

March 21, 2006

VIA ELECTRONIC FILING AND FIRST CLASS MAIL

Carole Washburn
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RE: *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

Dear Ms. Washburn:

Public Counsel submits these comments pursuant to the February 17, 2006, Notice of Procedural Schedule for Analysis of Wire Center Data. Because the ILECs have not produced all of the data responsive to the Commission's Bench Requests and the CLECs' Data Requests, Public Counsel believes it is premature for the Commission to endorse the non-impairment designations made by Qwest and Verizon.

The FCC has authorized the Commission to arbitrate wire center designation disputes. With regard to this docket, the Commission correctly set forth a two-step process. The first step is collection of wire center level data so that the CLECs can engage in a "reasonably diligent inquiry." The second step involves the ILECs' non-impairment designations and resolving any disputes about these designations. The Commission may compel production of the requested data during this first step without interpreting the FCC's Triennial Review Remand Order (TRRO) or deciding the appropriate methodology for determining non-impairment.¹ Indeed, we agree with the CLECs that full legal briefing regarding the appropriate methodology for non-impairment designation should come after data disclosure and not before. The ILECs should not be allowed to shortcut this two-step process simply by withholding data.

In addition, the ILECs refusal to provide the data based on their narrow interpretation of the TRRO is inappropriate given the larger purpose of this docket. This docket was intended to reevaluate the status of competition in light of the TRRO's elimination of UNE and UNE-P since the Commission premised its approval of competitive classification of business services on the existence of competitive entry through UNE and UNE-P. See e.g., *In the Matter of the Petition of Qwest Corporation For Competitive*

¹ However, the TRRO is of little help in guiding this Commission as to what it should do when an ILEC fails to separate residential and business UNE-P in its line counts.

Classification of Basic Business Exchange Telecommunications Services, UT-030614, Seventeenth (Final) Order (December 23, 2003), ¶ 99 (“CLECs using UNE-P are present in 61 of 68 Qwest exchanges, where over 99% of Qwest’s analog business customers reside.”) These prior decisions now warrant reassessment.²

This context should not be lost in resolving this dispute. There should be no question, for instance, that 2003 line count data is insufficient for the policy determinations the Commission must make under its competitive classification statutes. To the contrary, RCW Title 80 mandates that “effective competition” actually exist before a company receives competitive classification and therefore, requires use of the most currently available data in order to protect the public interest.

In conclusion, the Commission should withhold endorsing the ILECs’ non-impairment designations until after Qwest and Verizon revise and supplement their responses to the Commission’s Bench Requests and the CLECs’ Data Requests. Once the data is received, all interested persons should be entitled to full briefing on any disputes before the Commission endorses the ILECs’ designations.

Sincerely,

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cc: Service list

² See, UT-030614 at ¶ 115: “The Commission declines to delay this proceeding pending the conclusion of the TRO and generic cost proceedings, or to import into this proceeding new requirements from the TRO. Qwest is entitled to a ruling now on its petition, which can be re-examined at a later time, upon a proper motion.”