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*Via Email: jean.jewell@puc.idaho.gov  
and Via Overnight Delivery*

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, ID 83702-5983

RE: Docket No. QWE-T-08-04

Dear Ms. Jewell:

Enclosed for filing are an original and seven copies of the Comments of Integra Telecom and PAETEC.

Please feel free to contact me should you have any questions.

Sincerely,

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Enclosures

cc: See Attached Certificate of Service

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Company Representative, Integra Telecom

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE PETITION OF</b>	)	
<b>QWEST CORPORATION REQUESTING</b>	)	<b>CASE NO. QWE-T-08-04</b>
<b>AUTHORIZATION TO WITHDRAW ITS</b>	)	
<b>STATEMENT OF GENERALLY</b>	)	<b>COMMENTS OF INTEGRA</b>
<b>AVAILABLE TERMS AND CONDITIONS</b>	)	<b>TELECOM AND PAETEC</b>
	)	

**I. INTRODUCTION AND SUMMARY**

Integra Telecom of Idaho, Inc.; Electric Lightwave, LLC dba Integra Telecom; and Eschelon Telecom, Inc. dba Integra Telecom (collectively referred to as “Integra”)<sup>1</sup> and McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services (“PAETEC”)<sup>2</sup> oppose the Petition of Qwest Corporation (Qwest’s Petition) in this matter. Qwest’s Petition raises two main issues for this Commission to review: (1) Qwest’s proposal to withdraw Qwest’s Statement of Generally Available Terms and Conditions (“SGAT”); and (2) Qwest’s proposal to eliminate the Performance Indicator Definitions (“PIDs”) and Performance Assurance Plan (“PAP”). The Commission should deny both proposals. First, Qwest’s SGAT withdrawal proposal is an attempt to substitute its unilateral negotiations positions (*i.e.*, its

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<sup>1</sup> Electric Lightwave, LLC dba Integra Telecom (“ELI”) currently serves customers in Idaho and currently negotiating a new interconnection agreement (“ICA”) with Qwest.

<sup>2</sup> PAETEC requests intervention in this matter for the same reasons as set forth in Integra’s recent Petition for Intervention in this matter.

“Template” negotiations offer) for Commission reviewed terms (in the SGAT and its exhibits). Second, the PAP, by providing clear wholesale service quality standards – many of which are parity with Qwest’s retail performance – is essential to the protection of competition in Idaho. As a provider of local and intrastate long distance telecommunications and data services in Idaho, Integra is both a Qwest competitor and a Qwest customer that is greatly dependent on Qwest’s near-ubiquitous telecommunications infrastructure. Integra has intervened in this proceeding because it has a strong interest in the regulatory tools that provide it some measure of competitive balance in this inherently unbalanced situation. PAETEC likewise seeks to intervene in this matter for this reason. One of the regulatory requirements that Integra, PAETEC, and other competitive local exchange carriers (“CLECs”) rely upon is the availability of dominant carriers’ open, Commission-reviewed offerings such as Qwest’s SGAT. CLECs also rely upon the Idaho PIDs and corresponding PAP to incent Qwest to provide wholesale services to CLECs in a manner that allows CLECs to compete.

Eschelon, a subsidiary of Integra, engaged in lengthy negotiations with Qwest in six states<sup>3</sup> to arrive at an interconnection agreement to succeed the parties’ ICAs entered into in 2000-2001. During this ICA negotiation process – in which numerous issues were negotiated to resolution by the parties prior to arbitration – Eschelon depended upon Qwest’s SGAT as a key source to help frame its negotiation positions. Without the SGAT, the number of disputed issues for arbitration would have been substantially greater. ELI has similarly relied upon the SGAT as a key source, to help frame its negotiations positions in Idaho. Eschelon and ELI justifiably relied on the SGAT as one negotiation starting point because the SGAT is a document developed through multi-party workshops with Staff participation, grounded in the federal

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<sup>3</sup> The states are Arizona, Colorado, Minnesota, Oregon, Utah and Washington.

Telecommunications Act of 1996,<sup>4</sup> and reviewed by the Commission. In contrast, Qwest’s “template” negotiations proposal is nothing more than Qwest’s wish list of ICA terms, representing Qwest’s going-in positions at the outset of negotiations. As such, it should be given no more weight – or apparent Commission sanction (such as through posting it on the Commission website) – than any other carrier’s going-in positions. If any web posting of ICA terms is to be considered, it should be CLEC-facing web posting of Qwest’s filed and approved interconnection agreements,<sup>5</sup> so those terms are more readily available when CLECs need to negotiate with Qwest or exercise their opt-in rights under Section 252(i) of the federal Act.

The SGAT procedure demonstrably promotes the Commission’s mission to foster a competitive intrastate telecommunications market.<sup>6</sup> In contrast, Qwest’s negotiation Template — proffered as a substitute to the SGAT — is unilateral, unreviewed, and unapproved. Likewise, the Commission approved<sup>7</sup> and FCC reviewed performance assurance plan (“PAP”) provides for an automated mechanism that incents Qwest, the predominant wholesale provider, to provide service quality to CLECs that gives CLECs an opportunity to compete in the retail market.

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<sup>4</sup> Decision Granting Application for Approval of Interconnection Agreement, Docket No. 00T-064, Decision No. 000-245 (March 8, 2000).

<sup>5</sup> Qwest does not currently post the approved Qwest interconnection agreements on its website and, in the past, has directed Eschelon to other carriers or the commissions to obtain copies of public interconnection agreements with Qwest. Qwest (which, unlike Eschelon, is a party to those agreements) did not provide docket numbers or other information that would be helpful in requesting those Qwest agreements from the commissions.

<sup>6</sup> Idaho Statutes Title 62 § 602.

<sup>7</sup> Commission’s Final Decision on Qwest’s Corporation’s Compliance with Section 271, In the Matter of U S WEST Communications, Inc.’s Motion for an Alternative Procedure to Manage its Section 271 Application, Case No. USW-T-00-3, June 10, 2002, pp. 3-5.

## II. ANALYSIS

### A. THE OBLIGATION TO FILE A SGAT SHOULD REMAIN BECAUSE IT SERVES THE PURPOSE THAT THE LEGISLATURE INTENDED — FACILITATING TELECOMMUNICATIONS COMPETITION.

#### 1. **Both the SGAT and the Performance Assurance Plan Offer Protection against Discrimination and Anticompetitive or Unilateral Behavior.**

One function of the SGAT is to help prevent backsliding after Qwest gained 271 approval in large part based upon its reliance on those SGAT terms (including the PID and PAP terms).<sup>8</sup> Though Qwest argues that the SGAT “was not the basis for Qwest’s successful multi-state section 271 application to the FCC,”<sup>9</sup> the FCC did rely upon Qwest’s SGAT when evaluating and approving Qwest’s request for 271 approval. The FCC’s order granting Qwest 271 approval references, cites, and/or discusses Qwest’s SGAT 191 times.<sup>10</sup> Many of these citations reference Qwest’s arguments using the terms of the SGAT to demonstrate that Qwest met the competitive checklist.<sup>11</sup> In addition, the FCC relied upon the Idaho PAP noting, “that the performance assurance plans (PAP) that will be in place in the nine states provide assurance that the local market will remain open *after* Qwest receives section 271 authorization in the nine application states.”<sup>12</sup>

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<sup>8</sup> The PIDs are in Exhibit B to the SGAT, and the PAP is Exhibit K to the SGAT.

<sup>9</sup> Qwest Petition, ¶ 15.

<sup>10</sup> Memorandum Opinion and Order, *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Adopted December 20, 2002 (“FCC 271 Approval Order”).

<sup>11</sup> For example, in the first cite in paragraph 71 the FCC discounts a concern raised by Covad regarding loop qualification by pointing to the terms and conditions in Qwest’s SGAT. Footnote 255 reveals that a Qwest ex parte to the FCC citing the SGAT is the source of the FCC’s conclusion.

