

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation) DOCKET UT-053025
Concerning the Status of Competition)
and Impact of the FCC's Triennial) ORDER 03
Review Remand Order on the)
Competitive Telecommunications) INITIAL ORDER REQUIRING
Environment in Washington State) DISCLOSURE OF ADDITIONAL
) INFORMATION
)
) (Information due by Friday,
) April 28, 2006; Comments
) accepting or objecting to wire
) center designations due by
.....) Friday, May 5, 2006)

1 *Synopsis. This order requires Qwest and Verizon to submit additional information to the Commission and interested persons by Friday, April 28, 2006, to allow the Commission to address the proper designation of wire centers in Qwest's and Verizon's service territory in Washington. Specifically, the order requires Qwest to submit December 2003 ARMIS 43-08 data, as filed with the FCC, showing actual business lines in use, rather than total capacity of its access lines. Verizon must provide an explanation of how it calculated its ARMIS 43-08 data and identify how it separates business and residential UNE-P lines in this data. Qwest and Verizon must respond to the Joint CLECs' data requests concerning fiber-based collocators in the wire centers in question. Verizon must also submit, as confidential, data concerning fiber-based collocators and business lines, as required by the Commission's order to disclose information. The order rejects all other requests for additional information.*

SUMMARY

2 **PROCEEDING.** In this proceeding, the Washington Utilities and Transportation Commission (Commission) will consider whether to issue an interpretive statement or policy statement addressing issues of competition in the telecommunications industry and challenges facing telecommunications carriers

following the Federal Communication Commission's (FCC) Triennial Review Remand Order (TRRO). The first part of this inquiry concerns Qwest Corporation's (Qwest) and Verizon Northwest Inc.'s (Verizon) designation of wire centers as non-impaired, or ineligible for access to high capacity loops and transport by competitors.

3 **INTERESTED PARTIES.** Lisa A. Anderl, Associate General Counsel, and Adam L. Sherr, Corporate Counsel, Seattle, Washington, represent Qwest. Timothy J. O'Connell and John H. Ridge, Stoel Rives LLP, Seattle, Washington, represent Verizon. Gregory J. Kopta and Sarah Wallace, Davis Wright Tremaine LLP, Seattle, Washington, represent Covad Communications Company (Covad), Eschelon Telecom of Washington, Inc. (Eschelon), Integra Telecom of Washington, Inc. (Integra), McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. (collectively Joint CLECs). Gregory Diamond, Denver, Colorado, represents Covad. Dennis Robins, Vancouver, Washington, represents Electric Lightwave, Inc. Karen Clausen, Minneapolis, Minnesota, represents Eschelon. Karen Johnson, Beaverton, Oregon, represents Integra. David Mittle, Santa Fe, New Mexico, represents Tel West Communications, LLC. Peter Healy, Olympia, Washington, represents TSS Digital Services, Inc. (TDS). Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represents the Washington Electronic Business and Telecommunications Coalition (WeBTEC). Simon J. ffitich and Judith Krebs, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel).

4 **DECISION.** This initial order considers the Joint CLECs' objections to data submitted by Qwest and Verizon, and requests for additional information. This order finds December 2003 data appropriate for evaluating Qwest's and Verizon's initial designation of non-impaired wire centers. The order requires Qwest to submit December 2003 ARMIS 43-08 data, as filed with the FCC, showing actual business lines in use, rather than total capacity of its access lines. Verizon must provide an explanation of how it calculated its ARMIS 43-08 data, and identify how it separates business and residential UNE-P lines in this data. Qwest and

Verizon must submit additional data concerning fiber-based collocators in the disputed wire centers. Verizon must also submit, as confidential, data concerning fiber-based collocators and business lines, as required by the Commission's order to disclose information. The order rejects all other Joint CLEC requests for additional information. Qwest and Verizon must submit the additional data and explanations on or before Friday, April 28, 2006, and interested persons may respond on or before Friday, May 5, 2006, accepting or objecting to the ILECs' wire center designations.

MEMORANDUM

A. Background

5 On February 4, 2005, the FCC released its Order on Remand, also known as the Triennial Review Remand Order, or TRRO.¹ In the TRRO, the FCC reexamined whether competitors were impaired without unbundled access to certain network elements, pursuant to Section 251(c)(3) of the federal Telecommunications Act of 1996 (the Act).² In determining whether competitors are impaired without unbundled access to high-capacity loops and interoffice transport, the FCC looked to the number of fiber-based collocators in a wire center and the number of business lines terminating and leaving a wire center as indicia of competition. The FCC classified ILEC wire centers into three "tiers" – Tier 1, Tier 2 and Tier 3, "based on indicia of the potential revenues and suitability for competitive transport deployment."³

6 Wire centers designated as Tier 1 are considered the most competitive, and have four or more fiber-based collocations, or 38,000 or more business lines.⁴ Tier 2

¹ *In the Matter of 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, Order on Remand, FCC 04-290 (rel. Feb. 4, 2005) [Hereinafter "*Triennial Review Remand Order*" or "*TRRO*"].

² Pub. L. No. 104-104, 110 Stat. 56 (1996).

³ *TRRO*, ¶ 111.

