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 QWEST'S RESPONSES TO JOINT CLEC EXCEPTIONS TO QWEST DATA

1 Qwest Corporation ('Qwest") hereby responds to the Joint CLEC Exceptions to Qwest's wire center data in this docket.

I. INTRODUCTION

2 In response to the Commission's Bench Requests issued on February 17, 2006, Qwest provided the Joint CLECs and the Commission the comprehensive set of data it used in determining which wire centers in Washington satisfied the Federal Communications Commission's ("FCC") wire center non-impairment criteria. In their exceptions filed on March 7, 2007, the Joint CLECs have requested that Qwest produce new, additional data different from that which the FCC used to make its fundamental determinations in the Triennial Review Remand Order ("TRRO"), with no factual or legal basis for such a

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request. Changing or modifying the thorough, detailed data that Qwest has already provided is both unnecessary and contrary to the FCC's stated intent regarding the data on which non-impairment decisions are to be made. The CLECs' attempt to impose upon Qwest an ongoing, open-ended obligation to produce additional data would result in precisely the type of complex and lengthy proceeding that the FCC intended to avoid. As the FCC stated in the TRRO, "[w]e are acutely aware of the need to base any test we adopt here on the most objective criteria possible in order to avoid complex and lengthy proceedings that are administratively wasteful but add only marginal value to our unbundling analysis." TRRO, ¶ 99.

3 In their exceptions, the Joint CLECs offer several challenges to the data Qwest provided in this proceeding, none of which has merit. Qwest addresses these contentions in the discussion that follows.

A. Qwest's use of December 2003 data is consistent with the data the FCC analyzed in making its non-impairment decisions in the TRRO and is also the data that was available when the FCC directed Qwest and the other RBOCs to submit the list of wire centers that meet the non-impairment criteria.

4 In the TRRO, the FCC stated, "The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE loops." TRRO, ¶ 105. The data which formed the basis for the FCC's analysis was ARMIS data from December 2003, which was filed in April 2004. This same data was also what was available on February 4, 2005 when the FCC directed Qwest and the other RBOCs to submit the list of wire centers that meet the FCC's non-impairment criteria. Consequently, the use of December 2003 data is not only appropriate, it is consistent with the FCC's intent to base determinations on "an objective set of data that incumbent LECs already have created for other regulatory purposes." TRRO, ¶ 105.

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5 Further, December 2005 ARMIS data has not been filed at this time. ARMIS data is filed annually in April of the following year and so the representations made by the Joint CLECs that December 2005 data is available is not accurate.[1] Further, even if such data was available, it would not be relevant to an inquiry of the wire center list and data Qwest submitted to the FCC at that agency's direction in February 2005. Qwest's February 2005 filing at the FCC used December 2003 data. If the wire center lists were to have been based on subsequent data, the FCC most certainly would have requested that data. However, the FCC did not require any subsequent data. Rather, the FCC requested the wire center lists based on the most current data available *at the time* those lists were filed with the FCC in February 2005.

6 The Joint CLECs would not be requesting new data if they had acted promptly in response to the wire center data that Qwest provided shortly after the FCC issued the TRRO in February 2005. It would be unreasonable for the Joint CLECs' one-year delay in disputing Qwest's wire center list before this Commission to serve as the basis for requiring Qwest to undertake an entirely new, time-consuming data gathering effort. Moreover, contrary to the Joint CLECs' assertion that updated data is necessary because of Qwest's representations that its access lines, particularly its business access lines, are steadily declining, such declines in access lines only underscore the ever-increasing state of competition in Washington – which ultimately supports the underlying reason for the relief.

B. **Qwest appropriately applied the FCC's Rules regarding the methodology for counting voice grade equivalents associated with each business line.**

7 Far from being the "novel concept" represented by the CLECs in their exceptions at

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[1] Nor was there an FCC filing of ARMIS data as of March 2005, so Joint CLECs' request for that data could not be satisfied.

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paragraph 7 on page 3 of their comments, FCC Rule § 51.5 (47 C.F.R. § 51.5) is clear in its requirement to count *all* business lines, including Qwest's own business lines, based on each line's voice grade equivalent:

> 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 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. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, *(3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents and therefore to 24 "business lines."* (Emphasis added.)

