

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 NOS. UT-073033

NARRATIVE REGARDING SETTLEMENT

In the Matter of the Petition of QWEST CORPORATION, For Commission Approval of 2007 Additions to Non-Impaired Wire Center List

DOCKET NO. UT-073035

I On June 28, 2007, in this docket, Covad Communications Company (“Covad”), Eschelon Telecom of Washington, Inc. (“Eschelon”), McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”), Integra Telecom of Washington, Inc. (“Integra”) and XO Communications Services, Inc. (“XO”) (collectively, the “Joint CLECs”)¹ and Qwest Corporation (“Qwest”) (collectively, the “Parties”) filed a Joint Request for approval of the proposed Settlement Agreement between Qwest and the Joint CLECs. The proposed Settlement Agreement was attached and marked as Attachment 1 to the Joint Request.

¹ “Joint CLECs” is a defined term in the proposed Settlement Agreement, which provides in the definitions (Section II) that “Joint CLECs’ refers collectively to Covad Communications Company and DIECA Communications, Inc. (Covad), Eschelon Telecom, Inc. (Eschelon), Integra Telecom Holdings, Inc. (Integra), McLeodUSA Telecommunications Services, Inc. (McLeod), Onvoy, POPP.Com (POPP), US Link, Inc. d/b/a TDS Metrocom, Inc. (TDSM), and XO Communications Services, Inc. (XO).” On page 1 of the proposed Settlement Agreement, it states: “Qwest and each CLEC are referred to separately as a ‘Party’ or collectively as the ‘Parties.’”

2 WAC 480-07-740(2) provides that, when filing a proposed settlement agreement, “parties must also file supporting documentation sufficient to demonstrate to the Commission that the proposal is consistent with law and the public interest and that it is appropriate for adoption.” WAC 480-07-740(2)(a) states that the supporting documentation “should include a narrative outlining the scope of the underlying dispute; the scope of the settlement and its principal aspects; a statement of parties' views about why the proposal satisfies both their interests and the public interest; and a summary of legal points that bear on the proposed settlement.”

3 Pursuant to WAC 480-07-740(2)(a), the Joint CLECs and Qwest jointly file this Narrative to supplement their Joint Request for approval of the proposed Settlement Agreement between Joint CLECs and Qwest. The Narrative is not intended to modify any terms of the proposed Settlement Agreement and, if there are any inconsistencies between this Narrative and the proposed Settlement Agreement, the proposed Settlement Agreement controls.

I. BACKGROUND

4 The Federal Communications Commission (“FCC”) issued its Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 and 98-147 (effective October 2, 2003) (“TRO”); and, on February 4, 2005, the FCC released the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand (effective March 11, 2005) (Triennial Review Remand Order) (FCC 04-290) (“TRRO”).

5 On or about February 15, 2006, one or more of the Joint CLECs filed requests with various state commissions asking that the Commission develop and approve both a list of Qwest Non-Impaired Wire Centers and a process for future updates of the wire center list. Those

commissions opened dockets in response to the Joint CLECs' filings.² Qwest responded to the Joint CLECs' requests and also petitioned for commission investigations and expedited proceedings in those states to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues, and bind all CLECs. This Commission investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the *TRRO* on local competition. The Joint CLECs and Qwest have reached resolution of their disputed issues. The Parties have embodied that resolution in the proposed Settlement Agreement, and seek approval of the proposed Settlement Agreement by the Commission.³

II. SCOPE OF THE PROPOSED SETTLEMENT AGREEMENT AND ITS PRINCIPAL ASPECTS

6 In scope, the proposed Settlement Agreement between Qwest and the Joint CLECs⁴ applies to six states (Arizona, Colorado, Minnesota, Oregon, Utah, and Washington).⁵ Although it applies to six states, the provision allowing termination by any party if a Commission modifies the proposed Settlement Agreement applies on a state-by-state basis.⁶ The proposed

² See Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (UM 1251), Arizona (Docket No. T-03632A-06-0091 et seq.), and Utah (Docket No. 06-049-40)

³ The proposed Settlement Agreement provides for resolution of the same issues in each of the six state jurisdictions. As the wire center lists are unique to each state, Attachment A to the proposed Settlement Agreement provides information by state.