⁴ *Id.*, ¶¶ 111-12.

wire centers have three or more fiber-based collocations or 24,000 or more business lines.⁵ Tier 3 wire centers are those that are not Tier 1 or 2 wire centers.⁶ Tier 1 and Tier 2 wire centers are considered “non-impaired,” such that competitors do not have unbundled access to high-capacity loops and transport in these wire centers.⁷ Competitors continue to have unbundled access to these network elements in Tier 3 wire centers.⁸

7 The FCC defines fiber-based collocators as:

[A]ny carrier, unaffiliated with the incumbent [local exchange carrier] 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 in this paragraph. ... Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator.⁹

8 The FCC also defines a business line as:

[A]n 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 [unbundled network element] UNE loops connected to that wire center, including UNE loops provisioned in combination with other

⁵ *Id.*, ¶ 118.

⁶ *Id.*, ¶ 123.

⁷ *Id.*, ¶¶ 111, 118; *see also* ¶¶ 174, 178, in which the FCC classifies Tier 1 wire centers for purposes of access to DS3-capacity loops as having at least 38,000 business lines *and* four or more fiber-based collocators, and for DS1-capacity loops as having at least 60,000 business lines *and* four or more fiber-based collocators.

⁸ *Id.*, ¶ 123.

⁹ 47 C.F.R. § 51.5; *see also* TRRO, ¶ 102.

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 kpbs-equivalent as one line. For example, a DS1 line corresponds to 24 kpbs-equivalents, and therefore to 24 “business lines.”¹⁰

The FCC explains that “business line counts are an objective set of data that incumbent LECs already have created for other regulatory purposes,” and analyzed “ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops” in the TRRO.¹¹

- 9 After the FCC issued the TRRO, the FCC’s Wireline Competition Bureau requested that incumbent local exchange carriers (ILECs), such as Verizon and Qwest, submit lists of wire centers satisfying the TRRO’s non-impairment criteria.¹² Qwest and Verizon submitted lists in February 2005 using the most recent data filed with the FCC, reflecting data collected through December 2003.

B. Procedural History

- 10 The Commission held a workshop in this proceeding on February 1, 2006, concerning competition in the telecommunications industry and challenges facing telecommunications carriers after the TRRO. One of the primary issues identified in the workshop was the proper designation of wire centers in Washington meeting the FCC’s non-impairment standards for UNE loops, high-capacity circuits and transport. In particular, competitive local exchange carriers (CLECs) attending the workshop questioned whether Qwest and Verizon had correctly designated certain wire centers as non-impaired for purposes of unbundled access to UNE loops, high-capacity circuits and transport.

¹⁰ 47 C.F.R. § 51.5.

¹¹ TRRO, ¶ 105.

¹² Joint CLEC Final Exceptions, ¶ 3.

- 11 The Commission held a conference on February 6, 2006, and established a schedule for obtaining information from Qwest and Verizon about the wire centers in question. The schedule provided an opportunity for interested parties to file exceptions to Qwest's and Verizon's data, for Qwest and Verizon to respond, and for interested parties to file final exceptions or state agreement with Qwest's and Verizon's designation of wire-centers.
- 12 At the request of the participating CLECs, Qwest and Verizon, the Commission entered Order 01 in this proceeding, a protective order, to allow interested persons who have filed appropriate exhibits to the protective order access to confidential and highly confidential information provided by Qwest and Verizon.
- 13 On February 21, the Commission entered Order 02, Order Requiring Disclosure of Information, requiring Qwest and Verizon to provide certain information to the Commission and interested persons.
- 14 Qwest and Verizon provided the Commission and interested persons with data on March 1. Both companies provided additional data within a week.
- 15 On March 8, the Joint CLECs submitted exceptions to Qwest's and Verizon's data and requested additional data. Qwest and Verizon filed responses to the Joint CLECs' exceptions on March 14, objecting to the requests for additional data.
- 16 On March 21, the Joint CLECs filed final exceptions and objections to Qwest's and Verizon's data supporting wire center designations. Public Counsel filed comments the same day asserting it premature for the Commission to decide on wire center designations. On March 28, Verizon filed comments responding to Public Counsel's comments.

C. Disputed Issues

- 17 The Joint CLECs raise a number of concerns about the sufficiency of the data Qwest and Verizon use to designate certain wire centers as non-impaired, the

methods the ILECs use to calculate certain data and whether the data should be considered confidential or highly confidential. In essence, these issues are discovery disputes which must be resolved before the Commission can address the ultimate issue of the proper designation of wire centers in Qwest's and Verizon's service territory in Washington. Although the Joint CLECs appear to concede that Qwest has properly designated certain wire centers in Washington,¹³ the Commission reserves ruling on these wire centers until Qwest and Verizon provide additional data in compliance with this order.

1. Age of the data

18 Each year on April 1, ILECs file annual network, financial and service quality data with the FCC's Automated Reporting Management Information System (ARMIS). For example, ILECs file 2005 data on April 1, 2006. The number of access lines in service is one type of data ILECs provide annually for FCC Report 43-08, the ARMIS Operating Data Report.¹⁴ The parties refer to this data as ARMIS 43-08 data. In this proceeding, Qwest and Verizon provided ARMIS 43-08 data showing the number of access lines in wire centers as of December 2003.

