

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
)

Qwest Communications International Inc. –) WC Docket No. 03-194
Application for Authority to Provide In-)
Region, InterLATA Services in Arizona)
)

REPLY COMMENTS OF AT&T CORP.

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. (“AT&T”) respectfully files these Reply Comments in opposition to Qwest’s request for authorization to provide in-region, interLATA authority in Arizona.

I. QWEST’S POLICIES WITH RESPECT TO DS1-CAPABLE LOOPS VIOLATE ITEMS 2 AND 4 OF THE COMPETITIVE CHECKLIST.

As AT&T demonstrated in its Opening Comments, Qwest’s policies with respect to the ordering and provisioning of DS1-capable loops by CLECs violate its obligation to provide nondiscriminatory access to UNEs, including loops, in violation of Items 2 and 4 of the competitive checklist. Beginning in late April 2003, Qwest reclassified, as “construction,” services that it previously classified as “incremental facility work” performed for CLECs without charge. As a result of this change, which became effective on June 16, the rejection rate for CLEC orders for high-capacity loops rose dramatically, from 2 percent to approximately 20 percent. The change in policy also caused a significant increase in the charges paid by CLECs to Qwest. As a result, the ability of CLECs to compete was significantly impeded, because Qwest’s retail operations experience no such rejections or charges. Although Qwest recently purported to rescind these changes and revert back to its preexisting policy, Qwest has not yet clearly done so.

Even if Qwest has reverted back to its preexisting policy, it is still not clear whether Qwest will adhere to the preexisting policy in the future. *See* AT&T Opening Comments at 3-25.

In an *ex parte* letter filed on September 29 at the request of the Department of Justice, Qwest seeks to pass off its change in policy as a mere “clarification.” Although Qwest admits that its “June 16 clarification” was “viewed as a policy change by some,” it attributes that perception to the fact that “prior to June 16, CLECs were not always charged for such construction.”¹

Qwest’s rationalizations are specious. AT&T has already demonstrated that Qwest’s “June 16 clarification” represents a significant change in policy from that in effect prior to June 16 – and from the policy that Qwest described in its previous Section 271 applications to the Commission. AT&T Opening Comments at 4-9.

Qwest’s suggestion that no change in policy occurred is belied by the rejection rates for orders for high-capacity loops, which jumped to 20 percent after June 16 from their prior, relatively *de minimis* levels. *Id.* at 12-13. The significant nature of the policy change is further confirmed by the substantial change in the CLECs’ experience in ordering DS1-capable loops that Eschelon described in an *ex parte* letter filed only three days ago.² As Eschelon states:

The impact of Qwest’s conduct was sudden and significant. After Eschelon received only 3 DS1 service inquiry (no build) jeopardy notices in Arizona for the first half of 2003, the number jumped so that approximately *fifty percent* of Eschelon’s DS1 orders went

¹ *See ex parte* letter from Hance Haney (Qwest) to Marlene H. Dortch, dated September 29C, 2003, at 1 (“Qwest September 29C *ex parte*”).

² *See ex parte* letter from Karen L. Clauson (Eschelon) to Marlene H. Dortch, dated October 14, 2003 (“Eschelon *ex parte*”).

held for no facilities between June 15, 2003 and August 15, 2003 in *Arizona*. Across the six states in Qwest territory where Eschelon does business, there was an overall *thirty-fold* increase in DS1 service inquiry (no build) jeopardy notices. It is not simply Eschelon's "view" that the number increased. The sudden jump is a fact. Qwest's tactic of calling its conduct a "clarification," rather than a "change," does not reduce the significant and sudden nature of the change. Nor does it decrease the harm that Qwest caused to its competitors. For example, Cbeyond, which experienced an almost *twenty percent* jump in these held orders from the start, reported that Qwest's policy change had "crippled" its ability to compete.³

Eschelon's *ex parte* letter also demonstrates the false and misleading nature of Qwest's assertion that "prior to June 16, CLECs were not always charged for such construction." Eschelon unequivocally states that – contrary to Qwest's assertion – prior to June 16, "Qwest *never* charged construction charges for the activities newly deemed to be 'construction' activities. Qwest did not deem these activities to be construction at all."⁴ Instead, Qwest recovered (and still recovers) the costs for these activities in the recurring and non-recurring rates established by the ACC.⁵

³ Eschelon *ex parte* at 2 (emphasis in original; footnotes omitted). AT&T has not used DS1-capable loops in the past to provide local exchange to large business customers because of the difficulties of establishing to the RBOCs' satisfaction that the DS1-capable loop would be used predominantly for local service. However, AT&T intends to order DS1-capable loops in the future in view of the *Triennial Review Order*'s recent abolition of a number of the Commission's preexisting restrictions on the use of such loops. See AT&T Opening Comments at 13-14 n.29.

⁴ Eschelon *ex parte* at 2 (emphasis in original).

⁵ *Id.* at 2-3. Statements by other CLECs, in proceedings before this Commission and State commissions, confirm that prior to June 16, 2003, Qwest did not assess construction charges for the activities that it made subject to its CRUNEC (CLEC-Request UNE Construction) process effective that date. See, e.g., WC Docket No. 02-314, *Initiation of A "No Facilities" Policy by Qwest Communications International, Inc. In Violation of Its Commitments To the Commission*, Petition for Enforcement Pursuant To Section 271(d)(6) of the Act, filed July 29, 2003, at 2-3 (with the exception of 2% of DS-1 orders rejected due to "no facilities," "all other initially rejected orders were ultimately worked with no additional charge to Cbeyond"); WC Docket No. 02-314, *supra*, Comments of Mountain Telecommunications in Support of Petition for

Qwest's change in policy was discriminatory, unjust, and unreasonable, in three respects. First, by effectively reclassifying line conditioning as "new facilities" for which CLECs must pay additional charges, Qwest has violated its obligation to provide access to UNEs under Section 251(c)(3), the *Local Competition Order*, the *UNE Remand Order*, and the *Triennial Review Order*. AT&T Opening Comments at 9-12.⁶ Second, Qwest's change in policy is discriminatory, because it has imposed additional costs, burdens, and delays on CLECs that Qwest does not experience in its retail operations. *Id.* at 12-14. Third, the method by which Qwest unilaterally changed its documentation to eliminate loop conditioning from the categories of "incremental facility work" that it would perform for the CLECs without charge not only violated, but also misused, the change management process. *Id.* at 14-18.⁷

Enforcement Pursuant To Section 271(d)(6) of the Act, filed August 8, 2003, at 3 (prior to June 16, "Pursuant to [Qwest's CRUNEC policy], Qwest did not impose construction charges on requests that could be resolved through facility work or assignments. . . . Thus, line conditioning historically had not been subject to 'construction' charges (which makes abundant sense given that no construction occurs with line conditioning)"); Eschelon *ex parte* at 2 n.8 (quoting similar statement in reply comments filed by Mountain Telecommunications on July 25, 2003, in ACC Docket No. T-00000A-97-0238); Colorado PUC Docket No. 03F-357T, *Cbeyond Communications, LLC v. Qwest Corp.*, Verified Accelerated Complaint of Cbeyond Communications, LLC, filed August 11, 2003, ¶ 10 (prior to June 16, "Qwest performed incremental facility work, including conditioning, for Cbeyond and charged Cbeyond the non-recurring and recurring rates for the facilities, with no additional charge beyond those rates").

