

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation	)	DOCKET NO. UT-053025
Concerning the Status of Competition and	)	
Impact of the FCC’s Triennial Review	)	JOINT CLEC FINAL EXCEPTIONS
Remand Order on the Competitive	)	AND OBJECTIONS TO QWEST AND
Telecommunications Environment in	)	VERIZON WIRE CENTER NON-
Washington State.	)	IMPAIRMENT DESIGNATIONS
	)	
	)	

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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 final exceptions and objections to the wire center data and non-impairment designations submitted by Qwest Corporation (“Qwest”) and Verizon Northwest Inc. (“Verizon”).<sup>1</sup> Because Qwest and Verizon have refused to provide the information necessary to determine the accuracy of their wire center non-impairment designations, the Joint CLECs, at least at this time, cannot agree with Verizon’s wire center designations, Qwest’s wire center designations based on line count data, or some of Qwest’s designations based on the number of fiber-based collocators.<sup>2</sup>

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<sup>1</sup> Covad does not join the portions of these Exceptions that are specific to Verizon.

<sup>2</sup> The Joint CLECs have been able to check some of the data with respect to fiber-based collocators in Qwest wire centers. While there continue to be disputes over Qwest’s methodology, the Joint CLECs have confirmed certain Qwest wire center designations based on the Joint CLECs’ independent investigation and reliance on Qwest’s representations that it received affirmative confirmation from certain CLECs that they are, in fact, fiber-based collocators in particular wire centers. The Joint CLECs, however, are continuing to investigate and reserve the right to amend this confirmation if their

## COMMENTS

### **A. Qwest and Verizon Have Failed to Provide Business Line Count Data That Is Contemporaneous With the Effective Date of the TRRO.**

2. The FCC adopted fiber-based collocation and business line counts as the triggers for determining whether impairment exists in a particular wire center. In paragraph 105 of the TRRO, the FCC defines business lines as incumbent local exchange carrier (“ILEC”) “ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops.” The TRRO did not specify the date on which these counts were to be made, but that order became effective on March 11, 2005. The determinations made pursuant to that order, therefore, should be based on data that is contemporaneous with that date.
3. Qwest and Verizon disagree and have provided data on the number of business lines as of December 2003 – over one year before the TRRO was issued and became effective. Both ILECs claim that this is the data that was on file with the FCC when it issued the TRRO and when the Wireline Competition Bureau subsequently requested a listing of the wire centers that satisfied the TRRO’s non-impairment thresholds. That observation, while accurate, is irrelevant. The FCC did not state that its non-impairment test was to be applied to the data that was on file as of the date of the TRRO. Indeed,

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reliance on Qwest’s representations is misplaced. Subject to that reservation of rights, the Joint CLECs do not dispute Qwest’s non-impairment designations, in whole or in part, in the following wire centers: Seattle East (Tier 1), Seattle Elliott (Tier 1), Spokane Riverside (Tier 1), Bellevue Glencourt (Tier 2), Tacoma Fawcett (Tier 2), Seattle Atwater (Tier 1 as of July 8, 2005), Seattle Campus (Tier 1 as of July 8, 2005), Seattle Duwamish (Tier 2 as of July 8, 2005), Seattle Main/Mutual (Tier 1, awaiting accurate line count data for loops), Bellevue Sherwood (Tier 2, awaiting accurate collocation data for Tier 1), and Olympia Whitehall (Tier 2, awaiting accurate collocation data for Tier 1). The Commission should note that Qwest did not designate three of these wire centers as non-impaired until July 8, 2005 (Seattle Atwater, Seattle Campus, and Seattle Duwamish), and thus the applicable transition rates and time period began on that date, not March 11, 2005.

FCC obviously contemplated that the wire center designations are to be based on current data because the TRRO expressly contemplates future non-impairment designations, which would be meaningless if only 2003 data could be considered.

