R. Steven Davis
Senior Vice President
Policy and Law

1801 California Street, 47th Floor
Denver, CO 80202

303 896 4200
303 298 8763 fax

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Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554

Re: Ex Parte Presentation, CC Docket Nos. 01-338, 96-98, 98-147, *In the Matters of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*

In this letter, Qwest proposes a framework for transitioning unbundled switching from the list of required unbundled network elements ("UNEs"). As Qwest has stated previously, the record in this proceeding supports elimination of switching as a UNE on a nationwide basis.[1] Qwest has also explained the risks of an open-ended delegation to the states of responsibility for determining if network elements are required to be unbundled pursuant to section 251.[2] While Qwest continues to be concerned about such delegation, it believes that it is possible for the Federal Communications Commission ("FCC" or "Commission") to give the states a role in establishing the transition for removal of switching from the UNE list, without running afoul of the statute or the Commission's policy objectives.

Qwest proposes a two-part compromise approach: first, an easily administrable process that would eliminate the requirement to fulfill new orders for unbundled switching in areas where marketplace evidence clearly indicates widespread use of alternative switching by facilities-based CLECs; and, second, a separate transition plan, developed by the states, for those areas that have seen more limited facilities-based entry up until now. Qwest's proposal would examine on a LATA-by-LATA basis the number of CLECs that have deployed at least one local

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[1] Qwest will not repeat that record evidence here, as it has been addressed extensively in earlier submissions. *See, e.g.*, UNE Fact Report, dated April 2002 at II-1, II-6 (showing that competitive local exchange carriers ("CLECs") use their own switches to serve Bell Operating Company ("BOC") wire centers containing approximately 86 percent of BOC switched access lines); Letter from Cronan O'Connell, Qwest, to Marlene H. Dortch, Secretary, FCC at 4 (Nov. 14, 2002) (noting Qwest's hot cut performance).

[2] *See* Letter from R. Steven Davis, Qwest, *et al.*, to Michael K. Powell, Chairman, FCC (Nov. 19, 2002).

exchange voice switch in the LATA. This proxy of competitive switching is extremely conservative, but also easily verifiable. As discussed below, Qwest's proposal would count only the first CLEC switch in each LATA as a "qualifying" switch, and would ignore the presence of remote switches deployed by CLECs to transport traffic to a host switch outside the LATA, all switches of the independent telephone companies, and switches deployed by cable and wireless providers in (or that cover) the LATA.

For those LATAs where at least three CLECs have deployed their own switches, the Commission would eliminate the unbundled switching requirement for new orders 30 days after the incumbent local exchange carrier ("ILEC") files a declaration certifying the presence of three "qualifying" CLEC switches. The transition for customers already served via UNE-P in those LATAs would be managed by the state commissions, but would have to be completed within one year. For LATAs with fewer than three "qualifying" switches, the Commission would work in partnership with the states to determine the timetable for implementing the Commission's decision to eliminate the unbundled switching requirement.

Under Qwest's approach, even apart from their special role for LATAs with fewer than three "qualifying" CLEC switches, state commissions would have significant responsibilities in all LATAs in two additional respects as well: (1) monitoring the hot cut process for the transition from UNE-P to UNE-Loops; and (2) developing procedures for and overseeing the transition of customers currently served by UNE-P to various other services.

Qwest's Proposal

Qwest proposes two separate transition phases for unbundled switching. The first phase would apply to LATAs with three or more "qualifying" CLEC switches, and would be administered solely by this Commission. The second phase would apply to the remaining LATAs and would be implemented by state commissions based on criteria established by this Commission.