⁴ The first paragraph of the proposed Settlement Agreement, on page 1, states: "This Multi-State Settlement Agreement ("Settlement Agreement") is entered into between Qwest Corporation ("Qwest") and Covad Communications Company ("Covad"), Eschelon Telecom, Inc. ("Eschelon"), Integra Telecom Holdings, Inc. ("Integra"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Onvoy, POPP.Com ("POPP"), US Link, Inc. d/b/a TDS Metrocom, Inc. ("TDSM"), and XO Communications Services, Inc. ("XO"). Qwest and each CLEC are referred to separately as a 'Party' or collectively as the 'Parties.'"

⁵ The term "Commission" is a defined term in the proposed Settlement Agreement. The Definitions section (Section II) defines "Commission" as referring individually to each of these six states. The Whereas clauses in the Introduction (Section I) provide background as to filings made in these states leading up to the proceedings (with docket numbers provided in the third and fourth whereas clauses).

⁶ See Paragraph VII(C) of the proposed Settlement Agreement, which states: "If, prior to approval, any Commission modifies any portion of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this Settlement Agreement *as to that particular state*" (emphasis added).

Settlement Agreement addresses specific needs within Washington by specifically addressing Washington wire centers in Attachment A. The proposed Settlement Agreement (Attachment 1 to the June 28, 2007 Joint Request) consists of seven sections and five attachments, as follows:

Settlement Section I: Introduction

7 This section, consisting of six “whereas” clauses, describes the FCC’s *TRO* and *TRRO* orders, the various petitions filed with various state commissions, the dockets that were opened by various state commissions, and reflects that the Parties have now reached a multi-state resolution of their disputes on the open issues.

Settlement Section II: Definitions

8 This section provides the applicable definitions of key terms used in the proposed Settlement Agreement, including the definitions of the various commissions and Parties.

Settlement Section III: Initial Commission-Approved Wire Center List

9 This section states the Parties’ agreement about which Qwest wire centers are the initial non-impaired wire centers, and the associated tier levels and effective dates.

Settlement Section IV: Non-Recurring Charge for Conversions Using the Initial Wire Center List and for Future Commission-Approved Additions to that List

10 This section reflects the Parties’ agreement regarding the nonrecurring charge (“NRC”) for conversions of unbundled network elements (“UNEs”) to alternative services or products, including the agreed-upon NRC rate and length of term, as well as how credits for those CLECs which have already paid a higher NRC rate will apply, and the status of the rate after three years.

Settlement Section V: Methodology

11 This section reflects the methodology that the Parties agreed to, for purposes of non-impaired facilities, to determine non-impairment and/or tier designations, including how to count “business lines” and “fiber-based collocators.”

Settlement Section VI: Future Qwest Filings to Request Commission Approval of Non-Impairment Designations and Additions to the Commission-Approved Wire Center List

12 This section summarizes the Parties’ agreement regarding how Qwest can request Commission approval of non-impairment designations and additions to the Commission-approved non-impaired wire center list in the future (i.e., future additions to the initial Commission-approved list).

Settlement Section VII: Other Provisions

13 This section has a number of miscellaneous provisions based on the Parties’ agreement regarding various issues, including interconnection agreement (“ICA”) provisions and amendments, refunds related to Qwest identified non-impairment designations that are not identified as non-impaired in Attachment A to the proposed Settlement Agreement Agreement, credits to CLECs that have been back-billed to March 11, 2005 for facilities with an effective non-impairment date of July 8, 2005 (instead of March 11, 2005), as well as general provisions about settlement, precedent and termination of the settlement agreement.

