to be adressed publicly and with the CMP team, including other CLECs. Qwest consented. Despite the footer in Exhibit E-W, the document is not confidential.

> going risk and is working toward migration through testing and process development.

See Ex. E-W. When introducing its current plan, therefore, Qwest added an explicit statement that Revised Option 2 presents a "risk," Qwest described the risk as "on-going," and Qwest indicated that it had not even completed its own investigation into all the potential impacts of this risk. *See id.*[5] It is impossible to reconcile this express Qwest disclosure of "on-going risk" with Qwest's claim to the Commission that Eschelon's concerns are "hypothetical." *See, e.g.*, Qwest's Response, p. 3. Qwest's business personnel gave Eschelon a reason for concern, and Eschelon has been attempting to gauge the extent of the problem since then.

b. <u>Risks include service affecting service order errors</u>.

Eschelon and Qwest met to discuss the information in the matrix. At the meeting, Ms. Toni Dubuque of Qwest had to admit that customer outages and adverse affects were real possibilities. Service order errors do occur, and they do cause service affecting problems. She indicated that Qwest could not make any guarantees as to when and how often these problems would occur. The Qwest business personnel's presentation of Revised Option 2 was very different, therefore, from the statements that Qwest's policy representatives are now making. Notably absent from all conversations with Qwest business personnel about Revised Option 2 were broad statements that the lines will not be taken out of service, the only change will be to the records within Qwest's systems, and the process will be completely transparent or invisible to Eschelon's end users. The

[5] *See also* Ex. E-P (Qwest stated: "Qwest acknowledges . . . that human error is a possibility, on the part of Eschelon's personnel and Qwest's personnel, in any implementation that involves some manual steps.") (Nov. 14, 2002) (quoted in Qwest's Response, p. 2). Qwest would have to explain how the error could

latter are the very types of assurances that Eschelon has been seeking, but Ms. Dubuque was clear she could not provide them.

c. **Change Order errors are not limited to billing or record impacts.**

Instead, Qwest business personnel said that Qwest planned to issue C-orders internally to effectuate the conversion. *See* Ex. E-W ("C-Orders issued internally by Qwest"). It is important to understand the significance of this single piece of information conveyed by the Qwest business unit. This is particularly true when it is compared to the suggestions that Qwest's policy representatives are now making through statements such as that Revised Option 2 "involves only record changes" and "the only change would be to the records within Qwest's systems." *See* Ex. E-V & Qwest's Response, p. 3. A "C" order is a "Change" order, and it is a type of service order issued by Qwest.[6] Another type of Qwest service order is a "Record" or "R" order. The type of service order issued at Qwest drives the system(s) that the order flows through downstream at Qwest.

A Record, or "R," order is limited as to which Qwest systems it flows through downstream. Basically, Record orders update the Qwest billing systems. Therefore, with a Record order, a service affecting problem is not a possibility because only billing systems are touched. If an error is made, the bill to the CLEC might be wrong, but the end user customer cannot go out of service. The risk of a service affecting problem is

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occur "on the part of Eschelon's personnel" if, as indicated on page 3 of Qwest's Response, the "conversion would not even impact Eschelon."

[6] CLEC's issue Local Service Requests ("LSRs"), and Qwest issues service orders (often referred to simply as "orders"). As part of Revised Option 2, no LSRs would be submitted. Eschelon would provide the necessary information, and Qwest would type service orders based on that information. (Revised Option 2 varies in this respect from the mechanized conversion that Qwest promised to Eschelon in 2000, because the mechanized conversion would have occurred through internal billing system changes performed using an IT "tool" that did not require manual typing of either LSRs or service orders.)

zero.[7] A CLEC bill adjustment is transparent to the end user customer; a customer outage is not.

In contrast, a "C" order is not as limited as to which Qwest systems it flows through downstream. A "C" order can flow through, for example, to Qwest facilities assignments or switch translations. Unlike errors made in internal Qwest billing systems, errors made in Qwest facilities assignments or switch translations are service impacting. If the Change order flows to these systems instead of only to the billing systems (as Qwest says is intended), Qwest will work the order[8] and impact the customer. When the order flows through to facilities assignments, for example, the assignment would be changed, which would pull the customer out of service.[9] When the order flows through to switch translations, if the order falls out of the switch for manual handling and does not get worked, the customer's service would be adversely affected. A typing error in the translations would significantly change the customer's features. It could take hours, or longer, to restore fully functioning service to a customer that has not requested any work on the line at all.[10] These are the kinds of scenarios that Eschelon reviewed with Qwest when Qwest last presented its Revised Option 2, and Qwest confirmed that these were real possibilities. Although Qwest had suggested this option involved "Billing work only" (*see* Ex. E-W), when asked, Qwest confirmed in discussions that these C Orders