⁶ Qwest recently acknowledged that it has not challenged the Commission's rulings in the *Triennial Review Order* regarding construction and network modifications -- including the Commission's reiteration of its previous rulings that loop conditioning is within the definition of the loop network element -- in the pending Petition for Mandamus and Joint Motion for Stay that the RBOCS have filed with the U.S. Court of Appeals for the District of Columbia Circuit regarding that order. See *ex parte* letter from Hance Haney (Qwest) to Marlene H. Dortch, dated September 29B, 2003.

⁷ Eschelon similarly describes the "improper manner" in which Qwest unilaterally implemented a "significant change" in its policy. See Eschelon *ex parte* at 3.

In early August, after protests by CLECs (including the filing of a complaint with this Commission by certain CLECs) and objections from the ACC Staff, Qwest stated that it would withdraw its changed policy and institute what it deemed an “interim” process. Whether Qwest has fully abandoned its attempt to classify loop conditioning activities as “construction,” however, remains unclear, particularly given the numerous changes that Qwest has made in the “interim process” since it was first announced. *See id.* at 19-25. Events since the filing of opening comments in this proceeding have not removed that uncertainty. In its September 29C *ex parte*, for example, Qwest does not represent that it has simply reinstated the DS-1 policy that was in effect prior to June 16, but asserts only that its current policy is “materially the same as” the pre-June 16 policy.⁸

Nor did Qwest clarify its intentions when it responded on September 26 to the comments of CLECs on its documentation describing its recently-announced “interim process.”⁹ In its response, Qwest stated its “commitment to work collaboratively with CLECs, whether within CMP or outside of CMP, concerning *any new proposals* concerning DS1-capable loops,” but then asserted that it “will not commence such collaboration until it has fully examined the ramifications of the Triennial Review Order and determined how and in what forum or manner to present a proposal, *if any*, to CLECs.”¹⁰ “Any new proposals” would be made by Qwest, because CLECs simply wish that Qwest’s pre-June 16 policy regarding conditioning be

⁸ Qwest September 29C *ex parte* at 2.

⁹ *See* Qwest Response to Document in Review, dated September 26, 2003 (attached hereto as Attachment 1).

¹⁰ *Id.* at 2 (emphasis added).

reinstated. Qwest, however, fails to specify whether it will make a “new proposal” and, if so, when it will present that proposal to the CLECs.

In view of this uncertainty, there is still no reason to believe that Qwest has fully abandoned its intention to apply the CRUNEC process to loop conditioning work and other work that was previously considered incremental facility work, and thus to require CLECs to pay additional charges for such work beyond the rates that they already pay for UNEs. *Id.* at 24-25. Qwest’s evasiveness simply provides further reason to believe that, as soon as its Application is approved, it will reinstate the policy that it recently withdrew. *Id.* at 25. As Eschelon states, “That Qwest is so nonchalant, unapologetic, and misleading about disruptive conduct that seriously harmed its competitors and which was expressly rejected by the ACC does not bode well for the future.”¹¹

For these reasons, Qwest has failed to demonstrate that it complies with the requirement of Checklist Item 2 that it provide access to UNEs on terms and conditions that are just, reasonable, and nondiscriminatory. Qwest also has not met its burden of satisfying Checklist Item 4’s requirement that it provide nondiscriminatory access to unbundled loops. *See id.* at 9. Unless and until Qwest *unequivocally* reinstates its policy regarding loop conditioning that was in effect prior to June 16 (and that is still reflected in its current SGAT),¹² *and* commits

¹¹ Eschelon *ex parte* at 3.

¹² *See* AT&T Opening Comments at 7 (describing the inconsistency between the policy that Qwest implemented on June 16 and its SGAT, which continues to classify loop conditioning as “incremental facility work” that Qwest will perform for CLECs without charge). In its Evaluation of Qwest’s Application, the Department of Justice states that “the Arizona CC and CLECs have addressed concerns as to whether Qwest has made appropriate use of the CMP in its attempts to change policies pertaining to provisioning and pricing of DS-1s.” DOJ Eval. at 6 n.20. The ACC has addressed Qwest’s improper use of the CMP as a means of imposing new

that it will not alter that policy without the consent of the CLECs and the approval of the various State commissions in its region,¹³ it cannot reasonably be found to be in compliance with these checklist items.

II. QWEST VIOLATES CHECKLIST ITEM 2 BY NOT HAVING ADEQUATE PROCESSES FOR ENSURING THAT DEFECTS IN ITS NEWLY-IMPLEMENTED SOFTWARE ARE CORRECTED PROMPTLY.

As AT&T demonstrated in its Opening Comments (at 28-31), Qwest does not maintain adequate processes and procedures for correcting software defects in a timely manner. AT&T's experience is that Qwest typically refuses to repair software defects *at all* on the ground that the defects are defects in documentation, not defects in its systems. This practice often forces CLECs to undertake costly revisions to their own systems, and flies in the face of the Commission's recognition that it is the BOCs' burden to repair software defects. MCI recently proposed an amendment to Qwest's change management plan that would foreclose this practice, and that also requires Qwest to fix software defects within specific time intervals, but Qwest has

charges without the approval of the ACC, by requiring Qwest to obtain the approval of the ACC before making any change in its pre-June 16 policy (including the assessment of any charges for conditioning). See AT&T Opening Comments at 17-18 & Att. 5 ¶¶ 108-109. However, although the ACC's recent order also expressly required Qwest to "reinstate its former policy on these issues as reflected in its current SGAT," Qwest has still not demonstrated that it has done so, given its consistently-ambiguous statements about its "interim" process and its intentions for the future. *Id.* at 18-25 & Att. 5 ¶ 109. See also Eschelon *ex parte* at 3 (noting that even after Qwest reversed the policy that it had put into effect on June 16, Qwest claimed that its decision to do so was "interim" only, and "dropped the 'interim' designation only after the ACC addressed this issue in the Arizona 271 proceeding").