14 There are also five attachments, as follows:

Attachment A: List of Non-Impaired Wire Centers

Attachment B: Triennial Review Remand Order (“*TRRO*”) Wire Center Amendment to the Interconnection Agreement between Qwest Corporation and Covad, Integra, POPP.Com, and XO

Attachment C: Triennial Review Remand Order (“*TRRO*”) Wire Center Interconnection Agreement language to be inserted into the proposed Interconnection Agreement

between Qwest Corporation and Eschelon if the proposed Settlement Agreement is approved

Attachment D: Triennial Review Remand Order (“*TRRO*”) Wire Center Amendment to the Interconnection Agreement between Qwest Corporation and McLeodUSA and TDSM

Attachment E: Model Protective Order

III. STATEMENT OF THE PARTIES’ VIEWS ABOUT WHY THE PROPOSED SETTLEMENT AGREEMENT SATISFIES BOTH THEIR INTERESTS AND THE PUBLIC INTEREST

15 Pursuant to the requirements of WAC 480-07-740, the Parties believe that the Settlement among the Parties is in the public interest. The Parties to the proposed Settlement Agreement have compromised on a mutually agreeable resolution of open issues that provides certainty as to the terms of the proposed Settlement Agreement and avoids the time and expense of additional litigation.⁷ Resolving contested issues without further litigation by the Parties also serves the public interest because the Commission conserves resources otherwise needed to resolve the disputes and gains administrative efficiencies. In addition to the administrative efficiencies and resources conserved for the particular issues open between the Parties at this time, the proposed Settlement Agreement will also help avoid future disputes by setting forth a methodology to be used by the Parties in the future.⁸ This avoids additional litigation of these same issues each time Qwest requests Commission approval of non-impairment designations and additions to the Commission-approved wire center list.

16 The proposed Settlement Agreement also includes mechanisms ensuring continued

⁷ See Paragraph VII(B) of the proposed Settlement Agreement, which states: “This Settlement Agreement is a settlement of a controversy. No precedent is established by this Settlement Agreement, whether or not approved by Commissions. The Settlement Agreement is made only for settlement purposes and does not represent the position that any Party would take if this matter is not resolved by agreement. This Settlement Agreement may not be used as evidence or for impeachment in any future proceeding before a Commission or any other administrative or judicial body, except for future enforcement of the terms of this Settlement Agreement after approval.”

⁸ See Section VI of the proposed Settlement Agreement, which is entitled “Future Qwest Filings to Request Commission Approval of Non-Impairment Designations and Additions to the Commission-Approved Wire Center List.”

Commission involvement to ensure the public interest is served and legal and policy standards are met on a going forward basis. Paragraph VI(F) of the proposed Settlement Agreement addresses future Qwest filings to “request Commission approval” of non-impairment designations and additions to the Commission-approved wire center list.⁹ A new non-impaired wire center designation requires a Commission order be issued to add it to the Commission-approved wire center list. The various scenarios addressed in Paragraph VI(F) each require a Commission order:

Paragraph VI(F)(2)(a) (no objection) – “In the event no objections to Qwest filing are filed with the Commission, the Parties agree that they will, within thirty (30) days of the Effective Date of the Non-Impairment Designations, **jointly request an expedited order** designating as non-impaired the facilities identified in the Qwest filing, **if no order has been received.**” (emphasis added)

Paragraph VI(F)(3) & (3)(a) (objection) – “. . . the Parties agree to ask **the Commission** to use its best efforts **to resolve such dispute** within 60 days of the date of the objection.” . . . “the Parties agree that they will jointly request an **expedited order** approving the undisputed designations identified in the Qwest filing on the Filing Date.” (emphasis added)

Paragraph VI(F)(4) (objection but Qwest prevails) – “as of fifteen (15) days after the effective date of the **Commission order** adding it to the Commission-Approved Wire Center List.”