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[7] In November of 2000, Qwest committed to a conversion to UNE-E that involved internal billing work only. Because no non-billing systems would be impacted, service affecting problems were not even a possibility. The standard of "'perfection'" about which Qwest now complains (*see* Qwest's Response, p. 2, quoting Qwest 11/14/02 letter), therefore, was set by Qwest. It promised "'perfection'" with respect to service affecting problems, because they cannot occur with billing only changes.
[8] *See* Ex. E-W ("inaccurate orders may flowthrough IMA, complete and post").
[9] At that point, one could only hope that Qwest would not claim, when restoring service, that the facilities had been re-assigned and were now unavailable, so that the customer would be in a "held order" status.
[10] Eschelon serves small to medium business customers. Qwest has not indicated at what time of day it would perform the conversion and whether it would avoid the business hours while still having sufficient resources to handle the conversion.

will flow through to facilities assignments or switch translations if action is not taken to stop them from doing so.

d. Failures to manually add FID will adversely affect end user service.

Once Qwest revealed this problem, Eschelon inquired as to how Qwest intended to prevent the Change orders from flowing through to non-billing systems such as facilities assignment and switch translations. Qwest said that it planned to place a code (which Qwest referred to as a Field Identifier, or "FID") on each service order to prevent the service order from flowing through those systems. Because Qwest had at one time promised an automatic conversion to UNE-E, Eschelon could have assumed that Qwest would accomplish the addition of the codes with a systems change. Experience has taught Eschelon to try not to make such assumptions, however. When asked, Qwest said that, under the current Revised Option 2, Qwest typists must remember to manually type the code (FID) on each and every service order, or the service order will flow through to facilities assignments and/or switch translations. With all Qwest's talk of "mechanization," this is a highly manual "solution." Not only does it introduce all of the problems generally found in manually typing service orders, but also it creates this new, additional manual step with particularly severe consequences when errors occur. Few things with this plan are certain, but it is certain that errors will occur with such a high degree of manual handling. And, when customer affecting troubles then occur, the disruption will be all the greater because the order will be out of process. Unsuspecting Qwest representatives in facilities assignments or switch translations will not anticipate that the order would flow to them or know why it did or what to do with it.

2. Qwest's Revised Option 2 Leaves Questions Unanswered.

Qwest's revelation, upon probing, that the allegedly mechanized process to convert the lines to UNE-E billing was, in fact, highly manual obviously impacted the progress of discussions and created a new series of questions. How would Qwest handle the situations when errors occurred and the orders flowed through to facilities assignments and switch translations? Would a trained person, familiar with the project, be on hand to resolve it? Would Eschelon even know about it (since Qwest and not Eschelon issued the order)? What would be the escalation process? *etc.*

a. Lesser level of project management will result in increased error rate.

These are reasonable questions. Qwest has not yet provided answers to such questions. Qwest suggests that its offer to "project-manage the effort" ends the inquiry. *See* Qwest's Response, p. 3. Qwest also suggests that the parameters of the offered project management are known simply because Qwest previously project managed a different project for Eschelon, as if the two projects were the same. *See id.* This is not the case.

In fact, Eschelon already knows of differences in the projects that introduce new issues to be addressed. For example, in the earlier resale to UNE-P migration project to which Qwest refers, Qwest appointed a special point of contact ("POC") familiar with the details of the project to personally handle all escalations when problems occurred. (It was later learned that, from a performance reporting perspective, the downside of this approach was that troubles not reported through the "standard" escalation process were

not captured in the performance measurements.[11] Qwest could have chosen to include the troubles in the numerator, just as it included the orders in the denominator, but it did not do so.) From the perspective of processing the orders, however, the benefits included consistency in handling of the orders that was enhanced by a thorough knowledge of the project's objectives, procedures, quantities, and schedule.

With respect to a more recent migration project, Qwest service management has informed Eschelon that Qwest will no longer offer a special POC for any project handling.[12] Therefore, a key part of the project managed effort that Qwest claims Eschelon "has admitted significantly reduces chance of potential error" (*see* Qwest's Response, p. 3), is unavailable for Revised Option 2. Qwest fails to disclose this fact when discussing the alleged benefits of project management. *See id.* For Revised Option 2, Eschelon will be required to call the general Qwest call center that takes calls on a wide range of issues from numerous carriers. The advantages of the previous project that stemmed from the single POC taking these calls, which the POC is fully prepared to expect and understands, are lost.