8 The FCC also emphasized the need for a consistent, "simplified ability to obtain the necessary information." TRRO, ¶ 105. Because Rule 51.5 employs a different methodology for counting voice grade equivalents than reflected in Qwest's December 2003 ARMIS filing, Qwest had to adjust the ARMIS data to count the total capacity of each circuit, rather than the channels being used on those circuits. The Joint CLECs' assertion that Qwest's methodology is not supported by the language of the rule is clearly controverted by the last sentence of the section that the Joint CLECs themselves quoted, which specifies that all 24 channels of a DS1 line should be counted, regardless of how many channels are being used by a CLEC at a particular point in time.

9 The Joint CLECs appear to want to *artificially reduce* the number of business lines. The FCC intended otherwise, however. In defining "business lines" and in applying its "business line" test, the FCC's intent was to capture "both actual *and potential competition*, based on indicia of significant revenue opportunities at wire centers." TRRO, ¶ 88.

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Accordingly, in its recent decision on March 2, 2006, the Florida Commission approved BellSouth's application of the full capacity of digital access lines by stating as follows:

> We also agree with BellSouth that unused capacity on channelized high capacity loops should be counted in the business lines…the FCC rules specifically state that "the business line tallies…shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line." (47 CFR 51.5). The FCC rule further explains by way of example that a DS1 line should be counted as 24 business lines because it corresponds to 24 64 kbps-equivalents. The FCC has made clear its "test requires ILECs to count business lines on a voice grade equivalent basis. In other words, a DS1 loop counts as 24 business lines, not one."[2]

While the Joint CLECs rely heavily on a North Carolina decision, the North Carolina Commission's treatment of the circuit counts associated with business lines is inconsistent with the TRRO and decisions of other state commissions. In addition to the Florida decision noted above, the Georgia Public Service Commission also ruled for BellSouth on this issue:

> The Commission also concludes that it is appropriate to count DS1 lines as 24 business lines… If a DS1 line includes channels that are not empty, then it is an access line that connects end-user customers with incumbent LEC end-offices for switched services. Consistent with 47 C.F.R. § 51.5, such a DS1 line must count as 24 lines.[3]

C. Qwest appropriately included all UNE-Loops as Business Lines.

10 The FCC's Rule § 51.5 states: "The 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." The Joint CLECs' proposal to artificially undercount UNE

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[2] *In re: Petition to Establish Generic Docket to Consider Amendments To Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecommunications, Inc.*, Fla. PSC, Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP. issued March 2, 2006 ("*Florida BellSouth Decision*").

[3] *In Re: Generic Proceeding to Examine Issues Related to BellSouth Telecommunications, Inc.'s Obligations to Provide Unbundled Network Elements*, Docket No. 19341-U, Order on Remaining Issues, page 20 of 54, entered March 2, 2006 ("*Georgia BellSouth Decision*")

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loops by adjusting based on actual usage is, again, contrary to the FCC's stated intent to identify *opportunity* in each wire center, and further undermines the FCC's attempt to apply an impairment standard that requires consideration of all the revenue opportunity that a competitor can reasonably expect to gain over the facilities it uses from all possible sources. TRRO, ¶ 24. The Indiana Commission considered this same issue and explained succinctly why the Joint CLECs' position on this issue is wrong:

> The FCC's rule, 47 C.F.R. § 51.5, defines "business lines" to include all UNE loops connected to a wire center at issue, regardless of the type of customer served. Moreover, when the FCC conducted a sample run of how to compute "business lines" in a wire center in paragraph 105 of the TRRO, *it used all UNE loops in the wire center, with no exclusions*. One reason for this was that the FCC wanted to establish a simple, objective test that relied on data the ILECs already have and which could be easily verified. *SBC Indiana's proposal for computing "business lines" uses the exact same data and categories that the FCC relied on in the TRRO.* We will not ignore the FCC's use of all UNE loops in its dry run nor will we redefine "business lines" in a manner that conflicts with the FCC's approach. Finally, we agree with SBC Indiana that *the CLECs' proposal to exclude certain UNE loops is inconsistent with the FCC's impairment analysis*, which used the same type of data that SBC Indiana proposes to continue to use here. We also note that the Illinois and Ohio commissions both held for SBC on this issue in their *TRO/TRO Remand Order* implementation dockets. [Citations omitted.][4]

The Illinois Commerce Commission reached the same conclusion, finding as follows:

> The FCC's definition of business lines specifically includes "…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." (47 C.F.R. §51.5) (emphasis added). *The phrase "all UNE loops" encompasses residential customers and non-switched services.* CLECs' contention that the FCC intentionally limited its count to business lines because transport deployment has been driven largely by high bandwidth and the service demands of business making business lines a more accurate predictor of impairment than total lines, is likewise inconsistent with the FCC's definition. *CLECs'*

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4 *In the Matter of the Indiana Utility Regulatory Commission's investigation of Issues Related to the Implementation of the Federal Communications Commission's Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order*, Cause No. 42857, approved January 11, 2006, Issue 3, p. 16.

