

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

Pursuant to the Notice of Procedural Schedule for Analysis of Wire Center Data, Verizon Northwest Inc. ("Verizon") responds to the Exceptions to Qwest and Verizon Data and Requests for Additional Data ("Exceptions") submitted by 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"). The Joint CLECs make a number of inappropriate criticisms of the data utilized by Verizon to identify non-impaired wire centers in the manner required by the Federal Communications Commission ("FCC") in the Triennial Review Remand Order ("TRRO").¹ Relying on such invalid criticisms, the Joint CLECs propound additional data requests. The Commission should refrain from seeking responses to the data requests, as they are tailored to obtain information that the FCC rules governing the identification of non-impaired wire centers bar from consideration.

¹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005), petitions for review pending, *Covad Communications Co., et al. v. FCC, et al.*, Nos. 05-1095, et al.

1. Verizon followed the FCC rules for determining the number of business lines associated with a particular wire center.

The Joint CLECs assert that the methodology used by Verizon to assess the impairment status of wire centers overstates the number of business lines. Exceptions at 2-8. That is false. Verizon's methodology for assessing wire center impairment follows the FCC rule set forth in 47 C.F.R. § 51.5 ("FCC Rule 51.5"), which states that:

[t]he number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements."²

As specified in FCC Rule 51.5, Verizon relied on data in ARMIS report 43-08 to determine the number of incumbent local exchange carrier ("ILEC") business switched access lines, and added the number of UNE loops connected to that wire center.

- a. Verizon utilized the most currently available ARMIS data to determine the number of ILEC business switched access lines.

The Joint CLECs criticize Verizon's use of 2003 ARMIS access line data to determine the number of ILEC business switched access lines in the identification of the original list of non-impaired wire centers in March 2005. Exceptions at 2-3. Verizon correctly used data from the December 2003 ARMIS report because it was the most recent report on file with the FCC as of the March 11, 2005 effective date of the *TRRO*.³ In fact, the FCC utilized the 2003 ARMIS report to analyze wire center data in the *TRRO*.⁴ The Joint CLECs discount the FCC's use of data from the 2003 report by noting that more current ARMIS reports exist today. That is, of course, true. And Verizon uses

² 47 C.F.R. § 51.5.

³ ARMIS report 43-08 is filed annually to report data for the previous calendar year; such filing is typically made on April 1st.

⁴ See *TRRO* ¶ 105 and n.303.

the most currently available publicly filed ARMIS data whenever it examines wire center classifications. For example, when Verizon examined wire centers to add supplemental wire centers to its non-impaired list in November of 2005 (effective February 2006), it utilized the most recent ARMIS data on file with the FCC at the time, which was 2004 ARMIS data (filed with the FCC in April 2005). The relevant data, however, when examining the original list of non-impaired wire centers filed to implement the *TRRO*, which became effective on March 11, 2005, is the publicly filed ARMIS data that was most currently available when that original list was identified and submitted to the FCC.

Use of December 2005 ARMIS data would reward CLEC delay in seeking to address this issue, and essentially postpone the effective date of the *TRRO* for purposes of identifying non-impaired wire centers by a full year (from March 2005 through March 2006). The implementing rules of the *TRRO* specify that once a wire center meets a non-impairment threshold, it is “not subject to later reclassification” to an impaired status.⁵ This means that wire center classifications operate on a ratchet – the only changes in classification permitted based on changes in the facts about numbers of business lines or fiber-based collocators after the data in effect on March 11, 2005, are changes from impaired to non-impaired (or from non-impaired for DS3 to non-impaired for DS3 to non-impaired for both DS3 and DS1). Yet the Joint CLECs are seeking what amounts to a potential wire center reclassification back to an impaired status by waiting until this late date to challenge Verizon’s original list of non-impaired wire centers submitted to the FCC on February 18, 2005. By basing such a tardy challenge on more recent ARMIS data, the Joint CLECs would preclude application of the governing FCC rule to data

⁵ See, e.g., 47 C.F.R. § 51.319(e)(3)(i) (“Once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 wire center.”).

supporting wire center classifications at the time the classifications were submitted on a timely basis to the FCC. The Joint CLECs should not be rewarded for their delay in seeking resolution of wire center determinations made in March 2005, and should not be permitted to effectively seek a “reclassification” of wire centers identified as non-impaired based on timely data at the time of identification.