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[11] Qwest states that "Eschelon even asserted that its performance measurement results were more accurate than Qwest's because the Qwest results included migration orders handled on a project basis, which had low error rates." *See* Qwest's Response, p. 3. Qwest does not disclose, when making this representation, that Eschelon also pointed out that it was unfair to include the project based orders in the denominator when it was not capturing the errors in the numerator. Eschelon did not claim that customer affecting errors did not occur. It complained that they did occur, even with project handling, but Qwest failed to include them in the measurement and thus over stated its performance. To the extent project handling reduced errors, this was due to the nature of the project handling (such as monitoring each order at the switch and using special personnel for troubles), and Qwest has not promised the same level of project handling in this case.

[12] Qwest suggested this was due to the performance reporting issues that Eschelon brought to light. Performance reporting issues could be addressed, however, by simply having the POC open tickets and then counting the tickets in the numerator (or similar agreed upon process).

b. **Undocumented and inaccessible processes and unknown product will increase error rate.**

This is particularly a problem for UNE-E (or "UNE-Star") orders, because the product and related processes are virtually undocumented. UNE-Star is not even listed in the Qwest product catalog ("PCAT") or its online business procedures. What are the chances that a call center representative is going to even have heard of UNE-E and UNE-Star, much less know what to do with it? Even if Qwest distributes some quickie training for every call center representative, what happens when that training does not take? If processes are documented on Qwest's wholesale web site, Eschelon can provide the URL and direct the representative to the process. Doing so eliminates many disputes and allows resolution at a lower level of escalation. Without such documentation, Eschelon will have to expend resources faxing over any job aids that Qwest chooses to provide (to convince Qwest's own representative that Qwest's processes are as Qwest has represented them to be to Eschelon) and escalating these issues to higher levels.[13] Such escalations are very resource intensive. This is a far cry from having a special POC who has forecasts in her hand, knows every detail of the project, ***and*** has documentation for the product and processes readily accessible at a URL available to her and Eschelon. Contrary to Qwest's assertions, no inference about low error rates can be made for this very different process.

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[13] This problem, when CLEC facing documentation is insufficient, is very real and causes unnecessary escalations and delays. *See, e.g.*, CR # PC112502-1 at http://www.qwest.com/wholesale/downloads/2003/030429/CLEC-QwestAprilProduct-ProcessArchiveReport.pdf; *see also* Change Requests PC010603-1; PC030603-1; PC123002-1; 5608163; PC123102-1; PC030802-1; PC073101-5; PC081902-1; PC081902-2; PC090501-2; PC090601-1; PC100101-3.

The lack of fully documented and accessible information about a little known product, and the use of less knowledgeable personnel in the general call center, makes this situation much more like the Custom Calling Management System ("CCMS") situation than the UNE-P migration project. The CCMS situation involved very high error rates -- 50% to 70%! Eschelon described the CCMS situation in the Affidavit of F. Lynne Powers. *See* Ex. E-12, ¶¶ 13-14. Briefly, significant provisioning problems occurred when Eschelon attempted to order UNE-E/UNE-Star (which is ordered as resale but is supposed to provide Centrex functionality on a POTS product). *See id.* Qwest held out CCMS as a solution to the problem. *See id.* Eschelon took the "trust me" path and even amended its interconnection agreement to provide for ordering of 1FBs with CCMS. *See id.* Only after amending its contract did Qwest operational personnel inform Eschelon that CCMS is an old product that the Qwest project manager wanted to retire and that few people at Qwest are knowledgeable about it. *See id.* Consistent with these statements, it became obvious that both the call center and translations personnel at Qwest were untrained in the product and ill equipped to handle problems. *See id.* In short, CCMS was a disaster.

Based on that experience, Eschelon has solid reasons for being skeptical about broad promises that Qwest has made regarding its proposed handling of Revised Option 2. Instead of being dismissed as unreasonable for asking questions, Eschelon would appreciate information as to how Qwest plans to avoid the very kinds of problems that occurred with the other unfamiliar product, CCMS. At least that was a Qwest product that had once been familiar but had just fallen out of use. UNE-E/UNE-Star is

not even recognized in Qwest's product catalog as a product. This presents issues that need to be addressed.

c. Absence of assurances about quality reduces confidence and increases need for specific details to address concerns.