4. The ILECs' position is particularly disingenuous given that they file their ARMIS reports on April 1<sup>3</sup> – *three weeks* after March 11, the date in 2005 when the TRRO became effective. More current ARMIS data thus was on file with the FCC at virtually the same time as the TRRO became effective. At a bare minimum, the Commission should require Qwest and Verizon to provide business line count data from their April 1, 2005, ARMIS filing reflecting data through December 2004.
5. Both Qwest and Verizon claim that the Joint CLECs are seeking a “reward” for delaying Commission consideration of this issue, but this erroneous claim is based on two mischaracterizations. First, the Joint CLECs are not proposing that the Commission review ARMIS data from December 2005, as the ILECs contend. Rather, the Joint CLECs propose that the Commission review data that was current as of the March 11, 2005 effective date of the TRRO. The Joint CLECs would have taken this position regardless of when the Commission took up the wire center designation issue. Second, CLECs first raised the issue of wire center designations under the TRRO in April 2005 – in the Verizon arbitration in Docket No. UT-043013 and in response to Qwest’s last petition for competitive classification in Docket No. UT-050258 that resulted in the Commission opening this docket. Any delay in Commission consideration of this issue thus is not attributable to the Joint CLECs, nor are the Joint CLECs seeking to derive any benefit from the timing of the Commission’s review.

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<sup>3</sup> Verizon Response to Joint CLEC Exceptions to Qwest and Verizon Data (“Verizon Response”) at 2, n.3.

6. The FCC and this Commission have consistently required that determinations under the Act be based on the most current data available. Qwest and Verizon have business line count data available at least as of December 2004, if not March 11, 2005. The ILECs refusal even to provide such data is a strong indication that such contemporaneous data does not support their wire center designations based on business line counts. The Commission should require the ILECs to provide that data and should not approve any such wire center designation based on business line counts that is not supported by that data.

**B. Qwest Has Improperly Expanded the Number of Its Business Lines.**

7. The FCC requires the ILECs to calculate their own business lines as the switched business lines included in ARMIS account 43-08. That is how Verizon has calculated its own business lines. 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. Neither the TRRO nor the FCC rules support Qwest's position.

8. Qwest purports to rely on language in FCC Rule 51.5, which defines "business line" and requires that business line tallies "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.'" The first sentence of the business line definition, however, states, "A business line is an incumbent LEC-owned switched access line *used to serve* a business customer . . . ." (Emphasis added.) Read in conjunction, these aspects of the FCC's definition require that only those 64 kbps-equivalent channels on a high capacity circuit that are *used to serve* a business customer are counted as business lines. Those are the lines that are reported in the

ARMIS 43-08 account, and “the FCC did not intend for the ILECs’ ARMIS business line count to be altered in any way.”<sup>4</sup>

9. The TRRO supports this interpretation. The FCC explained in paragraph 105 that it adopted the use of “ARMIS 43-08 business lines” because they are part of a report to the FCC and “are an objective set of data that incumbent LECs already have created for other regulatory purposes.” Qwest’s adjustments to its ARMIS 43-08 business lines are not part of any report to the FCC and are not “an objective set of data that [Qwest] already [has] created for other regulatory purposes.” Rather, those adjustments are a manipulation of the reported data that serve only to artificially increase the number of switched access lines that Qwest uses to serve business customers.

10. The Commission, therefore, should require Qwest, like Verizon, to provide and use only the ARMIS 43-08 business line count data for each wire center.

**C. Neither Qwest Nor Verizon Has Demonstrated That They Have Properly Excluded Residential UNE-P Lines.**

11. “Business lines,” as defined in the TRRO, include only those UNE-P lines used to serve business customers. Qwest has calculated business UNE-P lines by taking the total number of UNE-P lines and subtracting the number of lines associated with residential white pages listings. As the Joint CLECs previously observed, this methodology cannot be considered “conservative,” as Qwest contends, because it inflates the number of business UNE-P lines by including unlisted residential lines. Qwest asserts that using UNE-P lines that are listed in the business white pages would result in undercounting

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<sup>4</sup> *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*”).

“because businesses often list only one telephone number (the businesses’ main number) in the white pages despite having multiple lines serving their businesses.” Qwest, however, provides no data to support or quantify this assertion in general or its applicability to UNE-P lines in particular. Indeed, the applicability to UNE-P lines is especially suspect in the wake of the TRO, which limited UNE-P to four lines or fewer to any one end user customer and thus would not be used to serve the businesses that need many lines that Qwest’s methodology assumes.

12. Qwest’s telephone number listing methodology, moreover, should largely be unnecessary. As of February 28, 2005 – shortly before the March 11, 2005 effective date of the TRRO – Qwest’s own data demonstrates that approximately 93% of its UNE-P lines were served via Qwest Platform Plus (“QPP”), Qwest’s commercial UNE-P product offering.<sup>5</sup> QPP lines are separately identified as residential and business. If Qwest uses business line data contemporaneous with the effective date of the TRRO, as the Joint CLECs propose, Qwest would already have the data necessary to identify the vast majority of business UNE-P/QPP lines and would need to account for only the small fraction of UNE-P lines that had not been converted to QPP as of that date.