- b. The ARMIS data utilized by Verizon does not include residential UNE-P lines.

Joint CLECs claim that Verizon includes residential UNE-P lines in its business line count. Exceptions at 6. That is not the case. Verizon included only business UNE-P lines from the ARMIS 43-08 report; it did not include residential UNE-P lines. Such reporting is possible because the number of business and residential lines are listed separately on Verizon’s ARMIS 43-08 report.

- c. Verizon appropriately added the number of UNE loops to the number of ILEC business switched access lines, as specified in the FCC Rule 51.5.

The Joint CLECs criticize Verizon’s addition of the number of UNE loops connected to a wire center as set forth in FCC Rule 51.5. Exceptions at 4-8. In doing so, the Joint CLECs essentially ask the Commission to re-write the FCC’s rule to include numerous unsupported restrictions to decrease the number of business lines associated with a particular wire center. When it arbitrated the definition of the term “business line” for TRO/TRRO amendment purposes, the Commission joined with most state commissions addressing the subject and agreed that FCC Rule 51.5 speaks for itself and should be implemented by the parties without changes. *See* Order No. 18 (Sept. 22,

2005), Docket No. 043013, at ¶¶ 24-28.⁶ The Commission should similarly reject this latest attempt by the Joint CLECs to write into FCC Rule 51.5 numerous restrictions that the FCC did not adopt.

The Joint CLECs claim that UNE loops utilized to serve residential customers or to provide “non-switched” services should be excluded, and that the number of UNE loops should be reduced by application of utilization factors. Exceptions at 4-8. Such exclusions and reductions are not permitted by FCC Rule 51.5, which is clear that “all UNE loops connected to that wire center” must be included in the calculation.⁷ In addition to being required by the plain language of FCC Rule 51.5, the inclusion of all UNE loops is consistent with the manner in which business line counts were provided to the FCC by the ILECs when the FCC was performing its impairment analysis. The *TRRO* specifically cited the ILECs’ filings that defined business lines as including all

⁶ See also Opinion and Order, P-00042092 (Penn. Pub. Util. Comm. February 9, 2006) at 53-55 (rejecting a CLEC’s proposed definition that attempted to delete the portion of FCC Rule 51.5 adding UNE loops because the CLEC “omitted the rest of the FCC’s definition in Section 51.5 of its regulations” and did “not confirm with the FCC’s rule”); Arbitration Order, *Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements*, DTE 04-33, at 285 (Mass. DTE July 14, 2005) (“Accordingly, we reject the CLECs’ definitions for affiliate, business line, fiber-based collocator, wire center, and Tier 1 and Tier 2 wire centers that do not comport with the FCC’s definitions.”); Arbitration Decision, *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 05-0442, (Ill. Commerce Comm’n Nov. 2, 2005) at 30 (“SBC’s position on this issue is fully consistent with the data the FCC relied upon to set the impairment thresholds and this is why we find SBC’s proposed language more preferable.”); Recommended Decision, *Petition of Verizon Washington, DC Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996*, TAC-19, (D.C. P.S.C. Sept. 6, 2005) at ¶ 94 (“As Verizon notes in its comments, the CLECs either do not include all of the FCC’s definition or amend it in various ways. The term should be added to give clarity to the language to be added to reflect the wire certification criteria and processes. It should, however, reflect the TRRO treatment of the subject. The exact and entire wording of the FCC should be used.”), approved by Order (D.C. P.S.C. Dec. 15, 2005).

⁷ See 47 C.F.R. § 51.5 and ¶ 105 of *TRRO* (emphasis added).

stand-alone UNE Loops.⁸ As stated in paragraph 105, “[t]he BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, . . . business UNE-P, plus UNE-loops” – without regard to the customer served by those loops or the type of service provided to them.⁹ And the FCC specifically held that “line counts derived on a wire center basis include *all loops that terminate in that location*, even if they terminate on separate switches.”¹⁰ Moreover, the inclusion of all UNE loops in FCC Rule 51.5 did not exclude UNE loops used to provide “non-switched” services, as alleged by Joint CLECs. Rather, FCC Rule 51.5 expressly excluded non-switched lines only from the count of business lines served by ILECs: “business line tallies . . . shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services.” Verizon complied with this exclusion by using ARMIS data that includes only ILEC business lines for switched services.