¹³ Although the Arizona Corporation Commission recently required Qwest to obtain its approval of any change in its policy prior to its implementation, that requirement affects only ordering and provisioning in Arizona. See AT&T Opening Comments at 18 & Att. 5 ¶ 109. Similarly, although Qwest has pledged to "work collaboratively with CLECs" concerning any "new proposals" regarding DS1-capable loops, it has not agreed that it will make any change in its policy only after obtaining the concurrence of the CLECs.

rejected that proposal. As a result, CLECs have no assurance that Qwest will correct defects in its software at all, much less correct defects promptly.

MCI agrees that “Qwest’s change management document lacks sufficient language to require that Qwest correct software defects within a specific timeframe” and that Qwest’s veto of MCI’s proposed amendment to the change management plan means that “CLECs have no guarantees that software defects will be fixed in a timely manner.” MCI Comments at 1. In addition, DOJ acknowledges that “‘efficient implementation of system fixes for known defects’ is important.” DOJ Eval. at 6 n.20 (quoting DOJ Georgia/Louisiana I Eval. at 29 & n.97). As a result, DOJ urges the Commission to consider whether Qwest’s change management plan “continues to be adequate.” *Id.*

Qwest has noted in an *ex parte* letter that “Qwest and the CLECs collaboratively developed and agreed upon language [in Qwest’s change management plan] to address production support issues,” including software defects.¹⁴ The change management plan, however, is intended to be a dynamic document, and specifically provides that CLECs can submit change requests proposing amendments to the plan.¹⁵ MCI exercised this right when it became apparent to CLECs that Qwest does not promptly address and correct software defects.

Under Qwest’s existing change management plan, CLECs are at a significant competitive disadvantage because they never know when software defects will be corrected.

¹⁴ *Ex parte* letter from Hance Haney (Qwest) to Marlene H. Dortch, dated September 29A, 2003, at 1.

¹⁵ See Qwest Wholesale Change Management Process Document § 2.1, Schultz Decl., Exh. JMS-CMP-2.

This uncertainty interferes with the ability of CLECs to place orders efficiently and effectively. Accordingly, unless Qwest agrees to modify its change management plan, it cannot demonstrate that it satisfies checklist item 2.

CONCLUSION

For the foregoing reasons, and the reasons stated in AT&T's Opening Comments, Qwest's Application for authorization to provide in-region, interLATA services in Arizona must be denied.

Respectfully submitted,

/s/ Richard A. Rocchini

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October 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 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: October 17, 2003
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

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ATTACHMENT 1



Qwest Response to Document In Review

Response Date: September 26, 2003
Document: Product/Process: Changes to Interim Process Unbundled Local Loop-DS1 Capable Loop
Original Notification Date: August 27, 2003
Notification Number: PROS.08.27.03.F.01173.DS1CapableLoop_IntProc
Category of Change: Level 3

Qwest recently posted proposed updates to the **Interim Process Unbundled Local Loop-DS1 Capable Loop**. CLECs were invited to provide comments to these proposed changes during a Document Review period from August 28, 2003 through September 11, 2003. The information listed below is Qwest's Response to CLEC comments provided during the review/comment cycle as agreed to by Qwest and the CLECs and notified in PROS.09.05.03.F.01184.DS1CapableLoop_IntProc and PROS.09.18.03.01198.DS1CapableLoopProc.

Resources:

Customer Notice Archive http://www.qwest.com/wholesale/cmp/review_archive.html
Document Review Site <http://www.qwest.com/wholesale/cmp/review.html>

If you have any questions on this subject or there are further details required, please contact Qwest's Change Management Manager at cmpcomm@qwest.com.

Qwest Response to Product/Process: Interim Process Unbundled Local Loop-DS1 Capable Loop Comments

#	CLEC Comment	Qwest Response
1	<p><i>Name of CLEC Eschelon</i> <i>Date received 8/27/03</i> <i>Comment:</i> Eschelon objects to Qwest's notice. Qwest could have avoided this objection by agreeing to and implementing the first two points of the 12-CLEC Proposal (copy sent by separate email) presented to Qwest on August 15, 2003: "1. Qwest to promptly revert to its pre-June 2003 work activities, provisioning and assignment processes, and rates/charges for UNEs with respect to this issue. 2. Qwest to withdraw CMP notices PROS.04.30.03.F.01071.CRUNEC_V4.0, PROS.05.21.03.F.01089.FNL_CRUNEC, PROD.07.11.03.F.03468.UNECRUNEC_V5.0, and PROD.08.06.03.F.03494.DelayedResponseCRUNE</p>	<p>Qwest responds as follows:</p> <p>A. Qwest acknowledges CLEC's objection to issuing a CMP notification, and responds that, as Qwest has previously represented, the CLEC's consent to modifying the level of Category of Change from 3 to 1 will not constitute a waiver of their objection, and Qwest will respond to the comments submitted to this Level 3 change, in accordance with the request of the CLECs.</p> <p>B. In PROS.09.18.03.01198.DS1CapableLoopProc, made effective on September 18, 2003, Qwest addressed the CLEC comment concerning the one apparatus case limitation by the deleting the language.</p> <p>C. . In PROS.09.18.03.01198.DS1CapableLoopProc, made effective on September 18, 2003, Qwest</p>

Note: In cases of conflict between the changes implemented through this notification and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party.

The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process. Prior to any modifications to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