<sup>12</sup> FCC 271 Approval Order, ¶ 440 (emphasis added). The FCC also noted: “The Idaho Commission . . . worked with a number of other states through the MCP to address competitive checklist items, section

Qwest continues to receive the benefits of its 271 approval but now, after receiving 271 approval, seeks to backslide with respect to its SGAT and PAP commitments. As previously noted, Eschelon and ELI have depended upon the SGAT in negotiations with Qwest because the SGAT has been tested by the participation of multiple parties, including Staff, in workshops and hearings and considered by the Commission. The availability of such a vehicle for negotiation or adoption by CLECs is consistent with the legislature's charge to the Commission that "[E]ncourages the development of open competition in the telecommunications industry in accordance with provisions of Idaho law and consistent with the federal telecommunications act of 1996."<sup>13</sup>

Qwest makes an unsupported assertion that interconnection agreements have supplanted the SGAT and rendered them unnecessary.<sup>14</sup> As opposed to an after-the-fact dispute resolution under an ICA, SGAT filings require proactive conduct by Qwest to request approval before changes go into effect. In the Qwest-Eschelon interconnection agreement arbitration in Minnesota, the Minnesota commission adopted the ALJs' finding that Eschelon provided "*convincing evidence* that the CMP process does not always provide CLECs with adequate protection from Qwest making *important unilateral changes* in the terms and conditions of interconnection."<sup>15</sup> The SGAT is added protection against unilateral action without prior Commission review, because proposed SGAT changes should be filed for approval with the Commission before Qwest implements them.

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272 Track A requirements, and public interest issues, including post-entry performance assurance issues." *Id.* ¶14.

<sup>13</sup> Idaho Statutes, Title 62 § 602 (4)

<sup>14</sup> Qwest Petition, ¶ 23.

<sup>15</sup> MN Arbitrators' Report, at ¶¶ 21-22 (footnote in original; emphasis added).

**2. Qwest Makes No Showing in Its Filing That the Need to Support Telecommunications Competition in the State Has Lessened for Section 251/252 Products and Services.**

Through its *TRO*<sup>16</sup> and *TRRO*<sup>17</sup> Orders, the Federal Communication Commission (FCC) has significantly reduced the range of unbundled network elements (UNEs) that ILECs must make available to CLECs at cost-based prices. Since the 271 proceedings, the FCC, in the *TRO/TRRO*, may have allowed less regulation for certain elements that ILECs no longer must offer on an unbundled basis, the reverse is also true. The FCC denied the ILECs' request for less regulation for elements that ILECs must continue to offer on an unbundled basis through filed and approved ICAs. The FCC's rejection of the ILECs' request means that UNE terms belong in ICAs and the SGAT and both remain subject to regulation and Commission oversight.

While these FCC rulings do not require Qwest to withdraw any UNE offering, they do in some cases allow Qwest to do so. The SGAT procedures have long allowed Qwest to modify the SGAT.<sup>18</sup> To the extent Qwest claims the SGAT is out of date,<sup>19</sup> it is out of date because Qwest unilaterally chose not to update the SGAT.

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<sup>16</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338; 96-98; 98-147, 18 FCC Rcd 16978 (rel. Aug. 21, 2003) ("*TRO*"), *vacated in part and remanded, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 543 U.S. 925, 125 S.Ct. 313, 160 L.Ed. 2d 223 (2004).

<sup>17</sup> Order on Remand, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, FCC 04-290 (rel. February 4, 2005) ("*TRRO*").

<sup>18</sup> A modification of the tariff/SGAT would be the appropriate vehicle (as opposed to a complete withdrawal of the tariff/SGAT) for *TRO/TRRO* changes to the tariff/SGAT because not all of the products in the tariff and SGAT are affected by those FCC orders. For example, the Commission considered such a request for changes to the SGAT in docket QWE-T-03-24 (<http://www.puc.state.id.us/internet/cases/summary/QWET0324.html>).

<sup>19</sup> Qwest Petition, p. 1.

### 3. Qwest's Templates Are No Substitute for the SGAT Process of Commission Review and Approval.

As discussed, Qwest touts its negotiations proposals (the “template” offer posted on its website) as a logical successor to the SGAT. Qwest argues that, unlike the SGAT, Qwest’s going-in “template” proposal has “continued to evolve,” “reflects the current state of the law” and is “more consistent in its language across the fourteen states in which Qwest operates.”<sup>20</sup> In recent arbitrations with Eschelon, however, state commissions and ALJs often rejected Qwest’s template proposed language in favor of Eschelon’s proposed language, finding that Eschelon’s language – *not* Qwest’s proposed language – reflected the current state of the law and should be the language used in the ICA.<sup>21</sup> Qwest also fails to explain why the SGAT was not or could not be updated to reflect, not merely Qwest’s view, but agreement or findings regarding the current state of the law.

In any event, the Commission’s ability and jurisdiction to review Qwest’s SGAT are rights that the Commission may exercise in the public interest. Qwest’s template negotiation positions are not a reasonable substitute for the Commission’s SGAT process.<sup>22</sup> Qwest’s own template proposals are unilateral and are not accountable to anyone but Qwest for their fairness or competitive neutrality.

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<sup>20</sup> Qwest Petition, ¶ 24.

<sup>21</sup> See, e.g., where Eschelon’s language was adopted in Order Resolving Arbitration Issues, Minnesota Docket No. P-5340, 421/IC-06-768, March 30, 2007; Opinion and Order (Decision No. 70356), Arizona Docket Nos. T-03406A-06-0572 & T-01051B-06-0572 (May 16, 2008); Arbitrator’s Report and Decision (Order 16), Washington Docket UT-063061 (Jan. 18, 2008); Arbitrator’s Decision, Oregon Docket No. ARB 775 (March 26, 2008).

<sup>22</sup> When rejecting Qwest’s contention that information posted on its website need not be contained in a publicly-filed interconnection agreement, for example, the FCC stated that “[a] ‘web-posting exception’ would render [Section 252(a)(1)] meaningless, since CLECs could not rely on a website to contain all agreements *on a permanent basis.*” *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, FCC File No. EB-03-IH-0263, Notice of Apparent Liability for Forfeiture (rel. March 12, 2004) (“*Qwest Forfeiture Order*”) at ¶32 (emphasis added). While an interconnection agreement can be amended and therefore is not “permanent” in the sense that it is frozen in time, the FCC recognized that permanency, or certainty, is needed for the term of an interconnection agreement when not amended.



Anyone who has negotiated a complex contract, regulation, or piece of legislation, knows that no one party should be the arbiter of the proper “reflection” of the law, prior decisions, or rates, terms and conditions. Language attempting to capture such essential elements should be the product of a proceeding open to all interested parties and the ultimate decision maker, not the unilateral interpretation of the proponent. The SGAT, not Qwest-drafted template proposals posted to Qwest’s website, fit these criteria.

McLeodUSA (now PAETEC) recently asked the Minnesota commission to act as mediator in a dispute with Qwest regarding the appropriate starting point for interconnection agreement negotiations. In Qwest’s comments in that proceeding, Qwest made representations similar to those made here.<sup>23</sup> Specifically, Qwest said its template negotiations proposal “arises from . . . Commission decisions”; “reflects changes in . . . State commission decisions”; and “*reflects commission arbitrations* between Qwest and AT&T, Covad, *Eschelon* and others.”<sup>24</sup> A comparison of Qwest’s template negotiations proposal with the Qwest-Eschelon commission arbitration decision,<sup>25</sup> however, tells a very different story. Attached as Exhibit 1 is a matrix that compares the provisions of the Qwest negotiations template with the Minnesota Commission arbitration decision. It clearly shows that, despite Qwest’s claim to the contrary,<sup>26</sup> the Qwest

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<sup>23</sup> *Application for Variance* at pp. 2-3.

<sup>24</sup> Qwest Corporation’s Response to the Petition of McLeodUSA for Commission Mediation (“Qwest’s Response”), MN Docket No. P-5323, 421/M-07-609 (May 30, 2007), pp. 2 & 5 (emphasis added).

<sup>25</sup> See Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigations And Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc., for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252 (b)*, MPUC Docket No. P-5340, 421/IC-06-768 (March 30, 2007); Arbitrators’ Report, *In the Matter of the Petition of Eschelon Telecom, Inc., for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252 (b) of the Federal Telecommunications Act of 1996*. Docket No. OAH 3-2500-17369-2, MPUC Docket No. P-5340,421/IC-06-768 (Jan. 16, 2007).

<sup>26</sup> See Qwest Petition, ¶ 24 and Qwest Corporation’s Response to the Petition of McLeodUSA for Commission Mediation (“Qwest’s Response”), MN Docket No. P-5323, 421/M-07-609 (May 30, 2007), p. 5.

template negotiations proposal does *not* reflect the Commission Qwest-Eschelon arbitration decision. Although the Qwest template negotiations proposal contains state-specific language when Qwest desires to carve out a term as applicable to only one or more state(s), the Qwest template continues to represent Qwest's unilateral position in this case.