Paragraph VI(F)(5) (objection and CLEC/party prevails) – “it is not added to the Commission-Approved Wire Center List.”

17 When a Joint CLEC objects to a Qwest non-impaired wire center designation, the proposed Settlement Agreement allows flexibility to use procedures and timeframes necessary to allow full review of objections. For example, Paragraph VI(F)(2) specifically provides that its time frame does not apply if “the Commission orders otherwise.” Paragraph VI(F)(a) and (b) and VI(F)(3)(a) recognize that the parties may “request” expedited treatment, but do not require the Commission to grant the request. Similarly, Paragraph VI(F)(3) provides that the parties will

⁹ See title to Paragraph VI(F) of the proposed Settlement Agreement, p. 8.

“ask” the Commission to use its “best efforts” to resolve certain disputes within 60 days, but it does not require the Commission to grant the request. Providing a full opportunity for the Commission to review objections, if any, helps ensure the public interest will be met in the event of future objections.

18 The proposed Settlement Agreement also serves the public interest because it is consistent with this Commission’s order in Docket No. UT-053025. The only way in which the methodology in the proposed Settlement Agreement¹⁰ differs from the process followed in prior Commission proceedings is that the methodology adopts a simplified approach as to how business lines are counted. In Docket No. UT-053025, the Commission adopted a method for counting business lines that employed “ratios or fill factors to extrapolate data referring to specific wire centers and to reflect the actual circuits in use.” See ¶ 24 of modified interpretative statement, Order No. 06, December 15, 2006. In the proposed Settlement Agreement, the Parties have agreed to use “the most recently filed unadjusted ARMIS data reported to the FCC . . . without making any inter-wire center adjustments to this data.”¹¹ This allows easier verification of the data (e.g., the Parties do not have to verify extra steps related to adjustments), which introduces efficiencies and helps avoid disputes before the Commission.

IV. SUMMARY OF LEGAL POINTS

19 WAC 480-07-730 *et seq.* allows carriers to enter into settlement agreements to resolve their disputes, provided the proposed settlement agreement is in the public interest and meets

¹⁰ See Section V of the Proposed Settlement Agreement, which is entitled “Methodology.”

¹¹ See Paragraph V(A)(1) of the Proposed Settlement Agreement; *see also Id.* Paragraph VI(B), which provides: “When requesting additional non-impairment designations, Qwest will use the methodology set forth in Section V above, and will use the most recent data available at the time Qwest submits its proposed non-impairment designations for Commission review. For business line counts, Qwest will use and submit the most recent filed ARMIS (as reported) data available at the time of submission of its request to the Commission.”

pertinent legal and policy standards. For the reasons stated above, the proposed Settlement Agreement between the Joint CLECs and Qwest is in the public interest. Section 252(i) of the federal Act requires that interconnection agreement terms be available for opt-in. Paragraph VII(A)(1)(4) of the proposed Settlement Agreement specifically provides that “Qwest agrees to make the terms in Exhibits B, C, and D available to other requesting CLECs for inclusion of one or the other in their interconnection agreements (ICAs), consistent with Section 252(i) of the Act, as well.” The proposed Settlement Agreement is also consistent with this Commission’s order in Docket No. UT-053025, as described in the previous paragraph.

V. CONCLUSION

- 20 The Parties agree that, if the proposed Settlement Agreement is approved and not terminated, there will be no open issues for the Commission to decide in this docket as to the Parties. Qwest and the Joint CLECs will each offer a witness in favor of approval of the proposed Settlement Agreement between Qwest and the Joint CLECs if the Commission deems it necessary. However, the Parties recommend that a hearing and witnesses are not necessary in the consideration of this Settlement.
- 21 The Parties respectfully request that the Commission promptly approve the proposed Settlement Agreement between Joint CLECs and Qwest.

DATED this 22nd day of August, 2007.

QWEST

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