BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State.	)	DOCKET NO. UT-053025 JOINT CLEC EXCEPTIONS TO QWEST AND VERIZON DATA AND REQUESTS FOR ADDITIONAL DATA

1. Pursuant to the Notice of Procedural Schedule for Analysis of Wire Center Data, Covad Communications Company, Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. (collectively "Joint CLECs") provide the following exceptions to the wire center data submitted by Qwest Corporation ("Qwest") and Verizon Northwest Inc. ("Verizon") and requests for additional data.

EXCEPTIONS

2. The data that Qwest and Verizon have submitted in response to the Commission's Bench Requests is deficient in several respects: (1) the data is from 2003 and thus is not contemporaneous with the TRRO; (2) the business line counts are artificially inflated to include maximum capacity, instead of capacity in service (*i.e.*, actual voice grade equivalent lines served); (3) the data does not exclude all CLEC residential and non-switched lines; (4) the data on the basis for identifying fiber-based collocators is insufficient to permit verification; and (5) Verizon has precluded meaningful review of its data by designating it as highly confidential. The Commission should require Qwest and

Verizon to revise and supplement the data they have provided to correct these deficiencies.

3. Some, if not all, of these exceptions highlight what will likely be disputes regarding the methodology to count business lines and/or fiber-based collocators to be addressed by the Commission. It is not Joint CLECs' intent that these exceptions contain all of the legal and policy arguments regarding the deficiencies in the ILECs' respective approaches to implement the TRRO with respect to wire centers. As provided for in the procedural notice, all parties should be entitled to full briefing on the methodological disputes. Instead, Joint CLECs request that Qwest and Verizon be required to revise and provide additional data that will enable the Commission to determine where disputes will impact any specific wire center designations.

Failure to Provide Data as of March 2005

4. Both Qwest and Verizon provide the number of access lines in the wire centers they have designated as non-impaired as of December 2003 – over one year prior to the March 11, 2005 effective date of the TRRO. Nothing in the TRRO authorizes the use of such stale data. Qwest and Verizon will likely claim that 2003 data is the appropriate because it was used by the FCC in preparation of the TRRO. But Qwest and Verizon file ARMIS data at least on an annual basis with the FCC; the latest of which would have been in December 2005. It is also likely that Qwest and Verizon collect this data on a monthly basis and, therefore, have the data even more current than December 2005.

5. The discrepancy between line counts in December 2003 and March 2005 is potentially significant because both ILECs have represented to the Commission in other proceedings that their access lines – particularly their business access lines – are steadily

declining. Using 2003 line count data, therefore, improperly inflates the number of business access lines served out of these wire centers. Accordingly, the Commission should require Qwest and Verizon to provide business line counts consistent with ARMIS requirements as of March 11, 2005, or as close to that date as possible, at least in those wire centers in which Qwest and Verizon are relying on business line counts to demonstrate nonimpairment.

Improper Expansion of ILEC Business Lines.

6. The first sentence of the FCC's definition of "business line" in Rule 51.5 states, "A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC." The FCC in paragraph 105 of the TRRO required the ILECs to calculate the total number of business lines as "ARMIS 43-08 business lines, plus business UNE-P, plus UNE-L."

7. Qwest, however, improperly adds lines to its ARMIS 43-08 business lines by counting the full voice grade equivalent capacity of DS1 and DS3 circuits, not just the portion of those circuits that are actually used to provide voice grade service to business customers. Qwest contends, "In ARMIS 43-08, Qwest reports the number of circuits attributed to DS1s and DS3s based on the actual channels used by the customer. The methodology dictated by the FCC rule for counting DS1 and DS3 circuits under the TRRO is different."[1] Qwest provides no citation for this novel concept, which is not surprising because none exists. Nothing in FCC Rule 51.5 or the TRRO authorizes, much less dictates, any departure from the ARMIS business line count requirements. The

[1] Qwest Response to Bench Request No. 01-003 (viii).