Elevating the Qwest template negotiations proposal to the role of successor or replacement for the SGAT, as suggested by Qwest, would allow Qwest to argue that its own negotiations position has been authorized or sanctioned by the Commission, before Commission review or arbitration of the contents of the template proposal. Any suggestion that the Commission has accepted the Qwest template proposal as a successor or replacement for the SGAT would give Qwest even more leverage in negotiations than it has today. The SGAT and interconnection agreements continue to address Section 251/252 products, such as UNEs, that the FCC has found to be impaired. Qwest remains the dominant carrier with respect to these products, and Qwest's unilateral dominant carrier negotiations position should not be sanctioned as a successor or replacement for the SGAT.

**4. Qwest's Unilateral and Peremptory Elimination of SGAT Opt-In Rights Contradicts Its Argument That the SGAT is No Longer Necessary to Maintain a Healthy Competitive Environment.**

Qwest's unilateral withdrawal of its SGAT from availability to CLECs is inconsistent with the general thesis of its Petition – that the competitive climate is faring so well through the use of interconnection agreements that SGATs are simply unnecessary.

On November 15, 2006, Qwest announced in a Level 1 notice<sup>27</sup> that, effective November 16, 2006, its SGAT would be unavailable for opt-in and that it would be replaced with Qwest's Negotiation Template Proposal. The announcement came via a Level 1 Notice in the multi-carrier Change Management Process (CMP).<sup>28</sup> According to the governing Qwest Wholesale Change Management Process Document, a Level 1 Notice is effective immediately, with no CLEC comment cycle.<sup>29</sup>

Qwest furthermore admits that Qwest had not been updating its SGAT to incorporate changes in law since 2004, and that the SGAT was as a result an outdated document.<sup>30</sup> In the meantime, Qwest had been representing to CLECs that it would update the SGATs to reflect changes, such as those made by the TRO/TRRO.<sup>31</sup> Qwest explained that it chose to stop updating the SGAT (despite its representations to CLECs to the contrary) because its template proposals were now Qwest's preferred tool with which to negotiate agreements. Qwest did not

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<sup>27</sup> Excerpts from the Qwest Wholesale Change Management Process Document regarding Level 1 changes are attached as Exhibit 2.

<sup>28</sup> Qwest's Level 1 Notice regarding SGAT unavailability is attached as Exhibit 3. Exhibit 4 contains Eschelon's objection to Qwest's Level 1 notice in which Eschelon asked Qwest to withdraw the notice and reinstate the SGATs (which Qwest did not do). Exhibit 5 includes screen shots from Qwest's web site showing the changed web changes, where now there is no link on the main page to the SGATs (making them more difficult to find) and, when the user clicks on "Agreements & Amendments" on the main page, the indicated page lists the SGATs under "Reference Only."

<sup>29</sup> See Qwest CMP Document, §5.4.2.1 (see Exhibit 2). Eschelon objected anyway (see Exhibit 4) but Qwest implemented the notice over objection.

<sup>30</sup> See Qwest Petition, p. 1 and Qwest (Ms. Stewart) Answer Testimony, CO Qwest-Eschelon ICA Arbitration, Docket No. 06B-497T, p. 31 ("the SGATs have not been updated to incorporate changes in law since 2002 and are therefore outdated documents."). Footnote 9 to Ms. Stewart's testimony on page 31 states: "The only exception is that Qwest has periodically updated Exhibit A and Exhibit B as changes have occurred in rates and performance indicators." See also Minnesota PUC Docket No. P-5340, 421/IC-06-768; OAH Docket No. 3-2500-17369-2 (not updated since 2003 in Minnesota).

<sup>31</sup> Throughout 2005 and 2006 (*i.e.*, after Qwest now says it stopped updating the SGATs), Qwest told Eschelon (through Qwest's service management team, in CMP, and in ICA negotiations) that Qwest would be updating its SGATs. Qwest indicated review of SGAT changes would occur through CMP and before state commissions. For example, on June 30, 2005, in CMP, Qwest said: ". . . *as SGAT language changes*, we will have a comment period and that the States will engage you when decisions are made." (See [http://www.qwest.com/wholesale/cmp/cr/CR\\_PC102704-1ES.htm](http://www.qwest.com/wholesale/cmp/cr/CR_PC102704-1ES.htm)).

explain why it did not first seek Commission approval to withdraw the SGATs, even where required by commission order to do so.<sup>32</sup>

Qwest's unilateral decisions to phase-out a viable SGAT upon which it partially based its case for obtaining 271 long distance authority – by deliberately rendering it obsolete, and then totally withdrawing the opportunity to opt-in to it from CLECs – demonstrate that competitive parity is far from achieved. Qwest's own actions show that it is still very much the dominant player in the Idaho telecommunications market place, with the economic ability, if left unchecked, to shape the standard for parties' contractual relationships as it sees fit. The history of Qwest's unilateral conduct regarding the SGAT demonstrates the continued need for the SGAT.

**5. Neither the Act Nor State Law Indicates a Lessening of the Need for SGATs to Sustain a Healthy Competitive Environment.**

Qwest argues that the Act does not require an SGAT and therefore Qwest is not required to maintain its existing SGAT.<sup>33</sup> Examination of the relevant sections of the Act and state law show that interconnection agreements, while without doubt a core piece of the competitive environment, were meant to stand beside SGAT offerings and not to supplant them.

Section 252(f) of the Act places the SGAT under the section heading, "Procedures for negotiation, arbitration, and approval of agreements." The SGAT is not superseded by ICAs; indeed, the Act makes clear that they will coexist:

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<sup>32</sup> See, e.g., 271 Opinion and Order, Arizona Decision No. 66201 in ACC Docket No. T-00000A-97-0238, p. 28 ("It is further ordered that Qwest Corporation's SGAT, as modified from time to time after Commission approval, *shall remain available*, as the standard interconnection agreement, *until the Commission authorizes otherwise.*") (emphasis added).

<sup>33</sup> Qwest Exceptions, ¶¶ 20-23.

47 U.S.C. § 252(f)(5) Duty to negotiate not affected.

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

This provision has not been repealed or modified. In the typical case in which an interconnection agreement is employed to govern the business relationship between a CLEC and its underlying wholesale carrier, the interconnection agreement will control the parties' relationship but will not affect the validity of filed SGATs.

**B. QWEST'S PERFORMANCE ASSURANCE PLAN (PAP) AND PERFORMANCE INDICATOR DEFINITIONS (PIDs) ARE NECESSARY TO SUSTAIN AND DEVELOP COMPETITION.**

Qwest's request to eliminate the PAP and its associated PIDs from carrier's ICAs should be denied. The PAP, by providing clear wholesale service quality standards is essential to the protection of competition in Idaho. In fact, many of the standards in the PAP are parity with Qwest's retail performance. As Qwest obtains greater deregulation in its retail markets<sup>34</sup> the essential nature of Qwest's PAP grows in order to ensure Qwest is not able to leverage its dichotomous role as the predominate provider of both wholesale and retail services. According to the FCC's Local Competition Report, competitor market share in Idaho ranks 13<sup>th</sup> out of the 14 Qwest states.<sup>35</sup> While competition has been slowly growing in Idaho,<sup>36</sup> elimination of wholesale service quality standards (PIDs) and the automatic enforcement mechanism associated with these standards (PAP) would certainly weaken competition in Idaho.

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<sup>34</sup> See for example Docket Nos. QWE-T-05-12 and QWE-T-05-13.

<sup>35</sup> Local Telephone Competition: Status as of June 30, 2007, Industry Analysis and Technology Division Wireline Competition Bureau March 2008. Table 7. (<http://www.fcc.gov/wcb/iatd/comp.html>).

<sup>36</sup> Local Telephone Competition: Status as of June 30, 2007, Table 8.

Qwest provides no specific evidence that the PAP, including its automatic enforcement mechanisms, is no longer necessary. Instead, Qwest seeks to shift the burden to CLECs to require them to individually bring Qwest service quality problems to this Commission. in each and every instance. The cost of filing a Commission complaint for each instance of a service quality problem would deter a CLEC's ability to obtain a remedy for those Qwest service quality problems. In essence, Qwest's proposal provides no remedy for poor wholesale service quality at all. The PAP was designed to address these types of issues, and it continues to serve its intended wholesale service quality role today.