Qwest's proposal to use LATAs to establish a transition for unbundled switching is sensible and conservative. Use of smaller geographic areas would be unnecessarily complex, and would not reflect the way in which CLECs and ILECs manage their networks. It is well established that switches are capable of serving, and are being used to serve, entire LATAs or states, or even multiple LATAs or states.[3] In this way, a CLEC can acquire increased scale so as

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[3] UNE Fact Report at II-5 to II-10. In fact, CLECs have chosen to deploy a single switch or host/remote configuration to serve locations hundreds of miles apart. For example, a CLEC in Oregon has deployed a switch in northern Oregon that it uses to serve customers in southern Oregon, roughly 300 miles away, as well as other distant locations in the state. Another CLEC uses a switch in Seattle to serve locations in Oregon more that 400 miles away. *See* Attachment A (mapping the network architecture of selected CLECs in Oregon and Colorado). Such

to reduce the per-line cost of switching. Further, the use of enhanced extended loop ("EEL") combinations, subject to the streamlined conditions proposed by Qwest,[4] would enable a CLEC to carry its traffic from all subtending wire centers in a LATA to its switch or point of interconnection in the LATA, without the need for collocation at each of the subtending offices. LATA designations also roughly conform to the way in which CLECs view the market. CLECs generally do not launch service in a single wire center, but rather enter in a state or metropolitan area.[5] While LATAs may have decreased significance over the long term, as BOCs obtain authority to provide interLATA services, LATAs will continue to be a meaningful geographic designation for the foreseeable future.

LATAs with Three or More "Qualifying" CLEC Switches. Under Qwest's proposal, where the FCC finds that there are three or more "qualifying" CLEC switches located in a LATA (*i.e.*, at least three CLECs have deployed their own switch), the requirement to fulfill new orders for unbundled switching would be eliminated, without further inquiry.[6] The presence of three or more competitors in a LATA using their own switching clearly demonstrates that CLECs have succeeded in serving customers using their own switching and would not be impaired in their provision of competitive local service in the absence of ILEC switching. In light of such evidence, there would be no need to adopt an extended transition plan. Moreover, the presence of three or more facilities-based competitive providers in a LATA would establish the conditions for a commercial wholesale market for switching in that area, enabling CLECs to make a cost-effective determination to use other providers' switching rather than deploying their own switches.

In fact, the compromise Qwest proposes would significantly understate the availability of competitive local switching and in the first instance, ignore the impact of intermodal competition.[7] In examining whether there are three "qualifying" CLEC switches in a LATA, the

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examples indicate that it is economical to serve disparate locations in a LATA with a single switch or host/remote configuration.

[4] Letter from Cronan O'Connell, FCC, to Marlene H. Dortch, Secretary, FCC, at 12-13 (Jan. 22, 2003).

[5] When LATAs were created, they were intended to represent separate communities of interest, as well as the way in which the incumbents' networks had been configured. *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (1983).

[6] Nineteen of the 27 LATAs served by Qwest have three or more "qualifying" CLEC switches. Attachment B describes the methodology used by Qwest to determine the number of "qualifying" CLEC switches in the LATAs in its region. Attachment C shows the results for Qwest's region.

[7] Although it would be inappropriate for the Commission to ignore the effects of intermodal competition (*see USTA v. FCC*, 290 F.3d 415, 422 (D.C. Cir. 2002), *pet. for cert. pending* (No. 02-858, filed Dec. 3, 2002)), the extensive level of intramodal UNE-L competition

Commission would count only one switch per CLEC, even though some CLECs have deployed multiple switches in a LATA. Thus, a LATA would not satisfy the three-switch test unless at least three CLECs have deployed their own switch in the LATA. The Commission also would not include in its count for a LATA a switch that a CLEC is using to serve customers in the LATA, but that is physically located in another LATA or state, which is a common network architecture deployed by CLECs. Finally, the count would be conservative because the Commission would ignore the presence of local voice switches deployed by cable companies, wireless providers, and other ILECs in the LATA. Although the presence of such alternative switching clearly is a relevant factor in assessing the state of facilities-based competition in a LATA, Qwest's proposal seeks to establish an easily administrable proxy for the availability of switching alternatives in a LATA.