<p>C, PROD.08.08.03.F.03494DelayedResponseCRUN EC and any associated changes made or pending pursuant to those notices."</p> <p>By withdrawing Qwest's previous notices, Qwest would not have to concern itself (and everyone else) with whether to continue to send such notices. (Eschelon agrees that Qwest cannot require use of the special construction process for 4 or more load coils, which appears to be part of this notice. Qwest did not do so, however, before June 2003. A withdrawal of the notices and return to the old process, therefore, would have more clearly accomplished this. There should be no delay -- for comments or ad hoc calls or any other steps -- for "implementation" of the process with respect to removal of more than 3 load coils, because the change that Qwest made affecting removal of more than 3 load coils in the first place was invalid.)</p> <p>As it is, with its new notices, Qwest has simply inserted additional confusion as to whether Qwest has actually returned to its previous practices or not and, if not, what has/has not changed. (See, for example, the questions posed by Eschelon in its August 11, 2003, email to CMPCR; copy sent by separate email.) Although Qwest appears to have reverted to the old process in some respects, it has not done so in all respects. For example, Qwest's notice does not remove the new restriction on more than 1 apparatus case. That was not a restriction under the old process that was in practice before June 15, 2003.</p> <p>Also, the old process was NOT interim, and Qwest has not reverted to the old process as long as it claims its present practice is interim. The difference is significant. By claiming that the current process is "interim," Qwest appears to be reserving the right to again unilaterally impose, at any time, the adverse, business-impacting, disruptive changes to which CLECs have objected. Qwest caught CLECs by surprise when it instituted these changes on or about June 16, 2003 (see, e.g., Cbeyond CO Complaint, 7; Eschelon's 7/18/03 AZ 271 Comments, pp. 4-5; Mountain Telecom 7/25/03 AZ 271 Reply Comments). Eschelon and other CLECs learned of the</p>	<p>addressed the CLEC comment concerning the inclusion of the word "interim" by the deleting each such reference.</p> <p>D. In PROS.09.18.03.01198.DS1CapableLoopProc, made effective on September 18, 2003, Qwest addressed the CLEC comment concerning Qwest's intention or plan to introduce a new process by deleting the following language: "Qwest will develop, explain and present a new process for provisioning of DS1-capable loops in collaboration with the CLECs through the CMP." Such change is not intended to retract Qwest's stated commitment to work collaboratively with CLECs, whether within CMP or outside of CMP, concerning any new proposals concerning DS1-capable loops. Qwest will not commence such collaboration until it has fully examined the ramifications of the Triennial Review Order and determined how and in what forum or manner to present a proposal, if any, to CLECs.</p> <p>E. Qwest confirms that more than one CLEC, including Eschelon itself, objected "to managing this issue outside of CMP." Under the circumstances, Qwest had no choice but to issue a CMP notice. Qwest had initiated the notice upon the request of CLECs as a general notification with the understanding that Qwest believed that this was a process change requiring the unanimous consent of CLECs to manage outside of CMP. With even one objection, Qwest no longer had the authority to manage the issue outside of CMP in the time frames requested by CLECs. Qwest notes that certain CLECs may prefer adhering to CMP process because it ensures that they are included in information exchanges that may not otherwise include them, such as the 12-CLEC Proposal.</p> <p>F. In PROS.09.05.03.F.01184.DS1CapableLoop_IntProc, made effective on September 5, 2003, Qwest addressed the CLEC comment concerning the use of the word "installed" by the deleting the language and replacing it with the word "ordered."</p> <p>G. Concerning the CLEC request for billing adjustments for CLEC orders that were not resubmitted as conversions, the Qwest process does not provide for such billing adjustments. First, such a billing adjustment would be exceedingly difficult to implement if the order was not resubmitted. Second, the CLEC proposal does not provide any means for determining whether the order as originally submitted would have been provisioned or rejected.</p>
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changes through a jump in the number of jeopardy notices for DS1 capable loops on the grounds of "service inquiry" for lack of qualified facilities (i.e., no build held orders). The harm to end user customers, CLECs, and competition was immediate and significant. (See, e.g., "Qwest DS1 Held Orders: Examples of Impact on Eschelon; copy!

Sent by separate email.) The harm went beyond the higher costs of private lines and included significant delays, disruptions, and resource burdens. See id. CLECs seek to avoid a repeat of this significant problem. Nothing in Qwest's notice ensures that it will not happen again (such as, after Qwest has received 271 approval for AZ).

In fact, Qwest's notice clearly shows that Qwest again intends to proceed on its own with unilateral imposition of a process. In the red-lined document attached to the notice, Qwest states: "Qwest will develop, explain and present a new process" (emphasis added). Absent from the notice is any reference to joint development or the oral commitment that Qwest made during the 8/15 call to meet with CLECs and attempt to obtain agreement. (Even within CMP, if every CLEC objects to a change, Qwest interprets its process to allow it to unilaterally implement the objectionable change after it has gone through the appropriate hoops. Using CMP does not ensure mutual agreement before a change is implemented.) Also absent is any reference to obtaining commission approval before implementing a new process, even if that process affects when and what rates CLECs pay for certain activities (such as occurred with the changes Qwest implemented on or about June 16, 2003). Qwest plans to "

Present" a process to CLECs, rather than to obtain CLEC consent. This is contrary to the 12-CLEC Proposal made in the second sentence of paragraph 6:

"Qwest must either negotiate such terms with CLECs or obtain commission approval before making such changes."

Qwest made a public commitment to all CLECs on the 8/15 call to meet with CLECs outside of CMP and attempt to obtain

H. Concerning Paragraph 7 of the 12-CLEC Proposal, Qwest agrees to its terms to the extent they are consistent with the PROS.09.18.03.01198.DS1CapableLoopProc, effective September 18, 2003. Other terms and conditions not included in or not consistent with that notice are not agreed to.

I. Qwest's response is not intended to address (a) any matters that are outside the scope of PROS.08.27.03.F.01173.DS1CapableLoop_IntPr; (b) any comments that constitute legal argument or advocacy; (c) any incorporation by reference, citation of or quotation from documents, orders or communications, when such documents, orders or communications speak for themselves; or (d) any factual assertions that are outside of Qwest's scope of knowledge and of which Qwest is not in a position to assess their validity.

agreement. Qwest has sent no communication to CLECs arranging such a meeting. Instead, despite Qwest's commitment to do so, Qwest unilaterally sent this CMP notice without arranging for such a meeting/discussions. In its notice, Qwest states that "Qwest has received CLEC objections to managing this issue outside of the Change Management Process (CMP.)" Qwest does not disclose the identify of the CLECs or the nature of the alleged objections, so other CLECs are denied an opportunity to discuss or respond. If Qwest is truly NOT handling this "outside of" the CMP process, Qwest's CMP process required Qwest to have obtained those comments in the form of an email to the CMP email address and included those comments in the Interactive Report so that all CMP participants would be able to review them. In addition, when CLECs/carriers disagree in CMP, there are voting and other procedures that apply. Qwest followed none of these CMP procedures. It just unilaterally chose which CLEC opinion it preferred and acted upon that view, despite commitments made during the 8/15 call. Although Qwest suggests that it is apparently handling this issue within CMP as a result of alleged "objections" to going "outside" of CMP, Qwest is selectively using certain aspects of CMP at its choice and to its benefit and is not consistently following its own process even when it claims it is doing so.

A large number of interested CLECs participated in the call on August 15th about this issue, and no CLEC objected on the call to the commitment that Qwest made to further discuss this issue with all of the CLECs outside of CMP. Since then, Eschelon has consulted with many of those other CLECs, and no CLEC has said that it objected to managing this issue outside of CMP. (One CLEC has indicated that it may want future CRUNEC issues to go to CMP, depending upon the issue, but said that it did not object to the removal of CRUNEC from CMP at present.) No CLEC has indicated to Eschelon that it objected to managing the issues raised by CLECs during the call at present outside of CMP. If Qwest nonetheless continues to maintain that the statement about CLEC objections

in its notice is accurate and intends to use CMP, Qwest should follow its own process and provide a summary of any such alleged objections in the Interactive Report, with all of the information (such as CLEC, date, ! Etc.) that are normally included with comments, and follow proper procedures with respect to those objections/comments. Again, it would be simpler and clearer for Qwest to simply for withdraw its previous notices, go back to previous processes, and start over. (For example, a CLEC can withdraw its own CR, etc.).