19 The Joint CLECs assert the data Qwest and Verizon provide is out-dated. The Joint CLECs assert that the ILECs have more current data, as they collect data monthly and report to the FCC annually. The Joint CLECs assert that using 2003 access line counts may inflate the number of business lines serving the wire centers in question. The Joint CLECs assert both Qwest and Verizon claim that their access lines are declining, indicating there may be a significant difference between line counts as of December 2003 and March 2005, when the TRRO became effective.

20 The Joint CLECs assert it is irrelevant that the December 2003 ARMIS data was the most recent data on file on the effective date of the TRRO. The Joint CLECs request the Commission require Qwest and Verizon to provide ARMIS 43-08 data

¹³ *Id.*, n.2.

¹⁴ See the FCC's website at www.fcc.gov/wcb/armis/.

as close as possible to March 11, 2005, the effective date of the TRRO. The Joint CLECs assert the ILECs should provide, at a bare minimum, the data from the April 1, 2005, ARMIS filing, which includes data through December 2004.

21 Qwest and Verizon assert that using 2003 ARMIS 43-08 data is appropriate, as it is the same data the FCC used in establishing wire center tiers in the TRRO, and the same data available when the FCC requested ILECs to submit lists of wire centers meeting the TRRO non-impairment criteria.¹⁵ Qwest asserts the FCC has not requested updated data from the ILECs.¹⁶ Verizon asserts that once a wire center meets a non-impairment threshold, it cannot later be reclassified as impaired.¹⁷ Verizon asserts the Joint CLECs' request to use more recent data is an attempt to reclassify as impaired wire centers the company has already identified as non-impaired.

22 Qwest and Verizon assert the Joint CLECs' delay in requesting new data is unreasonable and using more recent data would only reward this delay.¹⁸ Qwest further asserts that any decline in its business access lines is a sign of increasing competition in Washington, which supports limiting unbundled access to CLECs.¹⁹

23 ***Discussion and decision.*** It is reasonable for Verizon and Qwest to submit to the Commission December 2003 ARMIS data to support the designation of their initial list of "non-impaired" wire centers. It was the most recent data on file with the FCC at the time it entered the TRRO. The FCC used this data in establishing the wire center tiers. Qwest and Verizon used this data in filing their initial lists of non-impaired wire centers with the FCC.

24 The Joint CLECs appear to concede that certain wire centers may meet the TRRO's non-impairment criteria using this data, but seek updated data for the purpose of verifying the status of other wire centers. It would be inconsistent to

¹⁵ Qwest Response to Exceptions, ¶ 4; Verizon Response to Exceptions at 2.

¹⁶ Qwest Response to Exceptions, ¶ 5.

¹⁷ Verizon Response to Exceptions at 3 n.5, citing 47 C.F.R. § 51.319(e)(3)(i).

¹⁸ Qwest Response to Exceptions, ¶ 6; Verizon Response to Exceptions at 3-4.

determine the initial list of non-impaired wire centers based on data from different time periods. Qwest and Verizon's use of December 2003 data for the purpose of determining the initial list of wire centers is appropriate. Therefore, the Joint CLECs' request for Qwest and Verizon to provide updated ARMIS 43-08 data is rejected. On a going-forward basis, however, Qwest and Verizon must submit the most recent ARMIS 43-08 data when seeking to add any new wire centers to the list of non-impaired wire centers the Commission resolves in this proceeding.

2. Method of calculating business lines

- 25 The Joint CLECs object to the way Qwest calculates the number of its own business lines.²⁰ The Joint CLECs assert Qwest inflates the number of its business lines serving a wire center by counting the full voice-grade capacity of DS1 and DS3 circuits, rather than just those circuits used to provide service to business customers. The Joint CLECs request the Commission direct Qwest to use only ARMIS 43-08 data for counting ILEC-owned business lines.²¹
- 26 Similarly, the Joint CLECs assert Qwest over-counts the number of CLEC UNE loops by including the total capacity of the UNE circuit rather than the actual circuits in use when calculating total business lines.²² The Joint CLECs request the Commission direct Qwest to apply a utilization factor to determine the number of actual circuits in use.
- 27 The Joint CLECs assert the FCC intended, both in the TRRO and the definition of "business line" in Rule 51.5, that ILECs calculate the *actual* business lines served, not the capacity of the circuit. The Joint CLECs point to the first sentence of the FCC's rule: "A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent itself or by a

¹⁹ Qwest Response to Exceptions, ¶ 6.

²⁰ The Joint CLECs state it is unclear whether Verizon has properly calculated its business line count, and requests the Commission require Verizon to verify that it has not altered the ARMIS 43-08 data. *See* Joint CLEC Exceptions, n.3.

²¹ *Id.*, ¶ 8.