As stated above, many state commissions rejected similar CLEC attempts to re-write FCC Rule 51.5 in the context of *TRRO* amendment arbitrations. The same arguments advocating exclusion of UNE loops used to serve residential customers raised here by Joint CLECs were rejected in a number of such proceedings. For example, the California Commission rejected a CLEC attempt to “limit the definition of business lines to switched lines purchased by business customers pursuant to the FCC’s definition.” The California Commission stated that “[s]ince the FCC uses the phrase ‘UNE loops’ in

⁸ See *TRRO* ¶ 105 n.304; *id.* ¶ 114 n.322 (“[T]he BOCs each filed revised data sets, *all based on the same definition of business line*, and including all wire centers. . . . Accordingly, *we base our analysis in this Order on the BOC data received in December.*”) (emphasis added).

⁹ *Id.* ¶ 105.

¹⁰ *Id.* ¶ 87 n.251 (emphasis added).

both the discussion and in its rule, we must assume that that is exactly what the FCC meant,” and reiterated that “the FCC is clear that *all* loops should be included in the count, and we do not intend to depart from the FCC’s impairment criteria.”¹¹ Similarly, the Ohio Commission found that the FCC “explicitly required” a count of all UNE loops “knowing that some of those loops would include residential customers.”¹²

In fact, the meaning in FCC Rule 51.5 on this point was so clear that several CLECs petitioned for reconsideration of the *TRRO* seeking that the FCC’s definition of “business line” be amended along the same lines proposed by the Joint CLECs here. One group of CLECs argued that one of the *TRRO*’s “shortcomings” was that it “fail[ed] to prohibit BOCs from counting residential UNE-L lines as ‘business lines.’”¹³ Another group of CLECs pointed out that “the [FCC] counts all UNE-L lines provided to CLECs,” and that this “would include UNE loops used for non-switched access purposes, such as Internet access or local private lines.”¹⁴ Thus, CLECs themselves interpret the plain language of the *TRRO* as requiring the inclusion of all stand-alone UNE loops when conducting the impairment inquiry for particular wire centers. The reconsideration

¹¹ Decision Adopting Amendment to Existing Interconnection Agreements, *Petition of Verizon California Inc. (U 1002 C) for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in California Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, App. 04-03-014 (Cal. Pub. Util. Comm. Feb. 16, 2006) at 122-23.

¹² Arbitration Award, *Establishment of Terms and Conditions of an Interconnection Agreement Amendment Pursuant to the Federal Communications Commission’s Triennial Review Order and Its Order on Remand*, Case No. 05-887-TP-UNE (Ohio PUC Nov. 9, 2005) (“*Ohio Order*”) at 16.

¹³ Petition for Reconsideration of CTC Communications Corp., *et al.*, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, at 12 (FCC filed Mar. 28, 2005) (“*CTC et al. Petition for Reconsideration*”).

¹⁴ Petition for Reconsideration of Birch Telecom, Inc., *et al.*, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, at 15 (FCC filed Mar. 28, 2005) (“*Birch et al. Petition for Reconsideration*”).

petitions to the FCC were the appropriate route to request that the rules be re-written; a state proceeding considering implementation of the FCC's effective rules is not.

The Joint CLECs' proposed exclusions and reductions also ignore the calculus utilized by the FCC in determining impairment thresholds. The FCC chose the business line limitations based on its judgment that above certain levels, there would no longer be any impairment as to particular elements. But if the FCC had excluded or reduced certain UNE loops from the calculation, it could have chosen to set the relevant cut-offs at different levels. Moreover, the Joint CLECs' proposed exclusions and reductions disregard the FCC's rationale that business line counts are to be based "on objective criteria to which the incumbent LECs have full access," *id.* ¶ 108, and on "an objective set of data that incumbent LECs already have created for other regulatory purposes," *id.* ¶ 105. The Joint CLECs' proposed methodology is neither based on data to which the ILECs "have full access" nor data that ILECs "already have created." Verizon is not necessarily able to determine how a CLEC is using its UNE loops, whether all channels on a UNE loop are activated or whether a particular UNE loop is serving residential or business customers, nor does it compile such data.¹⁵

2. Verizon properly considered the number of fiber-based collocators located at a particular wire center.

Joint CLECs claim that Verizon has not provided sufficient data to support its compilation of the number of fiber-based collocators in particular wire centers.

