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 CORPORATION'S PETITION FOR ADMINISTRATIVE REVIEW OF ORDER NO. 3

1 Qwest Corporation ("Qwest") respectfully requests that the Commission reverse certain findings made in Order No. 03, *Initial Order Requiring Disclosure of Additional Information* ("Initial Order"). The Initial Order, while requiring Qwest and Verizon to provide additional information in support of each company's non-impaired wire center lists, also makes certain findings and conclusions regarding the methodology used to develop those lists. Qwest requests that the Commission review and reverse only one aspect -- the Initial Order's Conclusion of Law (7) (at paragraph 81). Paragraph 81 requires that, "[f]or 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…" Qwest also seeks clarification of this Conclusion of Law given its apparent inconsistency with Conclusion

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

of Law (8) (at paragraph 82). Paragraph 82 concludes that Qwest's method of calculating business UNE-P lines is "appropriate and consistent with the methods the Commission has accepted in prior proceedings."

A. <u>Qwest appropriately counted its own digital business switched access lines to include the full capacity of digital circuits.</u>

2 The Initial Order at paragraph 34 states that "the FCC's rule must be read consistently with the FCC's statements in the TRRO." Qwest agrees. Rule §51.5 (47 CFR 51.5) defines a business line, in relevant part, 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." This statement, coupled with the specific requirement outlined later in the "business line" definition in Rule §51.5 to count digital access lines by counting each 64 kbps-equivalent on a digital access line as one line, make clear that proper implementation of the FCC's intent requires that *both* Qwest's own digital switched access lines and those of the CLECs must be counted at their full capacity. The Georgia Commission agreed.

> The Commission also concludes that it is appropriate to count DS1 lines as 24 business lines, provided that those DS1 lines in which all 24 channels are empty shall not be counted at all towards the business line count. It is consistent with Commission practice to consider a DS1 line to be an access line. *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. (Emphasis added)*[1]

3 The Public Service Commission of South Carolina reached a similar conclusion in March 2006:

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1 *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*").

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

> Additionally, the federal rule requires ISDN and other digital access lines, *whether BellSouth's lines or CLEC UNE lines*, to be counted at their full system capacity; that is, each 64 kbps-equivalents is to be counted as one line. (citation omitted) The FCC's rule plainly states that "a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 'business lines'" *(Emphasis added)*[2]

4 This implementation methodology also yields the consistent reporting the FCC was seeking to allow it to compare the business lines counts submitted by each of the Regional Bell Operating Companies (RBOCs). In its Brief filed with the DC Circuit Court of Appeals, the FCC stated that the "Commission's 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*."[3]

5 Another requirement of Rule §51.5 that ensures this consistency is the requirement that business line tallies shall include "only those access lines connecting end-user customers with incumbent LEC end-offices for switched services." Just as when a CLEC purchases an unbundled DS1 or DS3 facility, when a Qwest retail customer purchases the retail equivalent of those facilities, it purchases the entire bandwidth of that circuit. It is the entire bandwidth of that circuit that is "connecting the end-user customers with the Incumbent LEC end-offices for switched services." While both the retail customer and the CLEC may use only a portion of the capacity, the remaining capacity on the circuit is still dedicated to that end-user, and can be turned up by them at any time. By counting the full capacity of DS1 and DS3 facilities provided to both retail and CLEC customers, Qwest's interpretation is consistent with the FCC's discussion at paragraph 88 of the TRRO, which states that the tests the FCC adopted "are designed to capture both actual *and potential* competition, based on indicia of significant revenue opportunities at wire centers." Limiting Qwest's digital business lines to only those

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[2] *In Re: Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law,* page 44, Docket No. 2004-316-C, Order No. 2006-136, Order Addressing Changes of Law, March 10, 2006 ("*South Carolina BellSouth Decision*").

[3] Brief for Respondents, *Covad Communications Company, et. al, v. Federal Communications Commission and United States of America*, Docket No. 05-1095 (and consolidated cases), filed September 9, 2005.

Qwest
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 398-2500
Facsimile: (206) 343-4040

circuits that are actually activated on that line would fail to produce a consistent measure to account for the potential competition and potential revenue the FCC's test was designed to capture.

6 For all of the reasons noted above, Qwest believes that Conclusion of Law (7) should be reversed and the Commission should find that Qwest's methodology for counting the digital access lines within its own retail business switched access line count (at their full capacity) is appropriate.

B. The Commission should clarify that Qwest's method for counting UNE-P lines is appropriate.

7 In addition, Qwest requests that the Commission clarify what appears to be a conflict between Conclusion of Law (7), which appears to require the same recalculation of business UNE-P lines as that discussed above for Qwest retail business switched access lines, and Conclusion of Law (8), which finds that Qwest's method of calculating business UNE-P lines is appropriate and consistent with methods the Commission has accepted in prior proceedings. Qwest believes its method of calculating business UNE-P lines, based on the total capacity of voice grade equivalent channels, is appropriate and consistent with the Commission's ruling regarding the similar calculation for UNE loops, and requests that the Commission confirm that Conclusion of Law (8) governs the calculation of UNE-P lines.

DATED this _____ day of May, 2006.

QWEST

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Lisa A. Anderl, WSBA #13236
Adam L. Sherr, WSBA #25291
1600 7th Avenue, Room 3206
Seattle, WA 98191
Phone: (206) 398-2500