**1. The Idaho PIDs and PAP were put into Place to Provide Assurance that Local Markets would Remain Open After Qwest Received 271 Authorization.**

The Idaho PIDs and PAP were put into place in conjunction with the FCC's 271 Approval Order to "provide assurance that the local market will remain open after Qwest receives section 271 authorization..."<sup>37</sup> The FCC found that the plans were "likely to provide incentives that are sufficient to foster post-entry checklist compliance,"<sup>38</sup> and based this conclusion on "total liability at risk in the plan; performance measurement standards and definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements."<sup>39</sup>

**2. Substantive Changes to Qwest's Idaho PAP and PIDs have Only Recently Taken Effect and their Impact is Yet Unknown.**

Most recently, this Commission approved a number of extensive changes to Qwest's PAP that were a result of a multistate, multicarrier negotiation. These changes were agreed upon by

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<sup>37</sup> FCC 271 Approval Order, ¶ 440.

<sup>38</sup> FCC 271 Approval Order, ¶ 440.

<sup>39</sup> FCC 271 Approval Order, ¶ 442.

Qwest and a number of CLECs, including Eschelon (now a subsidiary of Integra) and were the result of a year's worth of negotiations.<sup>40</sup> This is consistent with the FCC's observation "that competitive LECs have been involved in the development of these plans, and we anticipate that they will provide input in those forums which will review the plans in the future."<sup>41</sup> The Commission approved these changes fairly recently on November 8, 2007,<sup>42</sup> thus the changes have barely had an opportunity to take effect. It is disappointing, after the hard work between Qwest and CLECs to negotiate these changes, that Qwest has now abandoned the collaboration approach and seeks wholesale elimination of the PAP and its associated PIDs.

### **3. Qwest Fails to Provide Evidence that the Idaho PIDs and PAP Should be Eliminated.**

Qwest makes two erroneous arguments in support of the elimination of the Idaho PIDs and PAP. First, Qwest points to high level performance data in an attempt to have the Commission ignore the fact that Qwest routinely misses performance standards as well as installation and repair intervals. Second, Qwest argues that section 16.3 of the PAP document itself triggers elimination of the PAP and PIDs by this Commission.

Qwest claims that its "average Idaho performance since 2003 has been over 99%,"<sup>43</sup> but this statement is misleading. If Qwest performed at these levels for all performance measures, or even the most crucial of its performance measures, Qwest would not make any performance payments and Qwest's performance in Idaho would be the standard for the nation. This is not the case. For example, Qwest failed to meet its installation commitment benchmark in 6 of the

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<sup>40</sup> See Qwest's Notice of 2007 Stipulation, In the Matter of Qwest Corporation's Revisions to the Idaho Qwest Performance Assurance Plan (QPAP), Docket No. QWE-T-03-23, June 26, 2007.

<sup>41</sup> FCC 271 Approval Order, ¶ 445.

<sup>42</sup> Order No. 30641, In the Matter of Qwest Corporation's Revisions to the Idaho Qwest Performance Assurance Plan (QPAP), Docket No. QWE-T-03-23, November 8, 2007.

<sup>43</sup> Qwest Exceptions, ¶ 36.

last 12 months for DS1 EELs in Interval Zone 1;<sup>44</sup> and while Qwest met, on average, its 2-wire loop installation benchmark of six days in all 12 months, Qwest failed to meet, on average, the SGAT installation interval of 5 days in 8 of the 12 months.<sup>45</sup> The SGAT calls for Qwest to repair a DS1 EEL within 4 hours -- Qwest failed to meet this requirement in 65 out of 257 (25% of the time) in the past year.<sup>46</sup>

Qwest is also incorrect when it states that section 16.3 calls for the elimination of the Idaho PAP when Qwest's Section 272 affiliate requirements are eliminated.<sup>47</sup> Section 16.3 of the Idaho PAP, which Qwest only partially quotes, reads as follows:

16.3 Qwest will make the PAP available for CLEC interconnection agreements until such time as Qwest eliminates its Section 272 affiliate. At that time, the Commission and Qwest shall review the appropriateness of the PAP and whether its continuation is necessary. However, in the event Qwest exits the interLATA market, that State PAP shall be rescinded immediately.

This section of the PAP requires a Commission review of "the appropriateness of the PAP and whether its continuation is necessary," but is not an unqualified call for elimination. The only reference to elimination in this paragraph is in the instance that Qwest exits the interLATA market.

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<sup>44</sup> See Qwest's performance results from June 2007 through May 2008 for OP-3D.

<sup>45</sup> See Qwest's performance results from June 2007 through May 2008 for OP-4D.

<sup>46</sup> See Qwest's performance results from June 2007 through May 2008 for MR-5A and MR-5B. It should be noted though the contract calls for a four hour repair interval for DS1 EELs the PAP automatic enforcement mechanism, for this measure, only applies when Qwest's performance to CLECs is inferior to Qwest's performance for itself. The point of these examples is simply to show that Qwest's claims of greater than 99 percent performance does not necessarily translate into good performance for individual performance measures.

<sup>47</sup> Qwest Petition, ¶ 33.



**4. Qwest's Alternative Proposal to the Idaho PAP is Unworkable and is Tantamount to the Elimination of Wholesale Service Quality.**

Qwest claims that it is “committed to providing good service” and proposes language in its negotiation template “that provides additional written assurance that Qwest will continue to provide good service...”<sup>48</sup> Qwest’s proposed language is without substance, especially without the PIDs and the PAP. For example, Qwest’s language for Resale Services in section 6.2.3 states that Qwest will provide services “at least equal in quality and in substantially the same time and manner that Qwest provides these services to itself, its subsidiaries, its Affiliates, other Resellers, and Qwest’s retail End User Customers.”<sup>49</sup> Qwest requires the CLEC to raise any disputes through dispute resolution and to the Idaho Commission.<sup>50</sup> Qwest proposes similar language for interconnection and unbundled network elements. First, without the availability of PID data it would be extraordinarily difficult for a CLEC to demonstrate Qwest’s performance fails to meet Qwest’s contractual “assurances.” Second, assuming the CLEC were able to obtain data to show Qwest’s performance was inadequate, the time and expense involved in bringing a complaint to the Commission would provide Qwest with very little incentive to resolve the dispute in a “business-to-business”<sup>51</sup> setting.

**III. CONCLUSION**

Qwest has shown no reason that its petition to withdraw the SGAT and the Idaho PAP and PIDs should be granted. Qwest provides no facts to justify a shift from an open,

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<sup>48</sup> Qwest Petition, ¶ 37.

<sup>49</sup> Qwest Petition, Exhibit 1, section 6.2.3.

<sup>50</sup> Qwest Petition, Exhibit 1, section 6.2.3.3.

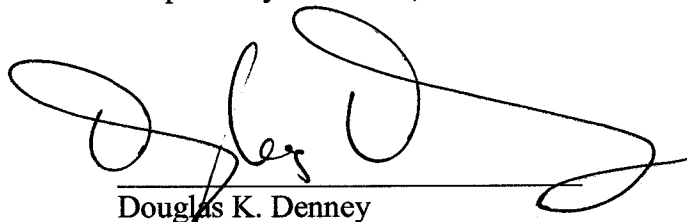
<sup>51</sup> Qwest Petition, ¶ 37.

participatory, Commission-centered process to a system of unilateral web postings of Qwest-only negotiation positions. Certainly the existence of interconnection agreements is not a new event. Qwest justifies its unilateral withdrawal of its SGAT by stating that its update is overly burdensome, yet declares that its unreviewed negotiation template proposals can be depended upon to reflect developments in law and the decisions of other state commissions. Likewise, Qwest has not demonstrated that the Idaho PAP and PIDs are no longer necessary and should be eliminated. Qwest's proposal to replace the automatic enforcement mechanism of the Idaho PAP and PIDs with Qwest assurances and a process that requires CLECs to raise time consuming and expensive disputes when Qwest's performance fails would harm competition in this state and is not in the public interest.

For all of the above reasons, the Commission should reject Qwest's Petition.

Dated this 8<sup>th</sup> day of July, 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Douglas K. Denney', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Douglas K. Denney  
Director, Costs & Policy  
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Company Representative, Integra

PAETEC authorized submission of these  
Comments on its behalf

Certificate of Service

Dated this 8<sup>th</sup> day of July, 2008.