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> *contention that SBC "seeks" to include "the sum of all UNE loops connected to the wire center" including UNE loops that serve residences is obviously incorrect, since the FCC's definition already includes the quoted language*. 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.[5]

Further still, the Ohio Commission stated:

> Moreover, the FCC explicitly required adding the sum of *all UNE-loops* connected to that wire center knowing that some of those loops would include residential customers. Incumbents are unable to determine if the end user is a business or residential customer since the incumbents terminate the UNE loop to a collocation arraignment and thus do not know the class of customer beyond that point.[6]

Finally, the Florida Commission agreed that, "a business line should include all business UNE-P lines and *all UNE-L lines*."[7]

11 Accordingly, the Joint CLEC proposal to apply a so-called "utilization factor" to "business lines" has no basis in fact or in law and, thus, the Commission should reject it. This proposal appears to be merely an attempt to artificially lower the number of business lines in violation of the methodology clearly outlined in the TRRO.

D. In the absence of actual tracking capability, Qwest applied the conservative methodology it has used in previous dockets before this Commission to account for business UNE-P lines.

12 Contrary to the Joint CLECs' assertions, the methodology that Qwest applied to determine the number of business UNE-P lines represents a conservative calculation that has been used in previous dockets before this Commission. For example, in the context of its 271

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[5] Arbitration Decision, *Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 with Illinois Bell Telephone Company to Amend Existing Interconnection Agreements to Incorporate the Triennial Review Order and the Triennial Review Remand Order,* ICC Docket No. 05- 0442 (Nov. 2, 2005) ("*Illinois TRO/TRRO Order*"), at p. 30.

[6] Arbitration Award, *In re Establishment of Terms and Conditions of an Interconnection Agreement Amendment, PUCO* Case No. 05-887-TP-UNC, at 16 (Nov. 9, 2005) ("*Ohio TRO/TRRO Order*"). (Emphasis added.)

[7] *Florida BellSouth Decision*, at p. 39. (Emphasis added.)

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proceeding, Qwest was required to demonstrate the level of residential competition it faced in Washington. One component of that demonstration was the number of residential UNE-P lines, which Qwest derived through the use of residential white page listings. Further, in its competitive classification dockets, Qwest used the same methodology it applied to the wire center data in this docket to arrive at the number of business UNE-P lines. In each of these instances, the data provided were sufficient for the Commission to ultimately issue an order approving the relief requested by Qwest.

13 In this proceeding, Qwest is simply applying the converse of what it provided in its 271 docket by deducting the residential UNE-P listings from the total UNE-P lines in service and attributing the balance to business UNE-P listings. It would be inappropriate to simply count the number of business listings in the white pages of the directory, as the CLECs suggest, because businesses often list only one telephone number (the businesses' main number) in the white pages despite having multiple lines serving their businesses. For example, an insurance agency may have multiple agents with direct phone numbers, but have only one number listed in the white pages directory for customers to call. Once again, the Joint CLECs' proposed approach would artificially reduce the number of business lines and require Qwest to undertake additional and unnecessarily complicated calculations. The methodology that Qwest applied in this case provides a simple, established, and transparent calculation that results in a reasonable accounting of UNE-P business lines.

E. Qwest appropriately included in its line counts UNE loops that may be used for non-switched business services.

14 The Commission also should reject an additional attempt by the Joint CLECs to inappropriately lower business line counts based on the argument that Qwest made no attempt to exclude UNE loops which CLECs may use to provide non-switched services.

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Again, that exclusion would be contrary to the FCC's stated intent to capture an accurate measurement of the "revenue opportunity" in a wire center. The FCC's impairment standard requires consideration of all of the revenue opportunity that competitors can expect to gain over facilities it uses from all sources. TRRO, ¶ 24. As noted earlier, the FCC intended that the "business line" test would serve as a gauge of both existing and potential revenue opportunity. If this Commission were to explicitly exclude some UNE loops simply because they are not "switched," it would ignore the opportunity the FCC intended to capture by requiring all UNE loops to be included in line counts. Excluding some UNE loops simply because a CLEC may have made a business decision to provide data would improperly assess impairment with an eye toward a particular carrier's business strategy. The FCC rejected this approach, finding that such a course "could reward those carriers that are less efficient or whose business plans simply call for greater reliance on UNEs." TRRO, ¶ 25 (citing ¶ 115 of the Triennial Review Order ("TRO"), 18 FCC Rcd at 17056).