North Carolina Utilities Commission recently agreed, concluding "after reading and analyzing the FCC's directives in both the TRRO and Rule 51.5 that the FCC did not intend for the ILECs' ARMIS business line count to be altered in any way," and that the ILEC "inappropriately adjusted the high capacity business lines represented in the ARMIS report to reflect the maximum potential use."[2]

8. The Commission should reach the same conclusion and should require Qwest to provide only the ARMIS 43-08 business line count data for each wire center.[3]

Over-counting CLEC Business Access Lines

9. Just as Qwest and Verizon may count only the lines or channels they actually use to provide service to business customers, only the portion of high capacity UNE loops that CLECs actually use should be included in the business access line count. Again, the North Carolina Commission agreed, finding that "the actual use of lines by actual customers is the business opportunity in a wire center, not simply the maximum capacity available to serve additional customers if additional customers are not seeking to be served."[4] That commission also recognized that the ILEC cannot determine the actual usage of CLEC UNE-L lines, but required such actual usage to be calculated by applying the ILEC's utilization factor for such facilities. In other words, if the ILEC's "high capacity line customers use 75% of the maximum capacity of their lines, it is reasonable

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[2] *In re Proceeding to Consider Amendments to Interconnection Agreements Between BellSouth Telecommunications, Inc. and Competing Local Providers Due to Changes of Law*, NC Utils. Comm'n Docket No. P-55, SUB 1549, Order Concerning Changes of Law at 67 (March 1, 2006) ("*North Carolina Order*").

[3] Verizon's responses to the Commission's Bench Requests are more spartan than Qwest's, and it is unclear whether Verizon has similarly inflated its business line count. *Compare* Verizon Response to Bench Request No. 3 (viii) *with id*. (xv). The Commission, at a minimum, should require Verizon to verify that it has not altered its ARMIS 43-08 business line count data.

[4] *North Carolina Order* at 68.

to believe that the [CLEC] customers would use 75% of the maximum capacity of their lines."[5]

10. The Commission, therefore, should require Qwest and Verizon to provide their utilization factors for the high capacity facilities that they provide to their retail business customers and to recalculate the UNE-L voice equivalent line counts to reflect actual line usage using this same factor in those wire centers in which Qwest and Verizon are relying on business line counts to demonstrate nonimpairment.

Failure to Exclude CLEC Residential Lines

11. Qwest acknowledges that it must exclude UNE-P lines used to serve residential customers from its business line calculation, but fails to do so accurately. Qwest provides the following explanation of how it allegedly identified and removed residential UNE-P lines:

> Qwest, has not previously tracked whether a UNE-P line is used to serve business or residential customers. However, since UNE-P lines each have an associated telephone number, a reasonable estimate of residential and business UNE-P lines can be developed by determining whether the UNE-P telephone numbers appear in the residential section of the white pages directory database. In view of the fact that the majority of residential lines are listed in the telephone directory, while a much lower proportion of business lines are listed (and reliance of business UNE-P listings would therefore significantly undercount actual business UNE-P lines in service), Qwest estimated UNE-P business lines by simply deducting UNE-P residential telephone number listings from total UNE-P lines in service, with the remainder attributed to business.[6]

Qwest provides absolutely no basis for its assertion that "the majority of residential lines are listed in the telephone directory, while a much lower proportion of business lines are

[5] *Id*.

[6] Qwest Response to Bench Request No. 01-003 (x).

listed." Qwest virtually concedes that its methodology of subtracting UNE-P residential telephone number listings from total UNE-P lines results in over counting business UNE-P lines if only a "majority" of residential UNE-P customers list their telephone numbers.

12. Qwest, therefore, should affirmatively count only those UNE-P lines that are listed in the business white pages section of the telephone directory database as business lines. Alternatively, if Qwest can provide some basis for its assertion that a significant number of UNE-P business customers do not list their telephone numbers in the white pages directory, Qwest should calculate the extent to which its own business customers list their telephone numbers and apply that percentage to the business UNE-P customers who have listed telephone numbers. Qwest should also be required to provide all supporting data for making that calculation.