When Eschelon has attempted to ask such questions, Qwest has chosen to interpret all such questions as request for a "written guarantee." Qwest then tells Eschelon that it cannot provide a guarantee that problems will not occur. As discussed below, Eschelon is not merely requesting a written guarantee and actually needs additional information. With respect to a guarantee or other assurances about service affecting problems, Qwest has not explained why Eschelon should have more confidence in Qwest's plan than Qwest is willing to convey. In the absence of a guarantee or acceptance or liability for Qwest-caused errors, what can Qwest do? Will Qwest agree to sufficient steps to inspire confidence? For example, in this situation, will Qwest use a special POC (while recording any errors in its performance reporting)? Will Qwest schedule the orders at a special time and have personnel watch the orders at the switch, as it did in a previous project? Qwest responds that it will not provide a written guarantee (presumably because problems ***will*** occur), and apparently that ended the analysis for Qwest. It certainly prevented progress on this issue.

If Qwest would provide a written guarantee that no service affecting problems would occur, Eschelon would happily accept it. Eschelon has made it clear however that, regardless of whether it receives a guarantee, written or otherwise, Eschelon will proceed with a conversion to UNE-E billing once the details are worked out. The absence of a guarantee or similar expression of Qwest confidence increases the importance of

obtaining specific information about what to expect. Eschelon has no other choice at this point but to try to proceed and to attempt to obtain what assurances and procedural protections it can to reduce the risks.[14]

D. ESCHELON IS RESPONSIVE AND HAS ATTEMPTED TO RESOLVE THIS ISSUE.

Despite Eschelon's continued willingness to try to work with Qwest to develop a more workable solution, Qwest has not provided Eschelon with all of the details it needs to address its concerns. Qwest has preferred to attempt to cast Eschelon as unreasonable and unresponsive rather than working through the difficult issues with Eschelon. Qwest's suggestions of unreasonableness or unresponsiveness on Eschelon's part are baseless.

1. Eschelon is more timely and responsive than Qwest.

A fair recitation of the facts shows which party has been more responsive and ready to discuss this issue. In Qwest's Response, dated April 23, 2003, Qwest claims that it is responding to Eschelon's emails of March 11, 2003 and April 9, 2003. Eschelon's April 9th email states in its entirety:

> No one from Qwest has contacted me in response to Eschelon's offer below to further discuss the conversion issue. The offer is still open.

See Ex. E-U. The "offer below" was made in Eschelon's March 11th email. In its March 11th email, Eschelon challenged statements made by Qwest to the effect that Eschelon has to date not agreed to further discuss the UNE-E conversion issue and made clear that Eschelon would discuss those issues "immediately." *See* Ex. E-U. In its recitation of the

[14] Eschelon is not waiving its breach of contract claims or accepting liability for any risks of customer impact.

facts, Qwest neglects to mention that Qwest did not respond to this offer for ***more than a month***. Qwest states that "Andrew Crain attempted to contact Ms. Clausen [sic] to discuss the matter" raised in Eschelon's March 11th email without mentioning that he did not do so until ***April 18th***.

Qwest also neglects to mention that, in contrast to Qwest's five week delay, Eschelon responded by email ***the same day***. Ms. Clauson indicated that she was unavailable that day (a Friday) due to the Easter holiday but would be available on Monday and Tuesday. *See* Ex. E-X. By the end of the day on Monday, April 21st, Ms. Clauson had provided Qwest with a detailed description of Eschelon's position as background for discussions and had provided suggestions for the handling of discussions going forward. *See* Ex. E-Y. Eschelon requested participation of Qwest subject matter experts in the discussions, provided support for why this might be useful, and provided questions to allow them to prepare for the discussions. *See id.* Eschelon concluded by suggesting that the parties discuss the issues and providing information about schedules to facilitate doing so. *See id.*

b. <u>Qwest responds again with denials instead of specific details</u>.

On April 21st, Mr. Crain left a voice message for Ms. Clauson, which she promptly returned the same evening. Ms. Clauson believed that the call ended with a commitment from Qwest to research the issues long raised by Eschelon and provide information to Eschelon which could then be discussed in a follow up call to include subject matter experts.[15] In an email the same evening, Eschelon provided information relating to scheduling of that call. When Qwest did not respond before Ms. Clauson

needed to leave for business travel later that week, Eschelon provided information to Mr. Crain about how to schedule the meeting in her absence. When Qwest had still not contacted Eschelon about scheduling the call when Ms. Clauson returned from her trip, Eschelon again contacted him to ask about scheduling. Mr. Crain has not responded at all to any of these attempts to arrange further discussions. Instead, on Monday afternoon, Eschelon received the Response that Qwest filed with the Commission and sent to Eschelon by regular U.S. mail. The Response is dated April 23rd. Qwest did not extend the courtesy to Eschelon, in response to any of Eschelon's communications over the previous week, of indicating that Qwest would be making, or had made, such a filing.