²² *Id.*, ¶ 9.

competitive LEC that leases the line from the incumbent LEC.”²³ The Joint CLECs assert the FCC bases its definition of business lines in the TRRO on “ARMIS 43-08 business lines, plus business UNE-P, plus UNE loops.”²⁴ The Joint CLECs also rely on a decision of the South Carolina commission, which found the FCC intended to count actual lines in use, and did not intend in the TRRO and rules to alter the ILECs’ ARMIS business line count.²⁵

28 Qwest asserts its method of calculating business line counts is based on the FCC’s business line definition. Qwest asserts the last two sentences of the FCC’s definition requires ILECs to base their business line counts on the capacity of the circuit, not actual lines served.²⁶ That portion of the definition provides:

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 kpbs-equivalent as one line. For example, a DS1 line corresponds to 24 kpbs-equivalents, and therefore to 24 “business lines.”*²⁷

29 For UNE loops, Qwest asserts the FCC’s definition requires Qwest to count “all UNE loops connected to that wire center, including UNE loops provided in combination with other unbundled elements.”²⁸

30 Qwest asserts the FCC intended the definition of “business line” to include “both actual and potential competition, based on an indicia of significant revenue

²³ *Id.*, ¶ 6, citing 47 C.F.R. § 51.5.

²⁴ *Id.*, citing TRRO, ¶ 105.

²⁵ *Id.*, ¶¶ 7, 9, citing *In re Proceedings 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 (Mar. 1, 2006) [Hereinafter “North Carolina Order”].

²⁶ Qwest Response to Exceptions, ¶ 7.

²⁷ 47 C.F.R. § 51.5 (emphasis added).

²⁸ Qwest Response to Exceptions, ¶ 10, quoting 47 C.F.R. § 51.5.

opportunities at wire centers.”²⁹ Qwest refers the Commission to the decisions of the Florida and Georgia commissions, which, it asserts, interpreted the FCC’s business line definition and provisions of the TRRO to require ILECs to include unused capacity on high capacity loops when calculating the number of ILEC-owned business lines.³⁰ Qwest also refers to decisions by the Florida, Indiana, Illinois and Ohio commissions directing ILECs to count all UNE loops connected to wire centers.³¹

31 Verizon asserts it has used ARMIS 43-08 data to include only ILEC business lines for switched services in calculating the total number of business lines.³² Verizon asserts the FCC’s rule requires all UNE loops to be included in the calculation.³³

32 ***Discussion and Decision.*** The FCC’s definition includes three requirements for tallying business lines. The interpretation of these three requirements drives the dispute between the parties. The Joint CLECs’ interpretation concerning ILEC-

²⁹ *Id.*, ¶ 9, quoting TRRO, ¶ 88; see also *Id.*, ¶ 10, citing TRRO, ¶ 24.

³⁰ *Id.*, ¶ 9 citing *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 at 37 (Mar. 2, 2006) [Hereinafter “*Florida BellSouth Decision*”]; *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 at 20 (Mar. 2, 2006) [Hereinafter “*Georgia BellSouth Decision*”]. The last sentence in Qwest’s quote from the Florida BellSouth Decision does not appear in the Florida decision. That additional language is stricken from Qwest’s Response.

³¹ *Id.*, ¶ 10, citing *Florida BellSouth Decision* at 39; see also *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 at 16 (Jan. 11, 2006); *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, Arbitration Decision at 30 (Nov. 2, 2005); *In re Establishment of Terms and Conditions of an Interconnection Agreement Amendment*, PUCO Case No. 05-887-TP-UNC, Arbitration Award at 16 (Nov. 9, 2005).

³² *Id.*, at 6.

³³ Verizon Response to Exceptions at 5-6.

owned access lines best captures the FCC's intent in how to count ILEC-owned business lines for purposes of identifying tiers of wire centers. Qwest and Verizon, however, are correct in counting all UNE loops connected to wire centers as business lines, regardless of whether they are actually used to serve customers.

33 In explaining its method, the FCC states:

[A]s 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. We adopt this definition of business lines because it fairly represents the business opportunities in a wire center, including business opportunities already being captured by competing carriers through the use of UNEs. Although it may provide a more complete picture to measure the number of business lines served by competing carriers entirely over competitive loop facilities in particular wire centers, such information is extremely difficult to obtain and verify. Conversely, by basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information.³⁴

The FCC does not discuss modifying the ILEC-owned business lines reported in ARMIS 43-08 data, referring to the data as “already ... created for other regulatory purposes,” and providing “a simplified ability to obtain the necessary information.”³⁵ While the FCC's rule states that a business line is an ILEC-owned or CLEC-leased switched access line “used to serve a business customer,” the FCC also provides that its thresholds, based on in part on business lines, are intended to “capture both actual and potential competition.”³⁶

³⁴ TRRO, ¶ 105.

³⁵ *Id.*

³⁶ 47 C.F.R. § 51.5; *see also* TRRO, ¶ 88.

34 The FCC's rule must be read consistently with the FCC's statements in the TRRO. To that end, the FCC's requirements for calculating, or tallying, the total number of business lines serving a wire center are most reasonably applied in part to ILEC-owned switched access lines, and in part to UNE loops. The first two listed requirements (i.e., that the access lines connect only actual customers and the number not include non-switched special access lines) are already considered in the switched access lines ILECs report to the FCC in ARMIS 43-08 data.³⁷ These requirements also logically apply to UNE-P lines, as they are switched access lines leased by competitors. The third requirement, that digital access lines be counted by voice-grade equivalents, should apply when ILECs count the number of UNE loops served by a wire center. Like the number of business lines served "entirely over competitive loop facilities in particular wire centers," the number of UNE loops in service "is extremely difficult to obtain and verify," as only CLECs can identify which lines serve business or residential customers. Thus, ILECs should include total capacity, not actual circuits in use, when calculating UNE loops, but not when calculating ILEC-owned or UNE-P business lines. Applying all three requirements to ILEC-owned access lines or to UNE loops would render the rule internally inconsistent, and inconsistent with the FCC's statements in the TRRO.