As to whether the issues are addressed in CMP or outside of CMP, Qwest should focus on what it is that CLECs have said should not be addressed in CMP. In paragraph 7 of the 12-CLEC Proposal, those 12 CLECs stated:

"Qwest to agree that it will not use the CMP process to attempt to make this type of change (e.g., introduce a new rate element, redefine a rate element, change a CLEC's ICA or SGAT term, or unilaterally expand/change a process in a manner that allows Qwest to charge rates for activities not previously subject to a charge (or previously subject to a lower charge). Qwest must either negotiate such terms with CLECs or obtain commission approval before making such changes."

CLECs objected strongly to Qwest's unabashed attempt to change rates and application of rates (as well as wording from the SGATs) under the guise of making a process change in CMP. CLECs also strongly objected to Qwest implementing such changes as to all CLECs, regardless of interconnection agreement terms, even though the CMP process itself states that the interconnection agreements control. There are simply changes that require mutual consent or commission approval, and Qwest cannot circumvent these steps by casting the change (whatever it calls that change) as a CMP issue and treating it on a notice-and-go basis. It is not just that Qwest cannot make such changes unilaterally through CMP, Qwest cannot make them unilaterally at all. For example, if a Commission has set a rate that includes certain components, Qwest cannot redefine processes or terms so that CLECs suddenly receive additional charges

for those components. Qwest needs Commission approval, not unilateral ! action, to make such a change. The burden should not be on CLECs to each discover the improper, unilateral changes and bear the burden and expense of complaining to all the relevant commissions.

That was CLECs' objection. The manner in which Qwest unilaterally made and implemented these changes was improper. Whether it goes through CMP or not, Qwest cannot unilaterally impose rates and change interconnection agreements. Qwest should return to the old process, on a non-interim basis. If, however, Qwest is proceeding in any other manner (such as implementing part of the new process or proceeding on an interim only basis), Qwest should honor its commitment to meet with CLECs outside of CMP. On the 8/15 call, Qwest agreed to use another notice process, and to send a reply all email to the CLECs copied on the 12-CLEC Proposal, to schedule such a meeting with CLECs. Qwest should do so.

With respect to the proposal in paragraph 7 of the 12-CLEC Proposal, CLECs did not say that no aspect of CRUNEC may ever be subject to CMP. When the parties discuss these issues, CLECs and Qwest may agree in those discussions that some aspects of the CRUNEC process (not the objectionable conduct) can be handled through CMP. Perhaps, for example, some aspects of the issue raised in paragraph 3 of the 12-CLEC Proposal are a candidate for such treatment. Paragraph 3 stated:
 "Qwest to provide sufficient level of detail in the held/jeopardy notices so that the CLEC knows why Qwest is stating the local facility is not available (such as at least the level of detail provided before January 2003, in the manual reports/spreadsheets, as to the reasons for these notices)."

When Qwest ceased providing a higher level of detail (after January of 2003), it made this change through its service management organization and not CMP. Therefore, Qwest should be able to reverse course and return to providing a higher level of detail without use of CMP. If additional

processes may be developed and Qwest and CLECs agree, however, perhaps there is some aspect of this issue that carriers may agree to refer to CMP. (Even if handled in CMP, however, the changes should not be implemented as to CLECs whose interconnection agreements provide otherwise and they do not agree to the changes. As stated in the CMP governing document, the interconnection agreements control.)

Pursuant to the commitment that Qwest made on 8/15, the first step should have been to have those discussions with interested CLECs in a call/meeting outside of CMP and then, if the issues can be distinguished in such a manner, proceed accordingly. Receiving a unilateral notice that merely states that "Qwest has received CLEC objections to managing this issue outside of" CMP (and presumably then applying CMP) - without even recognizing the opposite position taken by at least 12 CLECs and the opposite commitment made by Qwest on the 8/15 call -- is objectionable and improper.

Eschelon also objects to the phrasing of the redlined language in the last two bullet points of the document attached to the notice. The first one states that "Qwest will waive all conversion charges for circuits originally installed between June 16, 2003 and August 20, 2003." A circuit may have been ordered during this time period but not installed until later, and that circuit should still be included. The time period may also be slightly longer if the CLEC experienced problems before the 16th or did not have an opportunity to react to the changes by August 20th. (The time period also assumes that Qwest has fully returned to the old procedures by August 20th and, if that is not the case, there may be affected circuits after August 20th.) The second redlined statement states: "Qwest will not be able to adjust any billing unless the CLEC requests the circuit to be converted to UBL, EEL, or LMC." A billing adjustment may be due even though there is no conversion. For example, the end user customer may have become so dissatisfied by all of the delays created by Qwest's revised process that the customer cancelled, but did not do so

	<p>until the CLEC incurred these costs. Although not converting the circuit, the CLEC should receive the billing adjustment.</p> <p>Because Qwest used the term "installed" and not "ordered" in the language referred to above, it is unclear from the notice whether Qwest is now agreeing to paragraph 7. Eschelon also asks Qwest to confirm that it agrees to paragraph 7 of the 12-CLEC proposal:</p> <p>"Qwest to agree to complete, upon CLEC request, any DS1 capable loop orders that were jeopardized/rejected for reasons (e.g., "conditioning") caused by changes made by Qwest in conjunction with its CRUNEC process (including those made pursuant to its version 4 CRUNEC notice) since June 15, 2003, and waive the NRCs. Although CLECs may have lost some of these customers due to this issue, if the customers are willing to proceed, Qwest should process the orders that it would have processed but for the changes to which CLECs are objecting."</p> <p>Eschelon also incorporates by reference its comments to Qwest's previous CMP notices on these issues. Qwest should not have made its changes/modifications/alleged policy reinforcements on this issue at all without CLEC consent or commission approval, for the reasons previously stated.</p> <p>QWEST NOTE: THE ATTACHMENTS REFERENCED IN THIS COMMENT WERE SENT TO Qwest cmpcr@qwest.com on 8/29/03 from Eschelon. These attachments were included in an email that details the 12 CLEC DS1 proposal and an Eschelon-specific DS1 Impacts Document. Both of these documents are included as attachments to this Qwest Response to CLEC Comments.</p>	
<p>2</p>	<p><i>Name of CLEC</i> AT&T <i>Date received</i> 9/3/03 <i>Comment</i> AT&T's comments re: Qwest PROS.08.27.03.F.01173.DS1 Capable Loop_IntProc ("Qwest Interim CRUNEC Process").</p> <p>This Interim Process proposed by Qwest attempts to appease CLECs who objected to PROD.07.11.03.F.03461 UNECRUNEC V5.0</p>	<p>Qwest responds as follows to AT&T's comments:</p> <p>J. With respect to AT&T's comment concerning the Triennial Review Order, Qwest responds that the Triennial Review Order is not yet effective.</p> <p>In response to the remainder of A&T's comments, Qwest refers AT&T to Responses A, C-E, & H-I, above.</p>

("Notice"). Essentially that Notice attempted to assess a Quote Preparation Fee for Simple Facility Rearrangements for activities most CLECs believed should not be subject to any fee, as such fees had already been determined and litigated. See AT&T and other CLEC comments to that Notice. This Qwest Interim CRUNEC Process is in response to those CLEC objections.