Exceptions at 8. That is wrong. Verizon used the results from physical inspections it

¹⁵ See *Ohio Order* at 16 (noting that the FCC "explicitly required" a count of all UNE loops "knowing that some of those loops would include residential customers," and that "[i]ncumbents are unable to determine if the end user of the UNE-loop is a business or residential customer").

performed of collocation arrangements to assess whether a particular collocator constituted a “fiber-based collocator” under the FCC rules. In fact, the FCC cited Verizon’s collocation inspection data as one of the sources of competitive information it relied on in assessing competitive deployment of fiber-based collocation and establishing its fiber-based collocation criteria.¹⁶

The Joint CLECs assert that “at least one CLEC disputes its designation as a fiber-based collocator in one of wire centers that Verizon has claimed to be non-impaired.” Exceptions at 8. It is difficult to respond to such a vague claim, but each CLEC was sent a letter from Verizon in March 2005 requesting that it contact its Verizon account manager if it had actual, verifiable data that it believed demonstrated that any wire center identified by Verizon as non-impaired was incorrect. In fact, each CLEC was invited to review Verizon’s back-up data (upon execution of a non-disclosure agreement), including information allowing the CLEC to determine in which wire centers Verizon had identified it as a fiber-based collocator. Verizon has never received any actual, verifiable data from any CLEC challenging its identification as a fiber-based collocator in a Washington central office.¹⁷

3. Verizon properly designated certain data as “highly confidential.”

Joint CLECs take issue with Verizon’s designation of “non-masked CLEC-specific data” as “highly confidential.” Exceptions at 8. Verizon designated unmasked CLEC-specific data as “highly confidential” to protect customer-specific information

¹⁶ See *TRRO* ¶¶ 95 n. 270, 97 n. 275, 99, 100 n. 288 and 102 n. 293.

¹⁷ Verizon did receive information about an affiliate relationship between two collocators identified separately by Verizon in one Washington office, but consolidation of the two arrangements did not change the non-impairment status of the office.

from being shared beyond the attorneys in this matter so as not to provide competitively sensitive information about one CLEC (including CLECs unrepresented in this proceeding) to business employees of another. Verizon designated this information as “highly confidential” in light of its obligations under 47 U.S.C. Section 222, and will not produce such information subject to a lesser degree of protection without an express order of the Commission. Moreover, there is no need for this competitively sensitive information to be shared among non-attorneys, as the availability to each CLEC to review unmasked data regarding its own collocation arrangements allows for verification of all collocation arrangements identified by Verizon as fiber-based.

4. The additional data requests proffered by Joint CLECs are objectionable because they are based on an invalid methodology.

The Joint CLECs ask the Commission to issue supplemental bench requests for additional data requests included with the Exceptions. Exceptions at 9 and “Joint CLEC Proposed Follow-Up Data Requests.” The proposed supplemental data requests, however, are based on the flawed criticisms of Verizon’s methodology as described in this response. For example, the requests seek: (i) business line data from inappropriate time periods to analyze the original wire center list compiled by Verizon (Request 1); (ii) information to support efforts to inappropriately reduce UNE loop counts in violation of FCC Rule 51.5 regarding the use of such UNE loops to serve residential customers or by CLECs that do not use switching, or through application of usage factors (Requests 1-4); and (iii) customer-specific data regarding inspections of particular fiber-based collocation arrangements (Request 5). Request 5 is also unduly burdensome, as Verizon has made its back-up data on the methodology for identification of fiber-based collocators available

for a year now and each CLEC identified as a fiber-based collocater has had ample opportunity since that time to provide data challenging such identification.¹⁸ As the additional requests are based on faulty criticisms of Verizon data relying on a proposed methodology that would violate the FCC rules implementing the *TRRO*, the Commission should not seek responses to such objectionable requests.

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¹⁸ Joint CLECs provide no explanation regarding the information sought in Request 6, which inquires about any collocation arrangement that a Verizon entity may have in a Qwest central office. Verizon should not be required to provide competitively sensitive information about any collocation arrangements that it or any of its affiliates may have at a Qwest central office. The Joint CLECs have not made that request of any other carrier, and it would unduly burdensome and inappropriate for Verizon to be required to provide such information.