35 Thus, Qwest must submit its business line counts to include actual business lines as reported in its December 2003 ARMIS 43-08 data, without adjustment. Verizon must provide sufficient information to allow the Commission and interested persons to determine that Verizon did not alter its ARMIS 43-08 business line data. Qwest need not modify its calculation of UNE loops. Qwest and Verizon must provide the additional information only for the wire centers the Joint CLECS continue to dispute on or before April 28, 2006. The Joint CLECs and other interested persons may respond to Qwest's and Verizon's additional data on or before May 5, 2006, accepting or objecting to the ILECs' wire center designations.

3. Exclusion of residential UNE-P lines

³⁷ See North Carolina Order at 41-42.

- 36 As a part of its business line calculation, Qwest deducted UNE-P residential white pages directory listings from the total number of UNE-P lines to derive an estimate of business UNE-P lines.³⁸ The Joint CLECs assert that Qwest’s method does not accurately count business UNE-P lines, claiming Qwest should count only those UNE-P lines in the business white pages of the directory data base.³⁹ The Joint CLECs assert Qwest provides no basis for its assertion that the majority of residential lines are listed, while the majority of business lines are not. The Joint CLECs also assert that after the FCC entered the TRRO, UNE-P lines were converted to Qwest’s commercial offering, Qwest Platform Plus (QPP), which separately identifies lines as residential or business.⁴⁰ The Joint CLECs request that Qwest use QPP data to identify the number of business UNE-P lines in each wire center, as well as any UNE-P lines listed in the business white pages directory, for calculating business UNE-P lines.⁴¹
- 37 The Joint CLECs also assert Verizon provides no explanation for how it excluded UNE-P residential lines from the calculation of business lines.⁴² The Joint CLECs note that Verizon states in response to Bench Request No. 3 (x) that UNE-P lines “are included in the business switched access lines provided in ARMIS 43-08” data. The Joint CLECs are concerned that Verizon has included all UNE-P lines as business lines, without removing residential lines. The Joint CLECs request the Commission order Verizon to explain how it excluded residential UNE-P lines from the calculation of business lines.
- 38 The Joint CLECs also claim that Qwest and Verizon should exclude UNE loops used to provide residential and non-switched services.⁴³ The Joint CLECs request the Commission follow the North Carolina commission’s analysis and order Qwest and Verizon to exclude UNE loops used to provide residential service from

³⁸ Joint CLEC Exceptions, ¶ 12, quoting Qwest Response to Bench Request No. 01-003 (x).

³⁹ *Id.*, ¶¶ 11-12.

⁴⁰ Joint CLEC Final Exceptions, ¶ 12.

⁴¹ *Id.*, ¶ 13.

⁴² *Id.*, ¶ 13.

⁴³ Joint CLEC Exceptions, ¶¶ 11-16.

the calculation of business lines,⁴⁴ and require Qwest and Verizon to exclude from business line counts any UNE loops used to provide non-switched services.

39 Qwest asserts its method of calculating business UNE-P lines is a conservative calculation it has used in other proceedings before the Commission, e.g., Dockets UT-003022 and UT-003040, the Section 271 proceeding, and Dockets UT-000883 and UT-030614, competitive classification proceedings.⁴⁵ Qwest asserts it would be inappropriate to count only business UNE-P white pages directory listings, as businesses often have more than one line and list only the main telephone number. Qwest asserts the Joint CLECs' method would artificially reduce the number of business lines and require additional and more complicated calculations.⁴⁶

40 Qwest also objects to the Joint CLECs' effort to exclude UNE loops used to provide residential or non-switched service. Qwest asserts that excluding residential or non-switched UNE loops would be inconsistent with the FCC's decision to include all UNE loops in the business line calculation.⁴⁷ Qwest further asserts excluding these loops is "contrary to the FCC's intent to capture an accurate measure of the 'revenue opportunity' in a wire center."⁴⁸

41 Verizon asserts it has included only business UNE-P lines reported in ARMIS 43-08 data, and did not include residential UNE-P lines. Verizon asserts it lists business and residential data separately on its ARMIS 43-08 report.⁴⁹ Further, Verizon asserts it is appropriate to include UNE loops used for residential and non-switched services in calculating business lines. Verizon asserts the FCC did not distinguish between business and residential UNE loops the way it did for ILEC-owned access lines and UNE-P lines, but requires ILECs to include "all UNE loops connected to that wire center, including UNE loops provisioned in

⁴⁴ Joint CLEC Final Exceptions, ¶ 14.

⁴⁵ Qwest Response to Exceptions, ¶ 12.

⁴⁶ *Id.*, ¶ 13.

⁴⁷ *Id.*

⁴⁸ *Id.*, ¶ 14.