13. Verizon, on the other hand, provides no explanation of how it excluded UNE-P residential lines from its total business line count. Verizon merely states that UNE-P lines "are included in the business switched access lines provided in ARMIS 43-08."[7] Indeed, Verizon apparently has counted all UNE-P lines as business lines, without any attempt to deduct residential lines. Verizon should be required to explain how it excluded residential UNE-P lines from its business switched access line count and provide all supporting calculations. If Verizon has not excluded residential UNE-P lines, the Commission should require Verizon to do so and to support its calculation in the wire centers in which Verizon is relying on business line counts to demonstrate nonimpairment.

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[7] Verizon Response to Bench Request No. 3 (x).

14. Neither Qwest nor Verizon exclude UNE-L lines that are used to provide residential service. The North Carolina Commission concluded that a "business line" as defined by the FCC "is an ILEC-owned switched access line used to serve a business customer," and "it is inappropriate for [the ILEC] to include UNE-L lines in the count of business lines."[8] The Commission should reach the same conclusion and require Qwest and Verizon to exclude UNE-L lines used to provide residential service from the count of total business lines in those wire centers in which Qwest and Verizon are relying on business line counts to demonstrate nonimpairment.

Failure to Exclude CLEC Non-Switched Business Lines

15. The first sentence of the FCC's definition of "business line" in Rule 51.5 begins with the limitation that "[a] business line is an incumbent LEC-owned *switched* access line." (Emphasis added.) The business lines in the ILECs' ARMIS 43-08 reports are limited to *switched* business lines, but neither Qwest nor Verizon has made any attempt to exclude UNE loops that CLECs use to provide non-switched services. The ILECs generally would not know directly which UNE loops are being used for non-switched services, but some information is available. Covad, for example, does not provide switched services and thus all UNE loops it obtains from Qwest or Verizon should be excluded from the business line count.

16. The Commission, therefore, should require Qwest and Verizon to provide the information they have with respect to UNE loops used to provide non-switched services and to exclude such UNE loops from the business line counts in those wire centers in

[8] *North Carolina Order* at 68.

which Qwest and Verizon are relying on business line counts to demonstrate nonimpairment.

Failure to Provide Sufficient Data on Fiber-Based Collocators

17. Neither Qwest nor Verizon provides sufficient data to verify that the collocators they have identified are “fiber-based collocators” as defined by the FCC. Specifically, there is no data demonstrating that each fiber-based collocator connects its collocated equipment directly to its own fiber-optic network without relying on ILEC UNEs or cross-connects to other collocated carriers. Nor have Qwest or Verizon confirmed that the collocators identified were fiber-based collocators on March 11, 2005. Indeed, at least one CLEC disputes its designation as a fiber-based collocator in one of the wire centers that Verizon has claimed to be non-impaired. The Commission, therefore, should require Qwest and Verizon to provide more detailed information in the wire centers where either company is relying on the number of fiber-based collocators to demonstrate nonimpairment.

Verizon’s Misdesignation of Data

18. Consistent with the discussions during the workshop, Qwest designated non-masked CLEC-specific data as “confidential,” which has permitted non-attorney CLEC participants who have executed Exhibit B to the Protective Order to review the information. Verizon, however, designated the same type of information as “highly confidential,” which has precluded persons other than counsel from reviewing the data. The information is not highly confidential, and the Commission should require Verizon to redesignate the data as “confidential” and subject to review by those in-house personnel who are authorized to review confidential data under the Protective Order.

ADDITIONAL DATA REQUESTS

19. Based on the deficiencies described above, the Joint CLECs have prepared supplemental requests for information from Qwest and Verizon. These requests are attached. The Commission should issue supplemental bench requests to obtain this information prior to making any determination about the accuracy of Qwest's and Verizon's wire center designations.

CONCLUSION

20. The Commission and interested parties cannot verify Qwest's and Verizon's wire center designations without accurate, reliable data. The ILECs have not yet provided such data. Accordingly, the Commission should require Qwest and Verizon to revise and supplement their responses to the Commission's Bench Requests to provide the information the Joint CLECs have identified.

DATED this 7th day of March, 2006.

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