The process for determining whether there are three "qualifying" CLEC switches in a LATA would be straightforward. An ILEC would file a declaration with the Commission identifying those LATAs with three or more "qualifying" CLEC switches, based on publicly available data in the Local Exchange Routing Guide ("LERG") database. Unless a CLEC shows that the data in the ILEC's declaration is inaccurate, the requirement to provide unbundled switching for new orders would be eliminated in the LATAs in question 30 days after the filing of the declaration. As described below, the transition for customers already served by UNE-P in these LATAs would be managed by state commissions and would be completed within one year.

LATAs with Fewer than Three "Qualifying" CLEC Switches. For those LATAs with fewer than three "qualifying" CLEC switches, the FCC would work with the relevant state commission to determine the timetable for eliminating unbundled switching. As an initial matter, the presence of fewer than three "qualifying" CLEC switches in a LATA in no way indicates that CLECs would be impaired without access to the ILECs' unbundled switching. As noted, the three-switch test is a conservative proxy and ignores certain sources of competitive switching, as well as the availability of resale as yet another alternative to compete in the LATA.

Within six months of the effective date of the FCC's order, the state commission would establish a transition plan for eliminating the unbundled switching requirement for new and existing customers in the LATA, based on criteria defined by the FCC. Such criteria would include: (1) whether CLECs are serving customers in the LATA with switches located in other LATAs or states; (2) the presence of intermodal competition; and (3) whether there are factors other than the availability of unbundled switching, such as the rate levels of the ILEC's retail rates, that may impede the entry of facilities-based CLECs in the LATA. In no event could the transition timetable established by a state commission extend more that two years beyond the effective date of the FCC's order.

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established by the presence of three CLEC switches would allow the Commission to implement the first phase of the Qwest compromise without reliance on other forms of switching competition.

Additional State Responsibilities

In addition to its role in determining the transition in LATAs with less than three "qualifying" CLEC switches, state commissions would also have other significant responsibilities in all LATAs:

1. **Monitoring hot cut performance.**

   - The existing hot cut process, as established today for UNE-L would be used as the basis for all performance monitoring, based on an FCC finding that the hot cut process is not an impairment in states where state commissions have approved performance assurance plans (*e.g.*, the ROC process in Qwest's region) or where section 271 authority has been granted.

   - If necessary, the states would utilize their existing Long Term PID Administration Process through industry collaborative sessions to modify the metrics. Until such time as the modifications are approved, the existing metrics would remain in place.

   - States would rely on existing penalty provisions to enforce hot cut performance.

   - However, to ensure that both the CLECs and Regional BOCs are prepared for the growth of UNE-L orders, the states would also establish a timeline for CLECs to submit UNE-L demand forecasts. The ILEC would use these demand forecasts, subject to verification, for purposes of staffing its service centers, central office technicians, and field personnel.

2. **Developing procedures and overseeing the transition of customers currently served by UNE-P.**

   - For LATAs with three or more "qualifying" CLEC switches, transition of the embedded base of UNE-P customers would be completed no later than one year from the ILEC's filing of a certification with the FCC of three "qualifying" CLEC switches in the LATA. For LATAs with fewer than three "qualifying" CLEC switches, the transition for the embedded base of UNE-P customers would be governed by the same transition period established for new orders for unbundled switching in that LATA.

   - As is done for projects today, ILECs and CLECs would work cooperatively to develop a project timeline and identify the tasks necessary to accomplish this transition within the specified timeframe. Such a transition could include use of the CLEC's own facilities, purchase of services from another provider, or conversion to another service offered by the ILEC (*e.g.*, a market-based offering or resale). Any disputes that arise with regard to the transition would be resolved by the state commission within 45 days of the filing of a petition by any carrier.

- The ILECs' performance results would be included in the monthly Performance Measurement Results currently filed with the state commissions for new UNE-L orders consistent with current metrics.

Qwest believes that the compromise proposal outlined in this letter would accomplish the Commission's objectives in this proceeding, consistent with its obligations under the statute.