I do hereby certify that a true and correct copy of the foregoing **Integra and PAETEC's Comments** was served on the following:

VIA OVERNIGHT MAIL:

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**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE 'REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS' <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> -- DOES IT REFLECT COMMISSION ARBITRATION?
<b>RATES – Exhibit A</b>	
Issue A-9 (Conversion charges)	<p>The ALJs recommended on 1/16/06 use of the previously approved rate of \$1.35 for conversions from private line to UNE loop (as proposed by Eschelon) for Section 9.2.8 of Exhibit A and the rate of \$113.86 for private line to UDIT conversions for Section 9.6.12 of Exhibit A (instead of the rate of \$122.30 proposed by Qwest). No exceptions were filed on this issue.</p> <p><b>NO</b>, not with respect to conversions from private line to UNE loop. Minnesota Exhibit A, Section 9.2.8, to the Qwest template shows the rate rejected by the ALJs and this PUC of \$39.02, instead of the ordered rate of \$1.35.</p>

<sup>1</sup> Qwest Corporation's Response to the Petition of McLeodUSA for Commission Mediation ("Qwest's Response"), Minnesota Docket No. P-5323, 421/M-07-609 (May 30, 2007), p. 5. Qwest also claims that its negotiations template "arises from . . . Commission decisions" (Qwest's Response, p. 2) and "reflects changes in . . . State commission decisions" (*id.* p. 5).

<sup>2</sup> The Issue refers to an issue in the recent Minnesota Qwest-Eschelon arbitration (Docket Nos. P-421/CI-07-370), unless otherwise indicated.

<sup>3</sup> The Qwest negotiations template from the Qwest web site for use in this matrix was dated April 30, 2007. In addition, since then, Qwest periodically has distributed notices updating that template. This matrix refers to the April 30, 2007 version, unless otherwise indicated.

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, *IF QWEST REPRESENTS* THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.

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EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE 'REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS' <sup>1</sup>	
ISSUE <sup>2</sup>	COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED
Issue 4-5 (Design Change Charges)	<p>This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced for MN.</p> <p>Design Change charges are miscellaneous charges. In the Minnesota UNE cost docket the Minnesota ALJs ruled (and the Commission upheld) that miscellaneous charges should be set to zero. See August 2, 2002 ALJs' Report in MN PUC Docket CI-01-1375.<sup>4</sup></p>
Issue 9-53 UCCRE Charge	<p>The ALJs recommended the DOC's position on 1/16/06. Qwest did not file exceptions.</p> <p>The adopted DOC language refers to the terms of the SGAT: 9.9.1 Qwest shall provide Unbundled Customer Controlled Rearrangement Element (UCCRE) to CLEC in a non-discriminatory manner according to the terms and conditions of Section 9.9 and subparts of the Minnesota SGAT, unless</p>
	<p><b>NEGOTIATIONS TEMPLATE<sup>3</sup> -- DOES IT REFLECT COMMISSION ARBITRATION?</b></p> <p><b>NO.</b> Section 9.1.12(g) of the template ("Design change"), for 13 states, including MN, states: "Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change."</p> <p><b>NO.</b> The MN SGAT contains ICB rates for UCCRE in Sections 9.9.1 -- 9.9.5 of SGAT Exhibit A. Qwest's template shows "Intentionally Left Blank" for Section 9.9 and subparts of Exhibit A.</p> <p>Without first going to the Commission, and despite repeated</p>

<sup>4</sup> *Id.* ("Qwest has identified a number of miscellaneous charges (in half-hour increments, as opposed to quarter-hour increments approved in the Generic Cost Case) relating to additional engineering, labor, testing, and maintenance. Some, but not all, are listed for pricing in the Second UNE Pricing Prehearing Order. Many of these charges relate to troubles on the line. Qwest's list is modeled on its FCC tariff charges, as opposed to any cost study based on TELRIC methodology. **Qwest has failed to explain how these charges would be applied, such as how it would distinguish between situations when such costs are already included in element prices, or when "additional" engineering, labor, testing, or maintenance justifiably would be required.** Qwest has clarified only that none of these charges would apply if trouble were found on Qwest's side of the network. **Qwest has failed to adequately explain the application of these charges, and they should be deleted from its SGAT.**") (emphasis added).

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, ***IF QWEST REPRESENTS THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.***

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EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	statements by Qwest that Qwest would be updating the SGAT, <sup>5</sup> on Nov. 15, 2006, Qwest distributed a Level 1 CMP notice on 1 day's notice stating: "The SGATs are no longer available to opt into and have been replaced with the Negotiations Template Agreement (NTA)." Level 1 changes are defined in Qwest's CMP Document "as changes that do not alter CLEC operating procedures or changes that are time critical corrections to a Qwest product/process."
Qwest obtains a phase-out order (pursuant to Section 1.7.3) from the Commission within four months from the effective date of this Agreement.	
Issue 12-67(g) (Expedite Charge)	NO. Qwest's template Exhibit A for MN does not reflect the \$100 per order interim rate. To the contrary, the body of the template (Section 9.1.12(j), under "expedites") states
The ALJs recommended Eschelon's pricing proposal (including an interim rate of \$100 per order) on 1/16/06, the MN PUC adopted that recommendation on 3/30/07, and Qwest did not move to reconsider on this issue.	

<sup>5</sup> Starkey (Eschelon) MN Surrebuttal, pp. 32-33. See quote from Qwest CMP minutes in footnote below.

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EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	<p>for 13 states, including MN: "Prices for this miscellaneous service are market-based, using Qwest's Tariffed, cataloged, price listed, or other similarly documented prices, and are subject to change."</p>
<p>The ALJs found (¶222) that Qwest's tariff rate of \$200 per day seems "unreasonable" particularly since "historically in Minnesota TELRIC rates have been substantially less than Qwest's tariffed rates for similar services. The ALJs rejected Qwest's proposal to use tariff rate, which Qwest claimed was based on what the "market will bear."<sup>6</sup></p> <p>Expedite charges are miscellaneous charges. (See August 2, 2002 ALJs' Report in MN PUC Docket CI-01-1375 - quoted above).</p>	<p><b>NO.</b> The Exhibit A of the Negotiations Template contains numerous rates that have not been approved by the Commission. Among these are rates for which Qwest previously did not charge. For example, the SGAT Exhibit A for 7.9.4 reads "No Charge at This Time" while the Negotiations Template Exhibit A contains a rate in this section. Qwest has also</p>
<p>UNE or process previously offered without charge</p>	<p>The Exhibit A of the ICA contains approved rates. The Commission ordered in the UNE Cost Docket (P-421/CI-01-1375) that "Qwest shall obtain Commission approval before charging for a UNE or process that it has previously offered without charge." (Order at Page A-6) The Commission also ordered that, "The price for all other proposed NRCs not specifically set shall be zero, unless Qwest proposes a price in its compliance filing that is based on its cost study adjusted to exclude unwarranted manual activities and field verifications, and to use appropriate inputs approved in this docket or in the <i>Generic Cost Case</i> (flow-through, overhead, etc.) ALJ Report</p>

<sup>6</sup> Minnesota Qwest-Eschelon ICA arbitration, Qwest (Million) Rebuttal, p. 21, line 22.

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<p align="center"><b>EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&amp;T, COVAD, ESCHELON AND OTHERS"</b><sup>1</sup></p>	
<p><b>ISSUE<sup>2</sup></b></p>	<p><b>NEGOTIATIONS TEMPLATE – DOES IT REFLECT COMMISSION ARBITRATION?</b></p> <p>included NRCs in its Negotiations Template that previously did not exist for Unbundled Dark Fiber (9.7.2 – Field Verification and Quote Preparation &amp; 9.7.3 Engineering Verification).</p>
<p><b>TEXT OF ICA</b></p> <p>Issue 1-1 and subparts (Interval Changes and Placement); Section 1.7.2 and Exhibits N and O</p>	<p>p. 48.” (Order at A-4, Item 8.I.)</p> <p>The ALJs recommended Eschelon’s position on 1/16/06, the MN PUC adopted that recommendation on 3/30/07, and Qwest did not move to reconsider on this issue.</p> <p>The ALJs found: “Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important <i>unilateral</i> changes in the terms and conditions of interconnection.”<sup>7</sup></p> <p>Eschelon’s proposal for Sections 1.7.2 and Exhibits N and O were substantially the same as Section 1.7.1 and Exhibits L &amp; M of the SGAT, except that Eschelon’s proposal related to intervals rather than new products. Both 1.7.1 and 1.7.2 and</p>
	<p><b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language (or the principle) adopted by the MN PUC for MN. The template refers changes in intervals to CMP.</p> <p>In fact, after the arbitration, Qwest <del>deleted</del> Section 1.7 and Exhibits L &amp; M from its template for all states, including MN. Section 1.7 and Exhibits L &amp; M remain part of the MN SGAT and the Qwest-Eschelon</p>

<sup>7</sup> MN Arbitrators’ Report ¶22 (emphasis added).