15 Further, the North Carolina decision that the Joint CLECs cite is also in clear conflict with the FCC's statement at paragraph 105 of the TRRO, which states: "Moreover, as we define them, business line counts are an objective set of data that incumbent LECs already have created for other regulatory purposes. The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, *plus UNE-loops*." (Emphasis added.) Not surprisingly, in its decision on November 2, 2005, the Illinois Commerce Commission similarly found as follows:

> The FCC's definition of business lines specifically includes 'the sum of all incumbent LEC business switched access line, plus *the sum of all UNE loops* connected to that wire center, including UNE loops provisioned in combination with other unbundled elements . . . . *The*

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> *phrase 'all UNE loops' encompasses residential customers and non-switched services.*[8]

In its March 2, 2006 decision, the Florida Commission likewise found:

> We note that the rule refers to ILEC "business" switched access lines, but does not specify any particular UNE loops; rather it says "all" UNE loops connected to the wire center…This is consistent with the language from the test of the TRRO, cited above. We find that this distinction is significant and indicates that ILEC switched business access lines and UNE loops should be treated differently.[9]

As these decisions reflect, the FCC very clearly intended to include all UNE loops, regardless whether they were residential or non-switched, and thus the Commission should reject the Joint CLECs' attempts to do otherwise.

F. Qwest provided sufficient data to support its designation of fiber-based collocators.

16 The FCC established specific criteria for determining whether a CLEC is considered a "fiber-based collocator." The Joint CLECs' request to apply additional qualifying criteria goes well beyond the FCC's requirements and should be rejected. Specifically, in Rule 51.5, the FCC defined a "fiber-based collocator" as follows:

> A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth is this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single-fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. §153(1) and any relevant interpretation in this Title.

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[8] *Illinois TRO/TRRO Order*, p. 30 (citations omitted) (first emphasis in original) (second emphasis added).

[9] *Florida BellSouth Decision*, p. 37.

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The FCC clearly intended that these would be the only criteria for determining if a carrier is a fiber collocator, as reflected in the following statement from the TRRO:

> We define fiber-based collocation simply. For purposes of our analysis, we define fiber-based collocation as a competitive carrier collocation arrangement, with active power supply, that has a non-incumbent LEC fiber-optic cable that both terminates at the collocation facility and leaves the wire center. In tallying the number of fiber-based collocators for purposes of our transport impairment analysis, parties shall only count multiple collocations at a single wire center by the same or affiliated carriers as one fiber-based collocation. Finally, we find that a competing carrier's collocation facilities shall count toward the qualification of a wire center for a particular tier irrespective of the services that the competing carrier offers because the fiber-based collocation indicates an ability to deploy facilities and because it would exponentially complicate the process of counting such collocation arrangements. TRRO, ¶ 102.

17 As to the time frame for the data that Qwest provided for its determination of the number of fiber collocators, Qwest reiterates that the methodology it used began with a baseline of collocations in place in December 2003. Qwest then took that data and removed any collocations that had been decommissioned between December 2003 and February 2005. Qwest then physically verified that the collocations were supplied with more than minimum power and that they had fiber that terminated in the collocation and left the building. Qwest then took the additional step of requesting verification from each of the CLECs for which its records reflected a fiber-based collocation by asking that each CLEC advise Qwest if it had any dispute with such a designation, and subsequently made corrections to its collocation data based on the resulting feedback received from CLECs. This process is similar to that which the FCC employs in pricing flexibility dockets to verify the accuracy of the collocation information relied on in those proceedings. In addition, Qwest removed multiple entries based on CLEC mergers or affiliated companies that were known to Qwest, and further, sent letters to the CLECs requesting they identify any other affiliations of which Qwest may not be aware. The final verification of active

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"fiber-based collocations" was completed as of June 2005. Therefore, Qwest believes that the Joint CLECs' request for additional, updated information is unwarranted.

G. Information requested in the additional proposed data requests is improper and unnecessary.

18 Finally, Qwest believes that the additional Data Requests submitted by the Joint CLECs are not appropriate for all of the reasons listed in the responses above. Further, the Joint CLECs are asking for the creation of new data, and asking for information not supported by the FCC methodology. This is improper, for the reasons set forth above. Accordingly, Qwest respectfully submits that the Commission should reject the Joint CLECs' requests for additional data requests from Qwest. For the Commission's information, Qwest has also filed its specific objections and responses to the Joint CLECs' additional Data Requests.

DATED this _____ day of March, 2006.

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