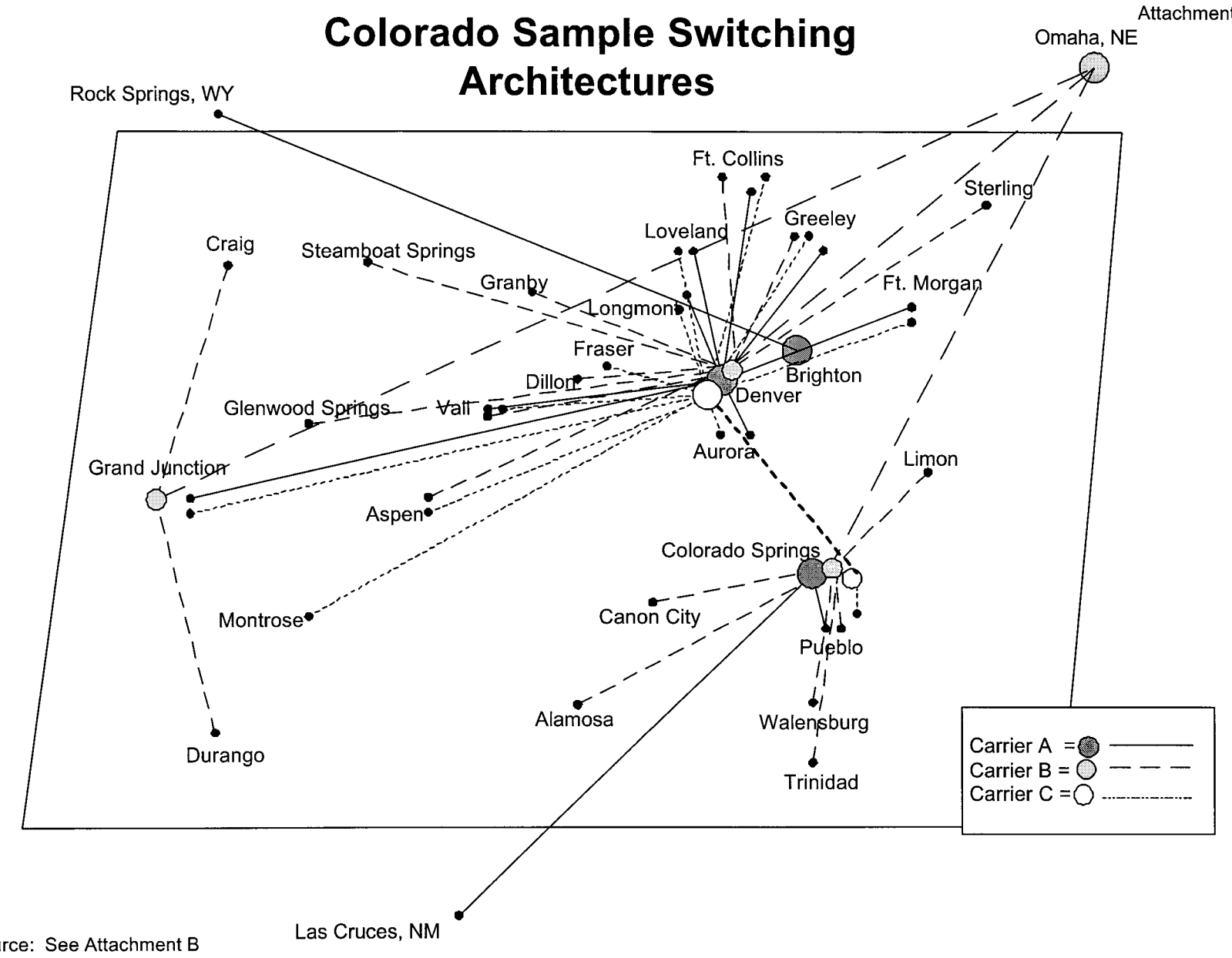
Sincerely yours,

/s/
R. Steven Davis

cc: Kathleen Q. Abernathy
Michael J. Copps
Kevin J. Martin
Jonathan S. Adelstein
Christopher Libertelli
Matthew Brill
Daniel Gonzalez
Lisa Zaina
Jordan Goldstein
William Maher
Jeffrey Carlisle
Michelle Carey