Eschelon had understood the next step was for Qwest to work on the substantive issues and then participate in a call to discuss the issues. Eschelon was surprised to find that Qwest had chosen to spend the time since the call in this manner instead and disappointed that Qwest has forced Eschelon to likewise divert resources from the planned approach to making formal filings.[16]

c. <u>Eschelon did not accuse Qwest of violating Rule 11</u>.

In its formal filing, Qwest erroneously asserts that Eschelon accused Qwest of "violating Rule 11." *See* Qwest's Response, p. 2. The quoted language from Eschelon's email, however, shows on its face that this is not the case. *See also* Ex. E-U. Eschelon made no accusation. Rule 11 requires a good faith basis for making certain statements.

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[15] After the call, Ms. Clauson discovered that Mr. Crain had also sent an email response. She responded to that email the same evening as well. *See* Ex. E-Z.

[16] Mr. Crain still has not responded to Eschelon's emails or its request for Qwest to withdraw its Response. This morning, Ms. Toni Dubuque of Qwest sent an email to Eschelon asking Eschelon to provide a list of questions to Qwest that the parties can meet and discuss. Eschelon appreciates Ms. Dubuque's response and will follow up with her. Unfortunately, Eschelon had not heard from Qwest earlier, so had drafted this Reply, and Qwest has not withdrawn its Response. Eschelon makes this filing to address the Response and will contact Ms. Dubuque.

Rather than assume that Qwest had none, Eschelon asked the question and gave Qwest an opportunity to provide a basis. *See id.* Eschelon also gave Qwest the opportunity to correct the record. *See id.* Now, Qwest has stated its position in its Response, Eschelon responds in this Reply, and the Commission can decide the issues presented by the parties.

d. <u>Eschelon made attempts to resolve this issue during the time period when Qwest stated that Eschelon would not further discuss the issue.</u>

The statement that Qwest made, which Eschelon quoted in its March 11th email, was Qwest's representation that "Eschelon has to date not agreed . . . to further discuss" the UNE-E mechanization issue. *See id.* [quoting Qwest's Comments Regarding Staff OSS Report, March 10, 2003, p. 15 (Qwest's March 10th Comments")]. Qwest quotes the paragraph of which this sentence is a part and concludes by stating that "[t]his paragraph is entirely accurate." *See id.* The quoted paragraph, however, does nothing except repeat the erroneous statements. Qwest says, again, that its "last attempt" to resolve the issue was made on November 14, 2002. *See id.* (As discussed below, this may be Qwest's "last attempt," but it certainly was not Eschelon's last effort to resolve this issue.)

On November 14th, Qwest merely sent to Eschelon a memorandum stating its position and rejecting Eschelon's position. *See* Ex. E-P. The memorandum contained no offer to resolve the issue. Instead, it purported to be a notice to Eschelon that Eschelon was somehow "knowingly and intentionally compromis[ing] any further claim for DMOQs based on UNE-E billing (at least insofar as it relates to the lack of mechanization)." *See id.* Qwest went even further and denied any obligation to mechanize UNE-E billing, even though Qwest's witness had testified during the July

Workshop that it was working to do so. *See id.* It is pretty difficult to read this memorandum and conclude that it is an attempt "to resolve this issue with Eschelon." *See* Qwest's Response, p. 2 (quoting Qwest's earlier comments). Nonetheless, Eschelon did respond on the same day with citations to the contractual commitment that Qwest requested in its memorandum.

Eschelon also followed up with Qwest on December 17, 2002. Eschelon confirmed its understanding of the status of the issue and said: "We are still hoping to receive a more workable solution from Qwest on UNE-E mechanization, and we will work the two issues (base and new lines) together." Although Eschelon indicated its intent to work on these two issues, Qwest did not provide any means to do so.

In addition to its communication on December 17, 2002, Eschelon attempted to resolve this issue through an escalation to Ms. Patricia Engels, Executive Vice President, Wholesale Markets, Qwest. Mr. Richard A. Smith, President and Chief Operating Officer of Eschelon, met with Ms. Engels to discuss key issues and followed up with a letter describing significant issues for resolution, including this one. The letter was dated February 10, 2003. Qwest had not responded to the letter by the date of its March 10th Comments and has since denied Eschelon's request without seeking further discussion with Eschelon.