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ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	
all four exhibits are part of the MN Eschelon-Qwest ICA after the arbitration.	MN agreement, but Qwest deleted them from its template using a non-CMP notice that was effective immediately without comment. <sup>8</sup>
Issue 2-3 (Effective Date of Legally Binding Changes – Change in Law)	NO. The Qwest template contains state-specific language for some issues, but it does not contain the language (or the principle) adopted by the MN PUC for MN. Qwest's template shows Qwest's proposed language for MN, without the DOC modifications.
Issue 2-4 (Effective Date of a Legally Binding Change – Change in Law)	NO. The Qwest template The Qwest template contains state-specific language for some issues, but it does not contain the language (or the principle) adopted by the MN PUC for MN. Qwest's template shows Qwest's proposed language

<sup>8</sup> In the following non-CMP April 27, 2007 notice (effective April 30, 2007), Qwest announced deletion of Section 1.7 in the Qwest template: <http://www.qwest.com/wholesale/cnla/uploads/PROS%2E04%2E27%2E07%2EF%2E04652%2ENegTemplate%5FWireless%2Edoc>. In the following non-CMP May 23, 2007 notice (effective May 24, 2007), Qwest announced it was removing exhibits L&M from the Qwest template: <http://www.qwest.com/wholesale/cnla/uploads/PROS%2E05%2E23%2E07%2EF%2E04700%2ENegTempAgreement%2Edoc>

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ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION? for MN, without the DOC modifications.
<p>COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED</p>	
<p>Issue 4-5 (Design Changes); Sections 9.2.3.8, 9.2.3.9, 9.6.3.6</p>	<p>This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced for MN.</p> <p><b>NO.</b> The Qwest template does not contain the Qwest-Eschelon language or the SGAT language. For example, the SGAT and the Eschelon ICA provide that design change charges do not apply if the change is caused by Qwest. This language is not in these sections of the Qwest template. In addition, although the SGAT contains no design change language in the loop section, Qwest's template loop section states that miscellaneous charges apply. In template Section 9.1.12, Qwest defines miscellaneous charges (including design changes) broadly (and differently from the Eschelon ICA and the SGAT).</p>
<p>Issue 5-6 (Discontinuation of order processing)</p>	<p>The ALLs recommended language not proposed by either company on 1/16/06, the DOC recommended language on 1/26/07, the MN PUC adopted that DOC recommendation on</p> <p><b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the</p>

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ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	language (or the principle) adopted by the MN PUC for MN. Qwest's template shows Qwest's proposed language for MN, without the DOC modifications.
3/30/07. Qwest moved to reconsider on this issue, and the Commission denied that motion in a written order dated 6/4/07.	The Qwest template did not change after this ruling. Qwest had its own language in the template before and after this ruling.
Issue 5-8 (Magnitude in Dispute)	The ALJs recommended Qwest's language on 1/16/06. Eschelon did not file exceptions.
Issues 5-9 and 5-12 (Definition of Repeatedly Delinquent)	<b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language (or the principle) adopted by the MN PUC for MN.
Issue 5-11 (Disputing the Deposit Requirement)	The Qwest template did not change after this ruling. Qwest had its own language in the template before and after this ruling.
Issue 5-13 (Increase in Deposit Based Upon Review of Credit Standing)	<b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language (or the principle) adopted by the MN PUC for MN.

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<b>ISSUE<sup>2</sup></b>	<b>NEGOTIATIONS TEMPLATE<sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?</b>
Issue 5-16 (Copy of Non-Disclosure Agreement)	The ALJs recommended Qwest's language on 1/16/06. Eschelon did not file exceptions.
Issues 7-18 and 7-19 (Transit Record Charge, Transit Record Bill Validation); Sections 7.6.3.1 and 7.6.4	The ALJs recommended Eschelon's position on 1/16/06, Qwest filed exceptions to both issues. <sup>9</sup> The Commission did not indicate in its March 30, 2007 order that it was acting upon either of Qwest's exceptions. Qwest did not move to reconsider on these issues.
Issue 8-20 (Collocation Available Inventory; Posting of Prices); Sections 8.1.1.10.1.1.1 & 8.2.10.4.3	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions. After the ALJs' ruling, Qwest agreed to close these sections for all six states.
Issue 8-21 (DC Power/Usage Pricing); Section 8.2.1.29.2.1 and additional sections	The ALJs recommended that these issues be reviewed in the UNE cost case, while using Qwest's language in the meantime, on 1/16/06. Eschelon did not file an exception.
Issue 9-31 (Nondiscriminatory	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions.

<sup>9</sup> In Qwest's Jan. 26, 2007 exceptions (p. 8). Qwest stated: "This Commission should reject the Arbitrators' ruling on Issues 7-18 and 7-19." Nonetheless, with respect to the upcoming ICA compliance filing, Qwest is taking the position that the Arbitrators ruled in Qwest's favor regarding 7-19.

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ISSUE <sup>2</sup>	COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED
Access to UNEs); Section 9.1.2	
Issue 9-32 (Delayed Orders When Facilities Are Not Available); Sections Sections 9.1.2.1.3.2.1, 9.1.2.1.3.2.2; 9.2.2.3.2 & 9.2.2.16	This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced for, the five states in which it was open, including MN. Eschelon provided four alternative language proposals; Qwest selected the second option (cancelled by Qwest after 90 days instead of 30 days). Qwest's witness testified: "Qwest has already notified CLECs of the acceptance of this proposal via the Change Management Process (CMP), and this change in policy (as advocated by Eschelon) has been in effect for all CLECs in Minnesota as of July 14, 2006." <sup>10</sup>
Issue 9-33 (Network Maintenance and Modernization); Section 9.1.9	The ALJs recommended the DOC's position on 1/16/06. Qwest did not file exceptions.
	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION? issues, but it does not contain the language adopted by the MN PUC for MN on this issue.  NO, the Qwest template continues to provide for cancellation after 30 days and not 90 days for all states. Qwest also has no exception for Washington in its template, though in Washington the order remains pending until filled or CLEC cancels. Although Qwest claims it changed from 30 to 90 days in CMP, as between CMP and the ICA, the ICA controls. CLECs signing the template will be governed by the 30 day period, and not the 90 day period in the Eschelon ICA and the PCAT.  NO. The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC

<sup>10</sup> Qwest-Eschelon ICA MN arbitration, Qwest (Stewart) Rebuttal (Sept. 22, 2006), p. 15, line 28 - p. 16 line 2.

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, *IF QWEST REPRESENTS* THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.

**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED
	<b>NEGOTIATIONS TEMPLATE<sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?</b> for MN on this issue.
Issue 9-33(a) (Relationship Between Section 9.1.9 and Copper Retirement); Section 9.1.9	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions.
Issue 9-34 (Location at Which Changes Occur); Section 9.1.9	The ALJs recommended the DOC's position on 1/16/06. Qwest did not file exceptions.
Issues 9-43 & 9-44 (Conversion of a UNE to a non-UNE)	The ALJs recommended opening of a generic docket, with use of Qwest language in the meantime. The Commission adopted the ALJs' recommendation on March 30, 2007.  Eschelon provided evidence showing that Qwest has implemented several "TRRO" related changes (including this one) without going through CMP, without negotiating the changes in ICA negotiations, and without first updating its
	<b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue.  <b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue.  The Qwest template did not change after this ruling. Qwest had its own language in the template before and after this ruling. Qwest relies on its PCAT for some of these terms.

<sup>1</sup> Qwest's own CMP minutes show that on June 30, 2005 Qwest committed in CMP, "... as SGAT language changes, we will have a comment period and that the States will engage you when decisions are made. *Cindy also said that PCAT changes will be brought through CMP.* Qwest-Eschelon MN ICA arbitration, Qwest Exhibit RA-26, pp. 4-5; see also Starkey (Eschelon) MN Surrebuttal, pp. 32-33.