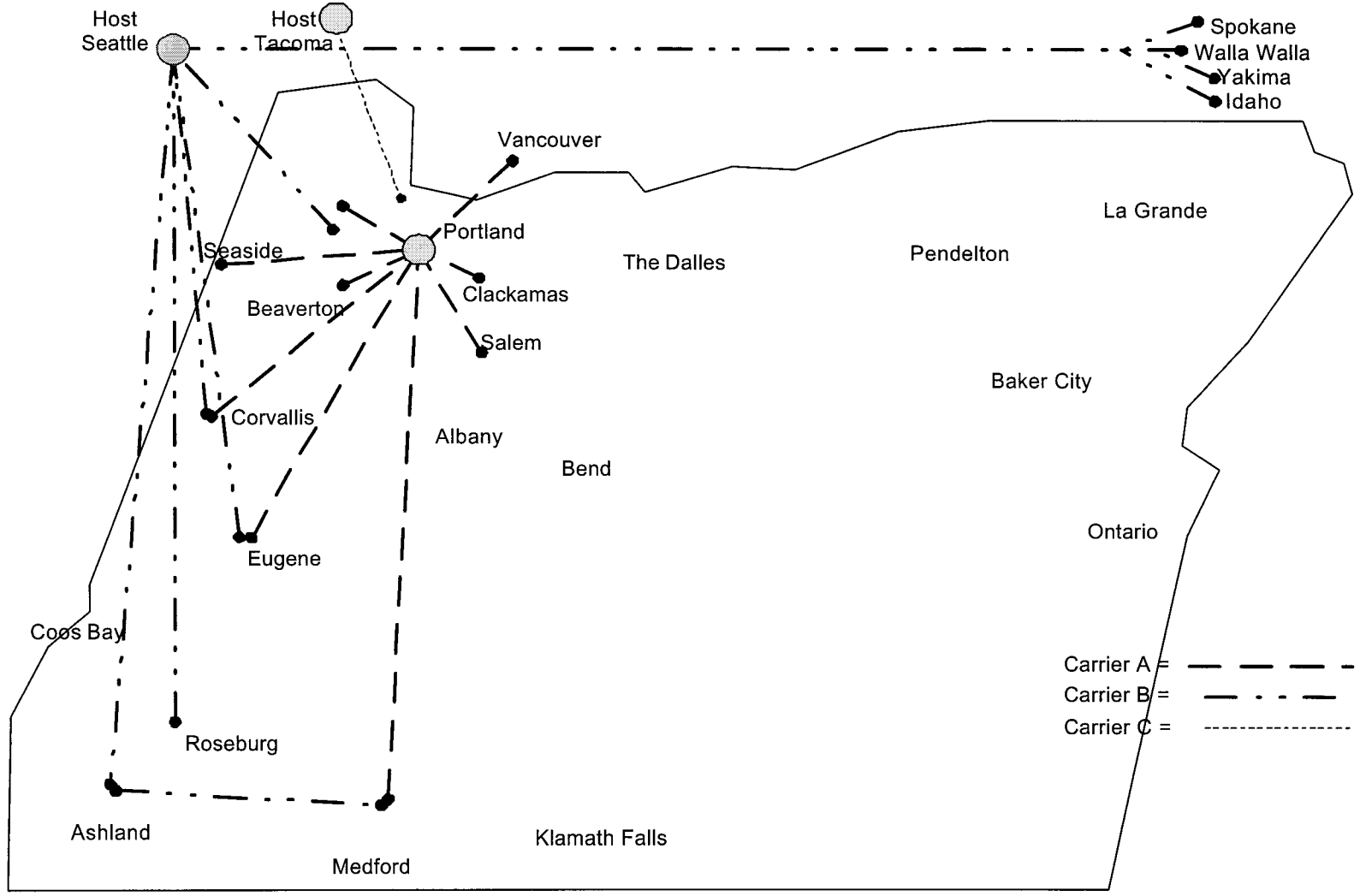
Attachment A

Colorado Sample Switching Architectures



Source: See Attachment B

Attachment A



Oregon Sample Switching Architectures

Source: See Attachment B

Attachment B

Methodology for Identifying "Qualifying" CLEC Switches by LATA

Three sources of data were used to build the CLEC Network Analysis from BIRRDS:

Telcordia Business Integrated Routing/Rating Database System (BIRRDS)
BIRRDS is an online, real time database used by the industry to officially relay detailed service provider specific information to the rest of the industry for the routing and rating of calls. BIRRDS is the database from which the Telcordia LERG Routing Guide (LERG) and several other output products are generated.