⁴⁹ Verizon Response to Exceptions at 4.

combination with other unbundled elements.”⁵⁰ Verizon also asserts that ILECs are not able to determine how a CLEC uses its UNE loops, or whether they are used to serve business or residential customers or for non-switched services.⁵¹

42 ***Discussion and decision.*** Qwest’s method for calculating business UNE-P lines is appropriate, as it is consistent with methods the Commission has accepted in past proceedings for calculating residential or business UNE-P lines. There is no need for Qwest to recalculate the data using QPP data or to count only business UNE-P white page listings.

43 It is not clear from the data Verizon provides whether or how it separated business and residential UNE-P lines. Verizon must provide a clear explanation on or before April 28, 2006, showing how it separately identifies business and residential UNE-P lines in its ARMIS 43-08 data. As with the business line count data discussed above, interested persons may respond to Verizon’s explanation on or before May 5, 2006.

44 The Joint CLECs request that Qwest and Verizon exclude from the business line calculation UNE loops used to serve residential customers and provide non-switched services is denied. The clear language of the TRRO and the FCC’s definition of “business line” demonstrate the FCC’s intent to include all UNE loops in the business line calculation. In the TRRO, the FCC calculated business lines based on “ARMIS 43-08 *business* lines, plus *business* UNE-P, plus UNE-loops.”⁵² The FCC did not qualify the UNE loops it included as business UNE loops or non-switched UNE loops, but *all* UNE loops. Further, in its definition of business line, the FCC provided: “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

⁵⁰ *Id.*, at 5-6, quoting 47 C.F.R. § 51.5.

⁵¹ *Id.*, at 5, 8.

⁵² TRRO, ¶ 105 (emphasis added).

provisioned in combination with other unbundled elements.”⁵³ All UNE loops should be included in the business line calculation.

4. Supporting data for identifying fiber collocators

45 The Joint CLECs claim that neither Qwest nor Verizon provide sufficient data to verify the collocators they identify are “fiber-based collocators” as defined by the FCC.⁵⁴ The Joint CLECs request that the Commission require Qwest and Verizon to provide more detailed information for wire centers where the ILECs rely on the number of fiber-based collocators to show non-impairment. Specifically, the Joint CLECs request that the ILECs respond to data requests with data showing “each fiber-based collocator connects its collocated equipment directly to its own fiber-optic network without relying on ILEC UNEs or cross-connects to other collocated carriers” and that the collocators were fiber-based collocators as of March 11, 2005.⁵⁵

46 Qwest asserts that no additional information is necessary. Qwest based its calculation of fiber-based collocators on the FCC’s definition and discussion in the TRRO.⁵⁶ Qwest used data from December 2003, removed any collocations that were terminated between December 2003 and February 2005, and then physically verified the power supply to the collocation and whether there was fiber terminating at the collocation and leaving the wire center.⁵⁷ Qwest asserts it consulted with CLECs to verify the data, and corrected the data based on feedback from CLECs.⁵⁸

47 Similarly, Verizon objects to the Joint CLECs’ request for additional data. Verizon used data from physical inspections of collocations to determine whether

⁵³ 47 C.F.R. § 51.5 (emphasis added).

⁵⁴ Joint CLEC Exceptions, ¶ 17.

⁵⁵ *Id.*; see also Joint CLEC Proposed Follow-up Data Requests, No. 5 (Qwest) and Nos. 5 and 6 (Verizon).

⁵⁶ Qwest Response to Exceptions, ¶¶ 16-17.

⁵⁷ *Id.*

⁵⁸ *Id.*

a collocator met the FCC's definition of a "fiber-based collocator," then verified the data by notifying CLECs of its designation of a wire-center as non-impaired.⁵⁹ Verizon asserts it has not received any actual data from any CLEC challenging its identification as a fiber-based collocator.⁶⁰

48 The Joint CLECs assert that the failure of CLECs to respond to Qwest's and Verizon's attempts to verify data does not mean the data is accurate. The Joint CLECs assert specific additional information will allow them to determine if Qwest's and Verizon's designations are accurate.

49 ***Discussion and decision.*** Qwest and Verizon must respond to the Joint CLECs' data requests concerning identification of fiber-based collocators in the wire centers the Joint CLECs continue to dispute by April 28, 2006, providing a copy of their responses to the Commission. The information is relevant, is apparently available, does not pose an undue burden on the ILECs, and would allow the Commission and Joint CLECs to verify the non-impairment designation of wire centers. The remaining uncertainty over a few wire centers can be resolved with little additional effort by Qwest and Verizon.

50 Qwest must respond to Data Request No. 5 and Verizon must respond to Data Request Nos. 5 and 6, attached to the Joint CLEC Exceptions filed on March 8, 2006. The Joint CLECs and other interested persons may respond to the ILECs' data on or before May 5, 2006, accepting or objecting to the ILECs' wire center designations.

5. Designation of data as highly confidential

51 Verizon provided information in response to the Commission's order requiring disclosure of information, designating the information as highly confidential. The

⁵⁹ Verizon Response to Exceptions at 8-9.

⁶⁰ *Id.*, at 9.