In addition, Eschelon made additional attempts to get Qwest to work on resolving this issue by including the UNE-E accurate billing issue on its February 19, 2003 and February 27, 2003 issues lists in the Minnesota 271 case, when Eschelon specifically asked Qwest to meet and discuss this issue. Qwest responded with a short list of issues that did ***not*** include UNE-E accurate billing and mechanization. Qwest did so even

though the Administrative Law Judge ("ALJ") in the Minnesota 271 case had identified this as an area in which Qwest failed to comply with 271's requirements.[17] Eschelon pursued this issue with Qwest and specifically asked to further discuss the issue:

> Eschelon would like a response to its requests for resolution of the key issues, including billing accuracy, DUF accuracy (including the request for an audit), conversion quality, UNE-E mechanization, OSS, etc. Eschelon proposes that the time set aside tomorrow morning be used to discuss these issues, if Qwest is prepared to move on any of them.

See Ex. E-AA. At this point, only a day remained of the two-week time period that the Minnesota commission had scheduled for negotiations. Although Eschelon was merely recognizing this time constraint in its email when proposing a call, Qwest attempts to twist the last phrase in the above quote to mean that "Eschelon stated that it did not want to discuss this issue unless Qwest had changed its position." *See* Qwest's Response, p. 3. To the contrary, through several previous communications, Eschelon had indicated a desire to discuss this issue fully. Only after Qwest had first ignored and then rebuffed those attempts, both resulting in delay, did Eschelon attempt to identify which issues should be discussed in the little time remaining. *See id.*

Qwest had already provided a list of issues about which it felt there was room for negotiation, and the list did not include this issue. In response to Eschelon's email, Qwest could have added this issue. Instead, Qwest included a litany of attacks on the very suggestion that discussion might be useful, starting many issues with: "other than the ROC OSS test, which we passed, what can we do through negotiation that would resolve the issue. . . ?" *See* Ex. E-BB. Billing accuracy was the first issue that Qwest

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[17] Findings of Fact, Conclusions of Law and Recommendations, Office of Administrative Hearings, *In re. Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13, and 14*, 7-2500-14486-2, MN PUC Docket No. P-421/CI-01-1371 (Jan. 24, 2003) ("Minnesota ALJ Order") at p. 96, ¶ 313.

shot down as a topic for negotiation in this manner. *See id.* With respect to UNE-E mechanization, Qwest claimed that UNE-E billing was already mechanized without acknowledging that the unresolved issue is that the conversion itself was supposed to be mechanized to avoid customer impact. *See id.* Unlike Qwest's email suggesting there was nowhere to go in negotiations, Eschelon's response to that email included specific, productive proposals for issue resolution. *See* Exhibit E-CC. Eschelon also made it clear in this later email (not mentioned by Qwest) that Eschelon would discuss ***any*** issue on the call. *See id.*

The attempts to try to resolve this issue on December 17th, February 10th, February 27th, and February 28 were all initiated and pursued by Eschelon.[18] In Qwest's Comments on March 10th (p. 15), Qwest said that it made its last attempt to resolve the issue on November 10, 2002. Perhaps this is a recognition that, on all subsequent occasions when Eschelon raised the issue, Qwest made no attempt to resolve it. In its March 10th Comments (p. 15), Qwest added that "Eschelon has to date not agreed to the conversion or to meet to further discuss." As the recitation of attempts made by Eschelon from December 17th through February 28th shows, however, that was not the case. Eschelon specifically asked Qwest to meet to discuss this issue. *See, e.g.*, Ex. E-AA. Not only that, Qwest and Eschelon did meet by telephone on February 28, 2003 at Eschelon's insistence. *See id.* Given these facts, Eschelon was pretty surprised to read in Qwest's March 10th Comments that "Eschelon has to date not agreed . . .to meet to further discuss." The statement not only contains an inference that Eschelon has refused

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[18] Qwest reduces this entire course of communications down to descriptions such as, since November 14, 2002, "the parties have met on several occasions to discuss issues." *See* Qwest's Response, p. 2. This

to cooperate but also Qwest then draws the conclusion that Eschelon's conduct is intransigent. These are serious allegations.

e. **Eschelon accurately quoted Qwest's statement and appropriately pointed out that the statement was incorrect.**

Qwest claims that Eschelon has "taken these two sentence fragments out of context." *See* Qwest's Response, p. 2. While it is true that Eschelon had not "agreed to the conversion" on the terms offered by Qwest at that time, it is simply untrue that Eschelon had not "agreed . . . to meet to further discuss," for the reasons stated. If the two phrases in Qwest's sentence had been joined with "and," Qwest's argument about the context would be more plausible. Qwest did not take that approach however. Qwest alleged that Eschelon had not done either of the two things. By doing so, Qwest was able to suggest that Eschelon had unreasonably refused to pursue resolution of this issue. That is a false impression. Eschelon had agreed to meet to further discuss and had made specific proposals to be discussed. Therefore, as Eschelon indicated in its March 11th email, the second half of Qwest's statement is incorrect. Eschelon pointed this out to Qwest and asked Qwest to make the correction. Qwest did not do so. Instead, it repeated the offending sentence again in its Response, causing Eschelon to expend resources on documenting a course of events of which Qwest is fully aware.