Each service provider or their agent inputs information to BIRRDS. Data in BIRRDS is the responsibility of the individual service provider. Errors in the data could result in misrouted, incorrectly rated or incomplete calls to and/or from the service provider's customers.

The BIRRDS online database was used to confirm each Common Language Location Identifier ("CLLI"), CLLI Operating Company Number ("OCN"), NXXs on each CLLI, NXX OCN, company name for each OCN, category of service provider based on OCN (Incumbent Local Exchange Carrier ("ILEC"), CLEC, Reseller, etc.), the Equipment Type abbreviation and the description/name associated with the Equipment Type abbreviation. This data was then summarized on the attached Chart at a LATA level. The BRRDS online database was used to verify any information pulled from the other two sources for this report.

Qwest Regional Numbering Plan (RNP)
RNP is a Qwest internal database updated each workday from Telcordia BIRRDS information. Telcordia data is downloaded electronically then RNP is manually updated by Local Networks Technical Regulatory from the daily reports. CLEC codes are identified when a wireline End Office Code (EOC) is assigned to other than the original ILEC code holder in the rate center. CLEC codes carry an identifying code in RNP to differentiate them from ILEC codes.

The RNP report pulled all CLEC code records in the 14 state area and included the following fields of data:
NPA NXX Use Code CLLI telc (OCN) rate cntr LATA Due Date (if new) company name

The Use Code does not appear in BIRRDS, therefore, using RNP allowed us to get an initial data report to use as a base.

Qwest Location Operational Shared Database (LOSD)
This internal database and report generator is electronically downloaded from Telcordia by Qwest IT on a monthly basis. Data in this database could be referred to as LERG data since it is from an output product of Telcordia BIRRDS. LOSD LERG data is a snapshot in time showing industry inputs as of the last day of the previous month.

Attachment B

From LOSD, we acquired a list of all possible Equipment Type abbreviations and lists of all CLLI codes associated with each CLEC OCN.

Qwest combined the information from the three data sources, verified the data and developed the attached chart (Attachment C) identifying qualifying switches by LATA.

Attachment C

Number of "Qualifying" CLEC Switches in Qwest LATAs

LATA Name	Number of Wire Centers	Sum of Total Access Lines	Number of Qualifying CLEC Switches
Company Total	**1,210**	**17,064,773**	**174**
SEATTLE	69	1,844,657	24
DENVER	128	2,288,360	19
MINNEAPOLIS	68	1,639,205	18
PHOENIX	88	2,259,601	16
PORTLAND	50	1,114,080	15
UTAH	60	1,088,147	12
FARGO	38	257,574	7
SPOKANE	45	485,614	7
COL. SPRINGS	36	491,346	6
NEW MEXICO	65	869,293	6
TUCSON	44	632,800	6
EUGENE	33	502,608	5
DES MOINES	57	462,008	4
OMAHA	50	418,348	4
SIOUX CITY	25	113,336	4
SOUTH DAKOT/	42	262,971	4
BILLINGS	36	162,909	3
IDAHO	65	548,803	3
ROCHESTER	22	212,490	3
GREAT FALLS	39	222,266	2
ST. CLOUD	18	110,757	2
CEDAR RAPIDS	27	276,508	1
DAVENPORT	15	214,604	1
DULUTH	30	156,126	1
WYOMING	26	262,753	1
BISMARCK	4	65,167	0
GRAND ISLAND	30	102,442	0

Note: Chart counts only one switch per CLEC in each LATA. Does not include remote switches, cable telephony switches or wireless switches.