13. The Commission, therefore, should require Qwest to use its QPP data to identify the number of UNE-P business lines in each wire center. Business UNE-P lines that had not been converted to QPP by that date should be identified only as those UNE-P lines that are listed in the business white pages section of the telephone directory database.

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<sup>5</sup> Qwest Response to Joint CLECs Letter to Commission Regarding Qwest’s Petition for Competitive Classification in Docket No. UT-050258 at 4, n.2 (April 25, 2005) (“The breakdown of 2/28/05 UNE-P/QPP volumes is as follows: QPP = 92,716; UNE-P = 7,587.”).

14. Verizon poses a different issue, contending that UNE-P lines are included in its ARMIS 43-08 report and that this report does not include residential UNE-P lines “because the number of business and residential lines are listed separately.”<sup>6</sup> Such a brief explanation raises more questions than it answers. Verizon does not explain why its UNE-P lines are included in its ARMIS 43-08 report or how Verizon separately identifies residential and business UNE-P lines when Qwest apparently is unable to do so. The Commission should require Verizon to provide more information supporting its explanation and detailing how it ensured that its business line counts exclude residential UNE-P lines.

**D. Qwest and Verizon Over-Count CLEC Business Access Lines.**

15. FCC Rule 51.5 defines a “business line” as “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.” By definition, the UNEs the ILECs provide to CLECs are not “business lines” if they are not used to provide switched services or are not actually used to provide service to business customers. The UNE line counts, therefore, should be adjusted to remove lines that are (1) used to provide non-switched services, (2) line equivalent channel capacity on high capacity circuits that is not actually being used to provide service, and (3) lines that are used to serve residential customers.

16. Qwest and Verizon disagree, essentially arguing that the FCC stated in Rule 51.5 that business line counts include “all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements,” and “all UNE

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<sup>6</sup> Verizon Response at 4.

loops” means all UNE loops. But that is not the case. UNE-P is a UNE loop “provisioned in combination with other unbundled elements,” but Qwest and Verizon do not dispute that only UNE-P lines used to serve business customers are included in the business line counts. The North Carolina Commission was similarly troubled by the conflict between the FCC’s absolute language and its definition of business lines and decided that the FCC’s ultimate intent was to exclude lines used to serve residential customers:

The Commission does acknowledge that the FCC stated in its Rule that business lines should include all UNE loops. However, the Commission finds it troublesome that a business line count would include residential lines. In addition, the Commission agrees that the first sentence in Rule 51.5 is a core requirement for a line to be counted and that sentence says that it must be a switched access line used to serve business customers in order to be counted.

Therefore, the Commission concludes that it is inappropriate for BellSouth to include residential UNE-L lines in the count of business lines.<sup>7</sup>

17. Qwest also contends that failure to include all UNE loops is “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.”<sup>8</sup> The FCC, however, did not intend such “opportunity” to include non-switched lines because the FCC’s definition of “business line” in Rule 51.5 expressly excludes “non-switched special access lines.” Nor does “opportunity” include spare capacity. A CLEC, for example, may obtain a DS1 loop to a customer

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<sup>7</sup> *North Carolina Order* at 68.

<sup>8</sup> Qwest Responses at 6 (emphasis in original).



location where the total customer demand for lines at that location is 10. A DS1 loop may be the least expensive means to serve those 10 lines, but the additional 14 line equivalents are nothing more than excess capacity and do not represent any “opportunity” because there are no other customers or lines to be served at that location. The North Carolina Commission agreed:

The Commission agrees with CompSouth and Public Staff that UNE-L lines added should only reflect the actual used capacity to serve a business customer as specified in the first sentence of Rule 51.5 (i.e., only lines used to serve business customers should be counted). The Commission agrees with the Public Staff that the business opportunities in a wire center represent the actual use of the lines, not necessarily the maximum potential use of the lines. Stated another way, the actual use of the lines by actual customers is the business opportunity available in a wire center, not simply the maximum capacity available to serve additional customers if additional customers are not seeking to be served.<sup>9</sup>

18. Finally, Qwest and Verizon contend that any adjustment to raw UNE loop counts would “disregard the FCC’s rationale that business line counts are to be based ‘on objective criteria to which the incumbent LECs have full access’ and on ‘an objective set of data that incumbent LECs already have created for other regulatory purposes.’”<sup>10</sup>

Again the ILECs interpret the TRRO far too narrowly. The number of UNE-P lines used to serve business customers is data to which at least Qwest does not have full access and requires calculations and adjustments that are not part of any other regulatory filing. The Joint CLECs, moreover, have proposed adjustments to UNE line counts based on data that is within the ILECs’ control – i.e., applying the ILECs’ utilization factors to high

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<sup>9</sup> *North Carolina Order* at 68.