AT&T believes the Qwest Interim CRUNEC Process proposed by Qwest is discriminatory and violates the recently issued FCC Report and Order and Order on Remand and Further Notice of Proposed Rulemaking ("Triennial Review"). The FCC was extremely clear in the Triennial Review that LEC's are required to provide "routine network modifications", or those activities that incumbent LEC's regularly undertake for its own customers. See Triennial Review, Paras. 632-633. The FCC further stated that it would not impose a rule listing the precise electronics a LEC would be required to add in order to transform a DS0 voice-grade loop to an unbundled DS1 loop - however, the FCC did give examples of routine network modifications and stated that the operating principle is that incumbent LEC's must perform all loop modification activities that it performs for its own customers. See Triennial Review Para. 634. The FCC required incumbent LEC's to make routine adjustments to unbundled loops to modify a loop's capacity to deliver services in the same manner that such LEC's provision for themselves. See Triennial Review Para. 635. Furthermore, the FCC stated that the changes to modify high-capacity loops and line conditioning require similar personnel and can be provisioned on similar intervals. The FCC also rejected Verizon's contentions regarding availability of loops and network modifications. Qwest's provision of special access without using the CRUNEC process demonstrates that the process applied to DS-1 loops is discriminatory on its face and clearly violates the mandates of the Triennial Review. Finally, the FCC noted that the costs associated with modifications often are reflected in the recurring rates for loops. AT&T will require that any process that is developed be in compliance with the Triennial

	<p>Review. Based on the language contained in the Triennial Review AT&T sees no point in Qwest pursuing any process changes that would require CLEC orders ! for DS-1 loops to go through the CRUNEC process.</p> <p>However, should Qwest wish to continue, AT&T has other concerns with the Interim Process. AT&T signed onto the CLEC Proposal dated August 15, 2003 prior to the Qwest/CLEC call to discuss Qwest's proposed CRUNEC policy. The CLEC Proposal at #6 requested that Qwest agree not to use the CMP process to make changes such as introducing new rates elements, redefining rate elements or changing a process that allows Qwest to charge for activities not previously subjected to the charge. Any issue or topic of rates, or modifications to individual CLEC contracts should never be subject to any CMP involvement. However, AT&T does believe that CMP is, absolutely, the appropriate forum to develop new processes relating to CLEC impacting procedures. AT&T is not adverse to Qwest utilizing the CMP forum to develop an appropriate and lawful CRUNEC process. To eliminate any confusion about the scope of the involvement, AT&T requests that Qwest explain, and that CLECs concur, with the scope of the changes to be addressed within the CMP procedure. AT&T also requests that Qwest address whether it will require any contracts with CLECs be amended prior to imposing additional changes on CLECs.</p>	
<p>3</p>	<p>Name of CLEC Mcleod Date received 9/4/03 Comment Mcleod respectfully requests that Qwest return to the processes prior to June 15th 2003 regarding the apparatus cases. Mcleod does not feel that there should be a limitation on the number of apparatus cases for the interim process as there was no limitation supported by the Qwest technicians prior to that date.</p> <p>Mcleod asks that this restriction be removed for the interim process. And to be discussed again within the confines of the DS1 process to be redefined pursuant to the CMP process, applicable commission approvals, and the FCC Triannual Review.</p>	<p>In response to McLeod's comments, Qwest refers McLeod to Responses B, D and I, above.</p>
<p>4</p>	<p>Name of CLEC MCI</p>	<p>Qwest responds as follows to MCI's comments:</p>

	<p><i>Date received 9/4/03</i> Comment Regarding Qwest Interim Process defined "Other Network Functions" including:</p> <ul style="list-style-type: none"> • Removal of Load Coils (LCs) • Removal of excessive Bridged Taps (BTs) • Rearrangement of existing pairs to include fiber hub counts • Rearrangement of existing pairs to extend the line • Rearrangement or addition of pairs into an existing Apparatus Case • Placement of additional repeater cards (no limit) due to rearrangement or placement of new Apparatus Case • Placement of one Apparatus Case <p>The current CRUNEC document V4 states "CRUNEC is NOT required for requests that can be resolved through facility work or assignments, such as: • Line and Station Transfers (LSTs): Moving a end-user's line to a spare facility and reusing the pair made spare to provision a service request. An LST is not used in a "reverse cut" fashion; Qwest does not swap two working end-user lines to provision a service request.</p> <ul style="list-style-type: none"> • Cable Throws (also known as Section Throws or Plant Rearrangements): Moving existing end-users from their existing facilities to another set of facilities in order to free up the original facility for use in the provision of a Company Initiated Activity (CIA) (e.g., to place Digital Loop Carriers or modernize a terminal). • Incremental Facility Work: Completing facilities to an end-user's premises (e.g. Place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal). • Outside Plant construction jobs in progress or Engineering Work Orders in progress." <p>MCI Question: Please describe the variances (if any) between Qwest Interim Process "other network functions" and those procedures currently excluded from the CRUNEC V4 process.</p>	<p>The CRUNEC v.4 process document and the Qwest Interim Process designation of "other network functions" are intended to address different network functions and activities. The CRUNEC v.4 process document generically addresses the construction request process for UNEs, while the Qwest Interim Process addresses specifically the DS1 capable loop provisioning process.</p> <p>In response to the remainder of MCI's comments, Qwest refers MCI to Response I, above.</p>
5	<p><i>Name of CLEC Covad</i> <i>Date received 9/5/03</i> Comment Please accept and respond to the</p>	<p>In response to Covad's comments, Qwest refers Covad to Responses B, C, D, G & I, above.</p>

following comments provided on behalf of Covad Communications:

- It is Covad's belief that there should be no "interim" process related to the provisioning of DS1 capable loops. As it appears that no specific limitations applied prior to June of this year, no limitations should apply now, including Qwest's unilateral decision to limit the number of apparatus cases to be placed. By placing any limitations/restrictions on the provisioning of DS1s, Qwest is in effect changing the rate for providing this UNE. This can only be done through IA negotiations or a commission cost case. Due to the rate impacts, these changes do not belong in CMP, however a CLEC collaborative effort would be appropriate for development of a new DS1 provisioning process.