**THE ISSUE HERE IS NOT WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, IF QWEST REPRESENTS THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.**

**EXHIBIT I**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
	SGAT, even though Qwest initially said it would do so. <sup>11</sup>
Issue 9-46 (Bridged Taps); Section 9.2.2.9.6	This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced, for six states, including MN.  <b>NO.</b> Despite Qwest's agreement to close this language in six states, its template does not include the agreed upon language.
Issue 9-50 (Cross Connect); Section 9.3.3.8.3; 1.7.3	The ALJs recommended the DOC's position on 1/16/06. Qwest did not file exceptions.  Qwest later agreed to close this language in several other states.  <b>NO.</b> Qwest's template does not include the MN arbitrated language or the agreed upon language for other states.
Issue 9-52 (Access to 911 databases); Section 9.8.1	This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced, for six states, including MN.  <b>NO.</b> Despite Qwest's agreement to close this language in six states, its template does not include the agreed upon language.
Issue 9-53 (UCCRE); Sections 1.7.3 & 9.9	The ALJs recommended the DOC's position on 1/16/06. Qwest did not file exceptions.  <b>NO.</b> Regarding the charges for UCCRE, see above. Qwest's template does not include the UCCRE or phase out language adopted by the MN PUC, even though it was adopted in arbitration in MN and even though the UCCRE terms still appear in the SGAT for MN and the Qwest's PCAT for all

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**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	
Issue 9-54 (Different UNE Combinations); Sections 9.23.2 (1 of 2 issues), 9.23.5.1.3	<b>NO.</b> Despite Qwest's agreement to close this language in six states, its template does not include the agreed upon language.
Issue 9-55 (Loop-Transport Combinations); Section 9.23.4	With respect to the terminology, Qwest's template did not change as a result of this order. With respect to the paragraph to which the parties agreed to close the issue, Qwest's template does not contain that paragraph.
Issue 9-56 (Service Eligibility Criteria Audits); Section 9.23.4.3.1.1	The Qwest template did not change after this ruling. Qwest had its own language in the template before and after this ruling.
Issues 9-58 and 9-59 (Commingled Arrangements)	The Qwest template did not change after this ruling. Qwest had its own language in the template before and after this ruling.

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, ***IF QWEST REPRESENTS*** THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.



**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE 'REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS' <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	after this ruling. Qwest relies on its PCAT for some of these terms.
Eschelon provided evidence showing that Qwest has implemented several "TRRO" related changes (including this one) without going through CMP, without negotiating the changes in ICA negotiations, and without first updating its SGAT, even though Qwest initially said it would do so. <sup>12</sup>	
Issue 9-61 (Loop-Mux Combinations)	The ALJs recommended Eschelon's position on 1/16/06, the MN PUC adopted that recommendation on 3/30/07, and Qwest did not move to reconsider on this issue.
Issue 12-64 (Acknowledgement of Mistakes); Section 12.1.4	NO. The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue. NO. The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue. Qwest not only has not added the language adopted in MN for this issue to its

<sup>12</sup> See above footnote quoting from Qwest CMP minutes.

<sup>13</sup> "MN 616" refers to the last digits of the docket number for two Minnesota Public Utilities Commission ("PUC") orders dated 7/31/03 and 11/12/03 from the docket entitled *In The Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures* [Minnesota PUC Docket P-4211C-03-616 ("MN 616 orders")].

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, *IF QWEST REPRESENTS* THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.

**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>14</sup>		
ISSUE <sup>2</sup>	COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	NEGOTIATIONS TEMPLATE <sup>3</sup> – DOES IT REFLECT COMMISSION ARBITRATION?
MN 616 case – Commission's Nov. 12, 2003 Order Finding Compliance Filing Inadequate and Requiring Further Filings	anticompetitive consequences of service quality lapses has <i>never</i> been as narrow as Qwest's language would suggest." <sup>14</sup>	template but also Qwest continues to argue in other states that the same language "expands Qwest's obligation well beyond what was ordered in Minnesota" in the MN 616 case. <sup>15</sup>  Although ICA negotiations would be a means of making these procedures "readily accessible," Qwest does not include these acknowledgement of mistake terms in its template. The template does not address the acknowledgment of mistakes procedures ordered in paragraphs (e)-(f). The procedures ordered in these paragraphs also did not go through CMP and do not appear in the PCAT. <sup>17</sup>

<sup>14</sup> Order Resolving Arbitration Issues (March 30, 2007), p. 15 ¶D (Topic 27) (emphasis added).

<sup>15</sup> Qwest-Eschelon ICA Oregon arbitration, Qwest (Albersheim) Rebuttal, p. 31, lines 11-15 (May 25, 2007).

<sup>16</sup> *In The Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures* [Minnesota PUC Docket P-4211C-03-616, Nov. 12, 2003 ("MN 616 order")], p. 4, ¶k.

<sup>17</sup> See, e.g., Qwest-Eschelon MN ICA arbitration, Qwest (Albersheim) MN Reply Testimony, p. 40, lines 5-9.

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**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE 'REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS' <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
<p>Issue 12-65 (Communications with CLEC Customers); Section 12.1.5.4.7</p>	<p><b>NO.</b> Despite Qwest's agreement to close this language in six states, its template does not include the agreed upon language.</p>
<p>Issue 12-66 (Communication with CLEC Customers); Section 12.1.5.5</p>	<p><b>NO.</b> Despite the arbitrated decision in MN and an agreement on these sections for all six states, Qwest's template does not contain that language for any state.</p>
<p>Issue 12-67 (Expedited Orders); Section 12.2.1.2</p>	<p><b>NO.</b> See above regarding the expedite charge. Section 9.1.12 of the Qwest template (like its proposal in the Qwest-Eschelon MN arbitration) defers to CMP via its reference to the PCAT: "The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product</p>
<p>Issue 12-68 (Expedited Orders); Section 12.2.1.2</p>	<p><b>NO.</b> See above regarding the expedite charge. Section 9.1.12 of the Qwest template (like its proposal in the Qwest-Eschelon MN arbitration) defers to CMP via its reference to the PCAT: "The request for an expedite will be allowed only when the request meets the criteria outlined in the Pre-Approved Expedite Process in Qwest's Product</p>

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, *IF QWEST REPRESENTS* THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.

**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE 'REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS' <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> -- DOES IT REFLECT COMMISSION ARBITRATION?
COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	Catalog for expedites at Qwest's wholesale web site." <sup>18</sup>
The MN ALJs found (¶22): "Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection."	
Issue 12-70 (Pending Service Order Notifications – PSONs); Section 12.2.7.2.3	NO. Despite the arbitrated decision in MN and an agreement on these sections for all six states, Qwest's template does not contain that language for any state.
Issues 12-71 – 12-73 (Jeopardies); Section 12.2.7.2.4.4	NO. The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue.
Issue 12-74 (Fatal)	NO. Despite the arbitrated decision

<sup>18</sup> Despite the MN ALJs findings (adopted by the MN PUC) in ¶¶219 and 22 (quoted above), Qwest takes the position regarding the compliance filing the that Commission has adopted this same sentence, even though it relies upon PCAT terms that Qwest announced in CMP as the controlling factor as to whether emergency situations create an exception to charging an additional fee for expedited ordering.

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**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
Rejection Notices); Section 12.2.7.2.6.1	Qwest did not file exceptions.  After the ALJs' ruling, Qwest agreed to close this issue with Eschelon's language in six states.
Issue 12-75 (Tag at Demarcation Point); Section 12.3.1, 12.4.3.6	This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced, for six states, including MN.
Issue 12-76 (Loss and Completion Reports); Section 12.3.7.1.1	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions.  After the ALJs' ruling, Qwest agreed to close this issue with Eschelon's language in six states.
Issue 12-77 (Testing Charges When Circuit is on Pair Gain); Section 12.4.1.5.1	This was a disputed issue at the time of filing the arbitration petition. The parties closed this language after arbitration commenced, for six states, including MN.
Issues 12-78 and 12-80 (Charges for Repeat Troubles - Trouble Report Definition and Trouble Isolation Testing); ICA Sections	These were disputed issues at the time of filing the arbitration petition. The parties closed this language after arbitration commenced for six states, including MN.  Eschelon's proposed language for was similar to Qwest-Covad ICA language.

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**EXHIBIT 1**

EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>	
ISSUE <sup>2</sup>	COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED
12.4.1.7, 12.4.1.8	NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION? circumstances, but Qwest is not offering this language to other CLECs in its template.
Issue 12-81 (Test Parameters); Section 12.4.3.5	NO. Despite Qwest's agreement to close this language in six states, its template does not include the agreed upon language.
Issue 12-83 (Dispatch Related charges); Section 12.4.3.6.1	NO. Despite Qwest's agreement to close this language in six states, its template does not include the agreed upon language. In Qwest's template, Qwest includes language allowing Qwest to bill CLEC when Qwest determines it believes the dispatch is not necessary (which was removed in the Qwest-Eschelon ICA) but omits language in this section indicating that Qwest will only charge for a dispatch if it dispatches and the trouble is not found to be in the Qwest network (which is included in the Qwest-Eschelon ICA).