F. LEGITIMATE QUESTIONS REMAIN UNANSWERED.

Eschelon has raised questions that remain unanswered. Perhaps Qwest will answer the questions now, in light of the Staff OSS Report. The Staff has already prompted progress by obtaining from Qwest affirmative representations from Qwest that

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suggests some kind of mutual discussions without alluding to these actions taken by Eschelon to prompt

the conversion will be transparent, invisible, without adverse impact to Eschelon's end user customers, and involve only changes to records within Qwest's systems. *See* Qwest's Response, p. 3 & Ex. E-V. This provides a better context from which to discuss Qwest's plan.

Examples of the remaining questions include:

-Does Qwest's proposal still include the use of a code/FID to prevent the orders from flowing to facilities assignments and/or switch translations? If so, has Qwest explored the possibility of auto-populating the code/FID for this type of order, instead of relying on typists to remember to manual enter it each time? If not possible, are other systems solutions available, such as an automatic prompt to ensure that the code is entered? (For example, could a particular PON be used to identify the orders which needed such a prompt? Or, could Qwest develop a template for these orders that has the code/FID populated in it?) If no systems solution is available for the FID issue, has Qwest considered a separate review of the orders for the FID before it flows through to be sure the FID has been entered and is correct? (Eschelon has to perform such a review when it submits LSRs, using the PSONs, so Qwest could similarly devote resources to a check of each order. A systems solution would, of course, be preferable.)

-When errors occur and the orders flow through to facilities assignments or switch translations, what process is in place to deal with these errors? Will Eschelon know of the schedule and when problems occur (given that Qwest is placing the orders with no LSRs by Eschelon)? Will a Qwest representative specially monitor the switch to watch these orders, as was done in the UNE-P migration project? Will a special time be set aside for these orders, with resources made available at that time, as was done for the UNE-P migration project?

-If Qwest will not use a special POC, what steps will Qwest take to address the absence of knowledge and documentation about UNE-E/UNE-Star? How will escalations be handled? What training will be provided to the call center, facilities assignments, switch translations, and any other affected Qwest groups?

-Qwest has previously said that it would provide Eschelon with "training." If Qwest is doing the work, why does Eschelon need training? What is the nature of the training?

-Will Qwest document any of its processes relating to UNE-E/UNE-Star on the Qwest wholesale web site? If not, what documentation will Qwest make available, when will it be available, and will the same documentation be available to internal Qwest representatives?

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discussions that were glossed over in Qwest's March 10th Comments.

-Are UNE-E (as it is provided to Eschelon now) and UNE-STAR (which Qwest says it will use to provide accurate billing) identical with respect to features/functionality? Obviously, Eschelon cannot find out after the move that there are differences. In its denials of Eschelon's request to opt-in to the McLeod rates for UNE-M, Qwest has emphasized what it claims are real differences in the features and functionality between UNE-E and UNE-M. It appears, however, that Qwest has implemented only one UNE-STAR product for accurate billing. How does that product accommodate the alleged differences? What steps has Qwest taken to be sure that moving lines to UNE-STAR will not impact the product other than to provide accurate billing?

-Has Qwest tested UNE-STAR to ensure that it, in fact, provides accurate billing (per the UNE-E agreement)? Is Qwest providing accurate UNE-E/UNE-STAR bills to any CLEC? What Qwest-Eschelon testing will be performed? Will there be test orders, and will we need to wait until the bills are received to determine if the test was successful?

-Jeff Thompson of Qwest had indicated that Eschelon should begin to order UNE-STAR for new lines after the existing UNE-E lines were moved to accurate billing. *See* p. 3 of Ex. 5 to Ex. E-12. Please provide documentation for the ordering process, as none is available on the web. Qwest had provided an informal job aid previously but has indicated that it needed to be updated. Eschelon seeks to avoid a CCMS-type situation in which the Qwest personnel are unfamiliar with the product and its processes. Please describe the training that has or will be performed for Qwest personnel and the documentation available to them.

-Alternatively, will Qwest agree to provide voice mail and AIN features (and, in particular, remote access forwarding) with UNE-P, to reduce the amount of lines that need to be on UNE-E if doing so would eliminate the requirement in any states where it does so to bill accurately for any remaining UNE-E lines? (*See* Ex. E-CC.)