- During the Aug. 15 conference call, Qwest represented that information was not available that would quantify how many DS1 lines were provisioned prior to June of this year that required the placement of more than one apparatus case. On the Sept. 4th call, Qwest indicated there was information available. It is Covad's belief that Qwest's decision to limit the placement of apparatus cases to one must have been based upon this information. Therefore, I respectfully request that this information be made available to the CLEC community, and that it include data for both UNE and Qwest retail DS1 provisioning.

- Although compensation has been offered to some CLECs for Qwest's unilateral decision to change the existing DS1 provisioning process, no compensation has been offered to CLECs who chose not to purchase the more expensive Qwest Retail DS1 service. Compensation must be made for the loss of customers. Further, Qwest must make all compensation based upon the date CLECs began to be impacted by the process change. In the case of Covad, we began seeing an increased rejection rate prior to June 16th and should be compensated for all improper rejections caused by the change in provisioning policy.

	<p>- Finally, any provisioning process, "interim" or otherwise, must be at parity with retail and Qwest must produce the data to demonstrate this.</p>	
6	<p>Name of CLEC Cbeyond Date received 9/5/03 Comment Cbeyond objects to the provision of the procedures stating that all special access that were not installed prior to 8/20 must be cancelled and re-ordered as UNE. Cbeyond will let those orders continue until installed and then convert to UNE. Qwest must then adjust any and all special access rates ORDERED before 8/20 as special access. This episode has already caused CLECs to loose customers and the further unnecessary delay proposed by Qwest is unacceptable. The adjustment must be defined as "special access circuits ordered between 6/16 and 8/20/2003</p>	<p>In response to Cbeyond's comments, Qwest refers Cbeyond to Responses F & I, above.</p>
7	<p>Name of CLEC Allegiance Date received 9/10/03 Comment Allegiance would like to reiterate our position that any changes to rates or new charges should be done via the Interconnection Agreement process and/or state commissions as appropriate.</p> <p>The recent Triennial Review Order (TRO) again affirmed that high-capacity loops at the DS1 or DS3 level must be provided on a UNE basis. In addition, the TRO clearly states that LEC's are required to provide "routine network modifications," or those activities that incumbent LEC's regularly undertake for their own customers. Thus, Allegiance is of the opinion that there should be no "interim" process and Qwest should put a permanent DS1 Capable Loop and EEL provisioning process in place that is in compliance with the FCC's rules which the FCC reaffirmed in the TRO.</p> <p>Last, any changes to the DS1/EEL provisioning process should be done via the CMP as a Level 4.</p>	<p>In response to Allegiance's comments, Qwest refers Allegiance to Responses D, I & J, above.</p>
8	<p>Name of CLEC Eschelon Date received 9/11/03 Comment Eschelon submitted comments on this notice on August 29, 2003. The deadline for comment is not until September 11, 2003, and Eschelon submits these timely supplemental comments on this issue.</p> <p>At an Open Meeting on September 8, 2003 in Arizona, the AZ Commission voted</p>	<p>In response to Eschelon's comments, Qwest refers Eschelon to Responses A-I, above.</p>

to approve an Order containing the following language:

"109. Staff agrees with Eschelon with respect to the recently imposed construction charges on CLECs for line conditioning. Staff is extremely concerned that Qwest would implement such a significant change through its CMP process without prior Commission approval. As noted by AT&T, during the Section 271 proceeding, the issue of conditioning charges was a contested issue. Language was painstakingly worked out in the Qwest SGAT dealing with the issue of line conditioning which Qwest's new policy is at odds with. Staff recommends that Qwest be ordered to immediately suspend its policy of assessing construction charges on CLECs for line conditioning and reconditioning and immediately provide refunds to any CLECs relating to these unauthorized charges. Qwest should reinstitute its prior policy on these issues as reflected in its current SGAT. If Qwest desires to implement this change, then it should notify the Commission in Phase III of the Cost Docket, but must obtain Commission approval of such a change prior to its implementation. To the extent Qwest does not agree to these conditions, Staff recommends that Qwest's compliance with Checklist Items 2 and 4 be reopened. We agree with Staff."

In addition, at the same Open Meeting, counsel for Qwest agreed to return "100%" to the processes in place before June 2003. (This is in addition to the representation that Qwest made to the AZ Commission at the 8/21/03 Open Meeting that "everything is going back to the way it was before June 15." (Tr. p. 40, lines 22-24)). Before June 15, Qwest had in place a non-interim process that resulted in a low level of jeopardy notices for service inquiry/no build. Eschelon's expectation, based on the AZ Order and Qwest's representations to the Commission, is that the non-interim process is in place, and levels will return to where they were before June 15. In addition, Eschelon expects that Qwest will seek prior Commission approval before attempting to make such changes in the future.

Eschelon objects to Qwest's notice. Qwest could have avoided this objection by agreeing to and implementing the first two points of the 12-CLEC Proposal (copy sent by separate email) presented to Qwest on August 15, 2003:

"1. Qwest to promptly revert to its pre-June 2003 work activities, provisioning and assignment processes, and rates/charges for UNEs with respect to this issue.

2. Qwest to withdraw CMP notices PROS.04.30.03.F.01071.CRUNEC_V4.0, PROS.05.21.03.F.01089.FNL_CRUNEC, PROD.07.11.03.F.03468.UNECRUNEC_V5.0, and PROD.08.06.03.F.03494.DelayedResponseCRUNEC, PROD.08.08.03.F.03494DelayedResponseCRUNEC and any associated changes made or pending pursuant to those notices."

By withdrawing Qwest's previous notices, Qwest would not have to concern itself (and everyone else) with whether to continue to send such notices. (Eschelon agrees that Qwest cannot require use of the special construction process for 4 or more load coils, which appears to be part of this notice. Qwest did not do so, however, before June 2003. A withdrawal of the notices and return to the old process, therefore, would have more clearly accomplished this. There should be no delay-for comments or ad hoc calls or any other steps-for "implementation" of the process with respect to removal of more than 3 load coils, because the change that Qwest made affecting removal of more than 3 load coils in the first place was invalid.)