Joint CLECs object to the designation of the information as highly confidential, asserting the information is not highly confidential and that such a designation is inconsistent with discussions during the workshop.⁶¹ The Joint CLECs request the Commission require Verizon to resubmit the information as confidential to allow appropriate in-house personnel to review the data.⁶²

52 Verizon asserts it properly designated non-masked CLEC-specific information as highly confidential to protect customer-specific information from being shared beyond attorneys in this proceeding in light of its obligations under Section 222 of the Act.⁶³ Verizon asserts it will not disclose this information subject to lesser protection without an express order of the Commission.⁶⁴ Verizon asserts that there is no need to share this information among non-attorneys, as the un-masked data clearly allows for verification of collocation arrangements.⁶⁵

53 ***Discussion and decision.*** Verizon must provide the information, as confidential: Verizon agreed to do so during the February 6, 2006, conference, and the Commission directed Verizon to do so in Order 02, Order Requiring Disclosure of Information.

54 During the conference, Verizon's counsel specifically agreed that it was appropriate to provide the identity of fiber-based collocators and aggregate CLEC line counts as confidential, not highly confidential, information.⁶⁶ Verizon's counsel further agreed that a protective order and Commission order requiring such disclosure would address its concerns about complying with Section 222.⁶⁷ In Order 02, the Commission ordered the disclosure of information, in light of the concerns over Section 222:

⁶¹ Joint CLEC Exceptions at 8.

⁶² *Id.*

⁶³ Verizon Response to Exceptions at 9-10.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ TR 19:14 – 20:9 (O'Connell).

⁶⁷ TR 9:16 – 10:22 (O'Connell).

In order to address the CLECs' concerns over the proper designation of non-impaired wire centers, the Commission requires information from Qwest and Verizon. The nature of the Commission's inquiry in this proceeding requires masking identifying information for certain data, a method the Commission has used in the past when collecting wire center data. After consulting with participants in the workshop and scheduling conference, the Commission requests that Qwest and Verizon provide the identify of fiber-based collocators as confidential information, but mask the identity of CLEC business lines by masking the data or assigning the CLEC a code. While Qwest and Verizon must provide Commission staff with access to all codes, Qwest and Verizon must only provide each CLEC seeking access to the information with the individual CLEC's assigned code.⁶⁸

The Commission also recognized the ILECs' concerns over Section 222 in the Protective Order entered in this proceeding.⁶⁹

55 Given these two orders and Verizon's agreement during the conference, Verizon submission of the information as highly confidential failed to comply with the requirements in Order 02. Verizon must resubmit its information in response to Order 02, as confidential, on or before April 28, 2006, masking the data as appropriate and providing the individual CLECs with their own masking code. Interested persons may respond to Verizon's data on or before May 5, 2006, accepting or objecting to Verizon's wire center designations.

FINDINGS OF FACT

⁶⁸ *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 UT-053025, Order 02, Order Requiring Disclosure of Information ¶ 7 (Feb. 21, 2006); *see also Id.*, ¶ 8.

⁶⁹ *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 UT-053025, Order 01, Protective Order ¶ 3 (Feb. 10, 2006).

56 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:

57 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, and to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Telecommunications Act of 1996.

58 (2) Verizon Northwest Inc. and Qwest Corporation are incumbent Local Exchange Companies, or ILECs, providing local exchange telecommunications service to the public for compensation within the state of Washington.

59 (3) Covad Communications Company, Electric Lightwave, Inc., Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc., Tel West Communications, LLC, TSS Digital Services, Inc., and XO Communications Services, Inc., are local exchange carriers within the definition of 47 U.S.C. § 153(26), providing local exchange telecommunications service to the public for compensation within the state of Washington, or are classified as competitive telecommunications companies under RCW 80.36.310 - .330.

60 (4) The FCC's Triennial Review Remand Order finds competitive local exchange carriers are not impaired under Section 251 of the Telecommunications Act of 1996 without access to high capacity loops and transport, if the wire centers serving the loops and transport meet certain criteria.

- 61 (5) The FCC established in the Triennial Review Remand Order the number of “fiber-based collocators” in a wire center and the number of “business lines” serving a wire center as the criteria for determining whether a wire center is non-impaired for purposes of CLEC access to high capacity loops and transport.
- 62 (6) In response to the FCC’s order, Qwest and Verizon, as well as other ILECs across the nation, filed with the FCC in February 2005 lists of wire centers meeting the FCC’s non-impairment criteria.
- 63 (7) In Order 02 in this proceeding, the Commission ordered Qwest and Verizon to provide certain information to the Commission and interested persons to allow the Commission to determine whether Qwest and Verizon properly designated certain wire centers in Washington State as non-impaired.
- 64 (8) Qwest and Verizon provided information in response to the Commission’s Order 02 on March 1, 2006.
- 65 (9) The Joint CLECs object to the sufficiency of the data, as well as the methods Qwest and Verizon used in calculating certain data.
- 66 (10) Qwest and Verizon submitted to the Commission data based on ARMIS 43-08 data reported to the FCC, reflecting 2003 annual data.
- 67 (11) The FCC used 2003 ARMIS 43-08 data in determining the criteria for wire center non-impairment, and ILECs used 2003 ARMIS 43-08 data in submitting lists of non-impaired wire centers to the FCC in March 2005.
- 68 (12) It is unclear from the data Verizon provides whether or how it separated business and residential UNE-P lines.