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EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>		
<b>ISSUE<sup>2</sup></b>	<b>COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED</b>	<b>NEGOTIATIONS TEMPLATE<sup>3</sup> – DOES IT REFLECT COMMISSION ARBITRATION?</b>
Issue 12-86 (Trouble Report Closure); Sections 12.4.4.1; 12.4.4.2; 12.4.4.3	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions.  After the ALJs' ruling, Qwest agreed to close this issue with Eschelon's language in six states.	<b>NO.</b> Despite the arbitrated decision in MN and an agreement on these sections for all six states, Qwest's template does not contain that language for any state.
Issue 12-87 (Controlled Production); Section 12.6.9.4	The ALJs recommended Eschelon's position on 1/16/06, the MN PUC adopted that recommendation on 3/30/07, and Qwest did not move to reconsider on this issue.	<b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue.
Issue 12-88 (Rates in Exhibit A)	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions.	<b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue.
Issue 12-90 (Unapproved Rates)	The ALJs recommended Eschelon's position on 1/16/06. Qwest did not file exceptions.	<b>NO.</b> The Qwest template contains state-specific language for some issues, but it does not contain the language adopted by the MN PUC for MN on this issue.
<b>OTHER EXAMPLES</b>		

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, *IF QWEST REPRESENTS* THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.

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EVIDENCE CONTRARY TO QWEST'S CLAIM THAT THE QWEST NEGOTIATIONS TEMPLATE "REFLECTS COMMISSION ARBITRATIONS BETWEEN QWEST AND AT&T, COVAD, ESCHELON AND OTHERS" <sup>1</sup>		NEGOTIATIONS TEMPLATE <sup>3</sup> - DOES IT REFLECT COMMISSION ARBITRATION?
ISSUE <sup>2</sup>	COMMISSION DECISION, OR NEGOTIATED RESULT AFTER ARBITRATION COMMENCED	
Covad-Qwest ICA, 3/14/05 MN arbitration decision - Payment, Section 5.4.1	The Commission granted 15 extra days to review bills when they lack a circuit ID, changing the payment due from 30 to 45 days in those cases.	<b>NO.</b> Qwest's template provides for 30 days in all cases, with no exception like the one ordered in the Covad arbitration
AT&T-Qwest ICA, 11/18/03 MN arbitration decision - Change in Law (Section 2.2)		<b>NO.</b> Qwest's template language is different from the arbitrated Qwest-AT&T ICA MN language for Section 2.2.
A&T-Qwest ICA, 11/18/03 MN arbitration decision - Definition of Tandem Office Switch in Section 4	AT&T arbitrated the definition of Tandem Office Switch and, in MN (and AZ), the Commissions ordered a definition using the phrase "capable of serving."	<b>NO.</b> The Qwest template does not have a state-specific version for MN or AZ. It has a single definition that does not use the term "capable of serving."
AT&T-Qwest ICA, 11/18/03 MN arbitration decision - Section 5.8.4	AT&T arbitrated decision adopted use of "gross negligence" in the limitation of liability provision.	<b>NO.</b> The Qwest template does not use "gross negligence" in Section 5.8.4 for any state.
AT&T-Qwest ICA, 11/18/03 MN arbitration decision - Sections 5.9.1.1, 5.9.1.2	The MN PUC said: "Language addressing how to treat liability from intellectual property violations adds clarity, and will be approved."	<b>NO.</b> The Qwest template does not include this intellectual property language in Section 5.9 for any state.

THE ISSUE HERE IS *NOT* WHETHER QWEST MUST ADD ARBITRATED TERMS TO ITS PROPOSAL. THE ISSUE IS, *IF QWEST REPRESENTS* THAT ITS NEGOTIATIONS PROPOSAL ("TEMPLATE") REFLECTS ARBITRATED RESULTS (WHICH MAY LEAD CLECS AND COMMISSIONS TO BELIEVE THAT IT DOES), WHETHER QWEST'S TEMPLATE IN FACT REFLECTS COMMISSION ARBITRATION DECISIONS.





**Announcement Date:** November 15, 2006  
**Effective Date:** November 16, 2006  
**Document Number:** PROS.11.15.06.F.04322.MultLangChangeforSGATs  
**Notification Category:** Process Notification  
**Target Audience:** CLECs, Resellers  
**Subject:** CMP – Getting Started as a CLEC V21  
Getting Started as a Reseller V12  
Interconnection Agreements V74  
Interconnection Negotiations Process V12  
Provisions Available for Opt In V12  
New Customer Questionnaires V32

**Level of Change:** Level 1

**Summary of Change:**

On November 16, 2006, Qwest will post updates to its Wholesale Product Catalog that include corrections, clarifications and additional information for Getting Started as a CLEC V21, Getting Started as a Reseller V12, Interconnection Agreements V74, Interconnection Negotiations Process V12, Provisions Available for Opt In V12, and New Customer Questionnaires V32 . You will find a redlined version of the changes on the Product/Process Document Review Archive at [http://www.qwest.com/wholesale/cmp/review\\_archive.html](http://www.qwest.com/wholesale/cmp/review_archive.html).

Qwest is updating the mentioned documents to provide additional information and clarification that does not change the process. The references to the SGATs and Exhibits and applicable language changes are being made. The SGATs are no longer available to opt into and have been replaced with the Negotiations Template Agreement (NTA).

Actual updates to the operational documents are found on the Qwest Wholesale Web Site at these URLs:

[http://www.qwest.com/wholesale/clecs/clec\\_index.html](http://www.qwest.com/wholesale/clecs/clec_index.html)  
[http://www.qwest.com/wholesale/clecs/reseller\\_index.html](http://www.qwest.com/wholesale/clecs/reseller_index.html)  
<http://www.qwest.com/wholesale/clecs/negotiations.html>  
<http://www.qwest.com/wholesale/clecs/negotiationsprocess.html>  
<http://www.qwest.com/wholesale/clecs/provisionoptin.html>  
<http://www.qwest.com/wholesale/clecs/newcustquestionnaire.html>

**Comment Cycle:**

No formal comment cycle applies. CLECs who feel the change(s) described in this Level 1 notification alter(s) CLEC operating procedures should immediately contact the Qwest CMP Manager, by e-mail, at [cmpcr@qwest.com](mailto:cmpcr@qwest.com).

Sincerely

**Qwest Corporation**

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 to such interconnection agreement.

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.

If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>



**November 15, 2006**

**Announcement Date:**  
**Effective Date:** November 16, 2006  
**Document Number:** PROS.11.15.06.F.04302.Amendments\_SGATs  
**Notification Category:** Process Notification  
**Target Audience:** CLECs, Resellers,  
**Subject:** Amendments SGATs

**Summary of Change:**

On November 16, 2006 Qwest will post updates to its Wholesale Product Catalog that include new/revised documentation for Amendments and SGATs. This material becomes effective on November 16, 2006.

Qwest is updating the following documents to remove the SGATs, Exhibits and language that pertains to the SGATs. The title of the web page will now become Negotiation Template Agreement. SGATs continue to be available as reference documents through the Quick Links located on the right side of the Wholesale web page.

**Amendments:**

- New Products and Services section – removed SGAT language
- New Products and Services Not in the Files SGATs title of section changed to Amendments for New Products and Services

**SGATs:**

- Title of document changed from SGATs (Wireline) to Negotiations Template Agreement (NTA)
- Interconnection Business section removed including the Dropdown and documents for the 14 state SGAT and Exhibits.
- Negotiations Template Agreement section – removed SGAT language
- Exhibit B by state and Exhibit K by state sections are added to include these Exhibits. These have not changed and remain as last published on the SGAT Interconnection Business section of this same document. Only the location within the document has changed.
- Resale Agreements and Exhibits - removed SGAT language and changed to NTA

Redline SGAT documents are found at URL: <http://www.qwest.com/about/policy/sgats/>

Actual updates are found on the Qwest Wholesale Web site at the following URLs:

<http://www.qwest.com/wholesale/clecs/amendments.html>  
<http://www.qwest.com/wholesale/clecs/sgatswireline.html>

Sincerely

Qwest Corporation

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 to such interconnection agreement.

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.

If you would like to unsubscribe to mailouts please go to the "Subscribe/Unsubscribe" web site and follow the unsubscribe instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>