As it is, with its new notices, Qwest has simply inserted additional confusion as to whether Qwest has actually returned to its previous practices or not and, if not, what has/has not changed. (See, for example, the questions posed by Eschelon in its August 11, 2003, email to CMPCR; copy sent by separate email.) Although Qwest appears to have reverted to the old process in some respects, it has not done so in all respects. For example, Qwest's notice does not remove the new restriction on more than 1 apparatus case. That was not a restriction under the old process that was in practice before June 15, 2003. Also, the old process was NOT interim, and Qwest has not reverted to the old process

as long as it claims its present practice is interim. The difference is significant. By claiming that the current process is "interim," Qwest appears to be reserving the right to again unilaterally impose, at any time, the adverse, business-impacting, disruptive changes to which CLECs have objected. Qwest caught CLECs by surprise when it instituted these changes on or about June 16, 2003 (see, e.g., Beyond CO Complaint, 7; Eschelon's 7/18/03 AZ 271 Comments, pp. 4-5; Mountain Telecom 7/25/03 AZ 271 Reply Comments). Eschelon and other CLECs learned of the changes through a jump in the number of jeopardy notices for DS1 capable loops on the grounds of "service inquiry" for lack of qualified facilities (i.e., no build held orders). The harm to end user customers, CLECs, and competition was immediate and significant. (See, e.g., "Qwest DS1 Held Orders: Examples of Impact on Eschelon; copy! sent by separate email.) The harm went beyond the higher costs of private lines and included significant delays, disruptions, and resource burdens. See id. CLECs seek to avoid a repeat of this significant problem. Nothing in Qwest's notice ensures that it will not happen again (such as, after Qwest has received 271 approval for AZ).

In fact, Qwest's notice clearly shows that Qwest again intends to proceed on its own with unilateral imposition of a process. In the red-lined document attached to the notice, Qwest states: "Qwest will develop, explain and present a new process" (emphasis added). Absent from the notice is any reference to joint development or the oral commitment that Qwest made during the 8/15 call to meet with CLECs and attempt to obtain agreement (Even within CMP, if every CLEC objects to a change, Qwest interprets its process to allow it to unilaterally implement the objectionable change after it has gone through the appropriate hoops. Using CMP does not ensure mutual agreement before a change is implemented.) Also absent is any reference to obtaining commission approval before implementing a new process, even if that process affects when and what rates CLECs pay for certain activities (such as occurred with the changes Qwest implemented on or about June 16, 2003).

Qwest plans to "p!resent" a process to CLECs, rather than to obtain CLEC consent. This is contrary to the 12-CLEC Proposal made in the second sentence of paragraph 6:

"Qwest must either negotiate such terms with CLECs or obtain commission approval before making such changes."

Qwest made a public commitment to all CLECs on the 8/15 call to meet with CLECs outside of CMP and attempt to obtain agreement. Qwest has sent no communication to CLECs arranging such a meeting. Instead, despite Qwest's commitment to do so, Qwest unilaterally sent this CMP notice without arranging for such a meeting/discussions. In its notice, Qwest states that "Qwest has received CLEC objections to managing this issue outside of the Change Management Process (CMP.)" Qwest does not disclose the identify of the CLECs or the nature of the alleged objections, so other CLECs are denied an opportunity to discuss or respond. If Qwest is truly NOT handling this "outside of" the CMP process, Qwest's CMP process required Qwest to have obtained those comments in the form of an email to the CMP email address and included those comments in the Interactive Report so that all CMP participants would be able to review them. In addition, when CLECs/carriers disagree in CMP, there are v!oting and other procedures that apply. Qwest followed none of these CMP procedures. It just unilaterally chose which CLEC opinion it preferred and acted upon that view, despite commitments made during the 8/15 call. Although Qwest suggests that it is apparently handling this issue within CMP as a result of alleged "objections" to going "outside" of CMP, Qwest is selectively using certain aspects of CMP at its choice and to its benefit and is not consistently following its own process even when it claims it is doing so.

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action, to make such a change. The burden should not be on CLECs to each discover the improper, unilateral changes and bear the burden and expense of complaining to all the relevant commissions.

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Perhaps, for example, some aspects of the issue raised in paragraph 3 of the 12-CLEC Proposal are a candidate for such treatment. Paragraph 3 stated:

"Qwest to provide sufficient level of detail in the held/jeopardy notices so that the CLEC knows why Qwest is stating the local facility is not available (such as at least the level of detail provided before January 2003, in the manual reports/spreadsheets, as to the reasons for these notices)."

When Qwest ceased providing a higher level

of detail (after January of 2003), it made this change through its service management organization and not CMP. Therefore, Qwest should be able to reverse course and return to providing a higher level of detail without use of CMP. If additional processes may be developed and Qwest and CLECs agree, however, perhaps there is some aspect of this issue that carriers may agree to refer to CMP. (Even if handled in CMP, however, the changes should not be implemented as to CLECs whose interconnection agreements provide otherwise and they do not agree to the changes. As stated in the CMP governing document, the interconnection agreements control.)

Pursuant to the commitment that Qwest made on 8/15, the first step should have been to have those discussions with interested CLECs in a call/meeting outside of CMP and then, if the issues can be distinguished in such a manner, proceed accordingly. Receiving a unilateral notice that merely states that "Qwest has received CLEC objections to managing this issue outside of" CMP (and presumably then applying CMP) -- without even recognizing the opposite position taken by at least 12 CLECs and the opposite commitment made by Qwest on the 8/15 call-is objectionable and improper.

Eschelon also objects to the phrasing of the redlined language in the last two bullet points of the document attached to the notice. The first one states that "Qwest will waive all conversion charges for circuits originally installed between June 16, 2003 and August 20, 3003." A circuit may have been ordered during this time period but not installed until later, and that circuit should still be included. The time period may also be slightly longer if the CLEC experienced problems before the 16th or did not have an opportunity to react to the changes by August 20th. (The time period also assumes that Qwest has fully returned to the old procedures by August 20th and, if that is not the case, there may be affected circuits after August 20th.) The second redlined statement states: "Qwest will not be able to adjust any billing unless the CLEC requests the circuit to be converted to UBL, EEL, or LMC." A billing adjustment may be due even though there is

<p>no conversion. For !</p> <p>example, the end user customer may have become so dissatisfied by all of the delays created by Qwest's revised process that the customer cancelled, but did not do so until the CLEC incurred these costs. Although not converting the circuit, the CLEC should receive the billing adjustment.</p> <p>Because Qwest used the term "installed" and not "ordered" in the language referred to above, it is unclear from the notice whether Qwest is now agreeing to paragraph 7. Eschelon also asks Qwest to confirm that it agrees to paragraph 7 of the 12-CLEC proposal:</p> <p>"Qwest to agree to complete, upon CLEC request, any DS1 capable loop orders that were jeopardized/rejected for reasons (e.g., "conditioning") caused by changes made by Qwest in conjunction with its CRUNEC process (including those made pursuant to its version 4 CRUNEC notice) since June 15, 2003, and waive the NRCs. Although CLECs may have lost some of these customers due to this issue, if the customers are willing to proceed, Qwest should process the orders that it would have processed but for the changes to which CLECs are objecting."</p> <p>Eschelon also incorporates by reference its comments to Qwest's previous CMP notices on these issues. Qwest should not have made its changes/modifications/alleged policy reinforcements on this issue at all without CLEC consent or commission approval, for the reasons previously stated.</p> <p>Attachments sent on 8/29/03</p>	
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