- 69 (13) The FCC's definition of "business line" in 47 C.F.R. § 51.5, and statements in the Triennial Review Remand Order, provide the basis for determining how ILECs should calculate the number of business lines under the FCC's non-impairment criteria.
- 70 (14) Qwest calculates the number of business UNE-P lines serving wire centers by deducting the number of residential UNE-P white page listings from the total number of UNE-P lines.
- 71 (15) Paragraphs 7 and 8 of the Commission's Order 02 required Qwest and Verizon to provide information as confidential to allow the Commission and interested persons to evaluate the data and protect customer proprietary network information.
- 72 (16) During the February 6, 2006, conference, Verizon agreed to provide the identity of fiber-based collocators and masked data concerning CLEC business lines as confidential, pursuant to a protective order.
- 73 (17) Verizon provided information in response to the Commission's Order 02 by designating the information as highly confidential, not confidential.

CONCLUSIONS OF LAW

74 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:

- 75 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.

- 76 (2) It is reasonable for Verizon and Qwest to submit to the Commission December 2003 ARMIS data to support the designation of their initial lists of non-impaired wire centers pursuant to the TRRO because the FCC used this data to establish the non-impairment criteria and the companies used this data in providing lists of non-impaired wire centers to the FCC in March 2005.
- 77 (3) Applying data from different time periods to determine the initial list of non-impaired wire centers, as the Joint CLECs suggest, would be inconsistent.
- 78 (4) The FCC's requirements in its rule defining "business line" for calculating the total number of business lines serving a wire center are most reasonably applied in part to ILEC-owned switched access lines, and in part to UNE loops. Applying all three requirements to ILEC-owned access lines or to UNE loops would render the rule internally inconsistent, and inconsistent with the FCC's statements in the TRRO.
- 79 (5) The first two listed requirements in the FCC's rule defining "business line," i.e., that the access lines connect only actual customers and the number not include non-switched special access lines, are already factored into the switched access lines ILECs report to the FCC in ARMIS 43-08 data. These requirements also logically apply to UNE-P lines, as they are switched access lines leased by competitors.
- 80 (6) The third requirement in the FCC's rule defining "business line," that digital access lines be counted by voice-grade equivalents, should apply when ILECs count the number of UNE loops served by a wire center. Like the number of business lines served "entirely over competitive loop facilities in particular wire centers," the number of UNE loops in service "is extremely difficult to obtain and verify," as only CLECs can identify which lines serve business or residential customers.

- 81 (7) For purposes of calculating total business lines under the FCC’s rule, ILECs should include actual circuits in use when calculating ILEC-owned business lines and business UNE-P lines, but should include the total capacity of circuits, not actual circuits in use, when calculating UNE loops.
- 82 (8) Qwest’s method of calculating business UNE-P lines is appropriate and consistent with methods the Commission has accepted in prior proceedings for calculating residential or business UNE-P lines.
- 83 (9) All UNE loops should be included in the calculation of business lines for determining whether a wire center meets the non-impairment criteria. The FCC did not distinguish in paragraph 105 of the TRRO between business and other UNE loops, but included *all* UNE loops in the calculation. In its definition of “business line”, the FCC provided: “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.” *47 C.F.R. § 51.5 (emphasis added)*.
- 84 (10) Providing additional information about fiber-based collocators in certain wire centers would not pose an undue burden on Qwest and Verizon and would allow the Commission and Joint CLECs to verify the non-impairment designation of wire centers in Washington.
- 85 (11) By submitting information to the Commission as highly confidential, Verizon failed to comply with the requirements of the Commission’s Order 02.

ORDER

86 **THE COMMISSION ORDERS:**

- 87 (1) Qwest Corporation and Verizon Northwest Inc. must submit to the Commission and interested persons on or before April 28, 2006, business

line counts showing actual business lines as reporting in their December 2003 ARMIS 43-08 data, without adjusting the data to reflect the total capacity of access lines. The companies must provide this information only for those wire centers the Joint CLECs continue to dispute.

- 88 (2) If Qwest Corporation and Verizon Northwest Inc. seek to designate additional wire centers as non-impaired in the future, the companies must provide to the Commission the most recently filed ARMIS 43-08 data to support the designation.
- 89 (3) Verizon Northwest Inc. must provide a detailed explanation to the Commission and interested persons on or before April 28, 2006, showing how the company calculated its December 2003 ARMIS 43-08 business access line data and how the company separately identified business and residential UNE-P lines in this data.
- 90 (4) Qwest Corporation and Verizon Northwest Inc. must respond to the Joint CLECs' data requests regarding identification of fiber-based collocators, only for those wire centers the Joint CLECs continue to dispute, on or before April 28, 2006.
- 91 (5) As required in the Commission's Order 02, Order Requiring Disclosure of Information, Verizon Northwest Inc. must resubmit, as confidential, on or before April 28, 2006, all information concerning the identity of fiber-based collocators and masked data identifying CLEC business lines.
- 92 (6) Except as the Joint CLECs' requests for additional information are granted in this order, the Joint CLECs' data requests, or requests for additional information, are denied.
- 93 (7) The Commission retains jurisdiction to effectuate the terms of this order.

Dated at Olympia, Washington, and effective April 20, 2006.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ANN E. RENDAHL,
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not effective until entry of a final order by the Utilities and Transportation Commission. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.