<sup>10</sup> Verizon Response at 8 (quoting TRRO paragraphs 108 and 105) (citations omitted).

capacity UNE loops and excluding loops provided to known data service providers (such as Covad) or non-UNE-P providers who offer residential service. The Commission should require the ILECs to make these adjustments to ensure that the business line counts include only the UNE loops that reflect “incumbent LEC-owned *switched* access line *used to serve a business customer*” as FCC Rule 51.5 requires.

**E. Qwest and Verizon Have Failed to Provide Sufficient Data on Fiber-Based Collocators.**

19. Neither Qwest nor Verizon provides sufficient data to verify that the collocators they have identified are “fiber-based collocators” as defined by the FCC. In response to the Joint CLECs’ concerns, both ILECs simply reiterate that the descriptive information they have provided is sufficient and refuse to provide any supporting data. Qwest and Verizon trumpet their verification efforts, but provide no documentation of those efforts. The fact that CLECs did not respond to requests for verification, moreover, does not mean that Qwest’s and Verizon’s identification of those CLECs as fiber-based collocators in particular wire centers is accurate. It means only that the CLECs did not respond.

20. The Joint CLECs have requested specific data demonstrating that Qwest’s and Verizon’s designations are accurate. The ILECs have refused to provide that data, although Verizon alludes to the existence of “back-up data” supporting its analysis.<sup>11</sup> The Commission should require the ILECs to produce this data before approving any disputed wire center designation that is based on the number of fiber-based collocators.

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<sup>11</sup> Verizon Response at 9.

**F. Verizon Has Misdesignated Data as Highly Confidential.**

21. Verizon designated virtually all of its wire center data as “highly confidential,” effectively restricting access to that data to counsel. Verizon contends that it “designated unmasked CLEC-specific data as ‘highly confidential’ to protect customer-specific information 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.”<sup>12</sup> The only unmasked CLEC data that Verizon provided, however, is the identity of the fiber-based collocators in its designated wire centers, and no CLEC has claimed that such is highly confidential. To the contrary, CLECs participating in this proceeding have stated that such information is confidential, not highly confidential. Verizon, moreover, has not limited its designation of “highly confidential” to unmasked CLEC data but has extended it to Verizon’s own business line count and masked CLEC line counts. Verizon offers no justification for such designation, and none exists – particularly when Qwest identifies such information only as “confidential” and has done so in other dockets without objection.
22. Verizon nevertheless states that it will not provide the information as confidential, rather than highly confidential, “without an express order from the Commission.”<sup>13</sup> The Commission has already entered such an order: “After consulting with participants in the workshop and scheduling conference, the Commission requests that Qwest and Verizon provide the identity of fiber-based collocators as confidential information, but mask the

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<sup>12</sup> Verizon Response at 9-10.

<sup>13</sup> Verizon Response at 10.

identify of CLEC business lines by masking the data or assigning the CLEC a code.”<sup>14</sup>

Verizon cannot plausibly claim that there is any legitimate basis for continuing to designate its wire center data as “highly confidential” in light of this Commission order.

23. Verizon purports to protect CLEC data from other CLECs when the CLECs and the Commission have expressly stated that no such heightened protection is warranted. Verizon’s designation of highly confidential data thus appears to be designed primarily to thwart CLECs’ ability to examine the data. The information is not highly confidential, and the Commission should require Verizon to redesignate the data as “confidential,” which could then be reviewed by those in-house personnel who are authorized to review confidential data under the Protective Order.

### CONCLUSION

24. 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. Instead, as demonstrated above, the information that Qwest and Verizon provide is only data that supports their view of the way to count business lines and fiber-based collocators. But, if the Commission concludes that the Joint CLECs have stated the correct counting methodology, the Commission would be unable to determine whether the wire center designations are accurate based on the limited data Qwest and Verizon have provided so far. 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. Only after the Commission and the parties have had the opportunity to review and comment on this data should the

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<sup>14</sup> Order No. 2, paragraph 7.

Commission approve any wire center designation that is based on business line counts or the number of fiber-based collocators that the Joint CLECs have been unable to independently verify.

DATED this 21st day of March, 2006.

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