A reading of this list of questions shows that the requests are reasonable. Any carrier conscientious about its duty to provide good service quality would or should want the same information. Eschelon would first like to avoid manual handling as much as possible and then, to the extent it cannot be avoided at this point, Eschelon would like as many appropriate procedures in place as possible to avoid harm. And, Eschelon wants to know in advance what those procedures are so it can work with them. This is not

"intransigence." *See* Qwest's March 10th Comments, p. 15. It reflects a genuine business need that is well grounded in fact and is obviously necessary in light of previous experience (such as the CCMS situation).

Assuming Qwest provides this information so that the details of a project to implement Revised Option 2 can be worked out, doing so will not give Eschelon the benefit of its bargain.[19] Unlike the Qwest 271 issues related to this issue that must be dealt with here, remedies to Eschelon for that breach of contract can be dealt with in another matter.[20] In light of Qwest's allegation of Eschelon unreasonableness, however, it must be pointed out here that Revised Option 2 is a significant departure from the manner in which the conversion was supposed to have taken place. (It requires manual typing of service orders instead of the promised systems solution for performing the conversion itself.) Qwest unilaterally made this departure and has taken Eschelon along for the ride. Nonetheless, Qwest recognizes no movement or flexibility on Eschelon's part and attempts to portray the simple asking of logical questions about a process that has been forced upon Eschelon as intransigence. We are very far from where we would have been if Qwest had honored its contract. Eschelon is just trying to ensure that the ride down that slippery slope results in as few adverse consequences as possible. Qwest needs to be more forthcoming and supportive in ensuring that the kinds of representations it has made to this Commission in Qwest's Response come to fruition.

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[19] The initial deal was supposed to provide Eschelon with an automatic conversion that involved only billing work and no risk to the end user customer's service. (Qwest focuses on mechanized billing while ignoring that a primary issue here is mechanized ***conversion*** to billing to avoid any adverse impact.) That promised solution did not involve any party manually typing orders (either LSRs or service orders), because a systems solution was supposed to do the work.

[20] The substantive issues raised by Eschelon are very relevant to this proceeding and show that Qwest continues to fail to provide accurate billing and has not complied with its 271 obligations. The issue of ***remedies to Eschelon***, however, is a separate issue that may be dealt with in another proceeding.

III. CONCLUSION

Qwest concludes its Response by stating that, until April 21st, "Eschelon has steadfastly refused to consider Qwest's proposal to convert Eschelon's UNE-E customers to the mechanized billing process." *See* Qwest's Response, p. 4. The reverse is true. All along, Eschelon has steadfastly considered Qwest's "proposal." Eschelon has considered the plan so closely that it has identified problems that need to be addressed, such as the handling of customer affecting problems when a Qwest typist omits the code/FID and the order improperly flows to facilities assignments or switch translations. Instead of a conclusion that Eschelon should not worry about such things, Eschelon would like Qwest to provide sufficient facts to show how such issues are being adequately covered. Whenever discussions start to get to that level of detail – and the devil is in the details – Qwest fails to provide answers and resorts to name-calling, such as "intransigen[t]" and "self serving." *See* Qwest's March 10th Comments, p. 15, and Ex. E-V.

Eschelon has asked the Staff and facilitator to participate in calls with Qwest about this issue and hopes that they will have an opportunity to do so. Eschelon is simply attempting to get resolution to genuine business issues. Qwest claims that it "is Eschelon's continued refusal to resolve the dispute over the embedded base that causes the billing accuracy issue to persist." *See* Qwest's March 10th Comments, p. 15. Qwest states that this is "intransigence." *See id.* Eschelon does not understand how it is intransigent for Eschelon to maintain its position but not intransigent for Qwest cling to its position. Qwest has continued to refuse to resolve this dispute. For a long time, part of its refusal was to decline to provide the very kinds of assurances that now appear in Qwest's Response (such as that the lines will not go down and the orders will involve

internal work only). We have been at impasse, and Eschelon brought this issue to the Commission for resolution. The Staff made its recommendation on the facts presented by the parties.

If the Commission adopts the Staff's recommendation on this issue, to "count these as an error or an inaccurate bill for purposes of calculating its billing measurements," Qwest will be more likely to move past that phase and get down to the details needed to move forward. We have already gained some attention to the issue as a result of the Staff's recommendation, and we ask the Commission to adopt that recommendation to allow that progress to bloom into accurate billing for UNE-E lines.

In the meantime, UNE-E bills remain 100% inaccurate. For this and the other reasons previously identified by Eschelon and other CLECs, Qwest fails to meet the standards of Section 271 of the Act.

April 30, 2003

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