

**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 04
Review Remand Order on the	)	
Competitive Telecommunications	)	ORDER ADOPTING INTERPRETIVE
Environment in Washington State	)	STATEMENT; GRANTING JOINT
	)	CLECS' PETITION FOR REVIEW;
	)	GRANTING IN PART AND
	)	DENYING IN PART QWEST'S
	)	PETITION FOR REVIEW
	)	
.....	)	

1 **SYNOPSIS.** *In this Order, we resolve the remaining disputes about how to interpret the FCC's Triennial Review Remand Order and FCC rules in determining whether competing telecommunications companies have access to high capacity loops and transport in certain Qwest and Verizon wire centers. We find that wire center determinations should be based on the most recent available FCC data, and reverse the finding in the initial order concerning the age of the data. We require Qwest to resubmit information on the three remaining wire centers in dispute using 2005 data by Wednesday, October 18, 2006. We also modify the initial order's finding concerning the calculation of business lines to reflect that UNE-P business lines may be calculated using the total circuit capacity. We adopt in an interpretive statement our interpretation of the FCC's TRRO and accompanying rules concerning non-impairment criteria for wire centers, and a designation of Qwest and Verizon wire centers meeting these criteria. After receiving additional data from Qwest, we will modify the interpretive statement to address the three remaining wire centers in dispute.*

**SUMMARY**

2     **PROCEEDING.** In Docket UT-053025, the Washington Utilities and Transportation Commission (Commission) considers 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).<sup>1</sup> 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. ffitch and Judith Krebs, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of the Attorney General (Public Counsel).

---

<sup>1</sup> *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*”].

- 4 **PROCEDURAL HISTORY.** The Commission opened this docket as a staff investigation in April 2005. After receiving comments from Qwest, Verizon and the Joint CLECs, 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 FCC adopted 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 high-capacity loops and transport.<sup>2</sup>
- 5 In Order 02, the Commission redefined the nature of the proceeding, stating that it would consider whether to issue an interpretive statement or policy statement in this proceeding to advise telecommunications carriers in Washington of the Commission's interpretation of the wire center designation provisions of the TRRO and other matters. *See Order 02, ¶ 6.*
- 6 On April 20, 2006, Administrative Law Judge Ann E. Rendahl entered an initial order, Order 03, in this proceeding, resolving disputes over the appropriate data Qwest and Verizon must provide, and interpreting the TRRO and FCC rules.
- 7 On April 28, 2006, Qwest and Verizon provided to the Commission and certain CLECs the additional data required by Order 03. Qwest provided additional information on May 5, 2006.
- 8 The Joint CLECs filed comments on the additional data on May 5, 2006, and continue to dispute the designation of three Qwest wire centers and one Verizon wire center. Verizon filed a response to the Joint CLECs' comments.

---

<sup>2</sup> The initial order, Order 03, summarizes the history and explanation of the FCC's TRRO as well as much of the procedural history in this docket. We do not repeat that history in this order.

- 9 On May 10, 2006, the Joint CLECs and Qwest filed petitions for review of the initial order. Qwest and Verizon filed answers to the Joint CLECs' petition, and the Joint CLECs filed an answer to Qwest's petition.

**MEMORANDUM**

- 10 While we initiated this proceeding as a Staff investigation, we chose to pursue whether to issue an interpretive statement in order to allow interested parties and Staff to communicate openly with the Commission without the requirements and formalities of an adjudication or rulemaking. Under the Administrative Procedure Act (APA), an agency may issue interpretive or policy statements "to advise the public of its current opinions, approaches, and likely courses of action."<sup>3</sup> Interpretive and policy statements are advisory only, and agencies must publish these statements in the Washington State Register.<sup>4</sup>
- 11 In this Order, we resolve the remaining disputes about how to interpret the FCC's TRRO and accompanying rules governing CLEC access to high-capacity loops and transport at ILEC wire centers. We resolve the issues the Joint CLECs and Qwest raise in petitions for review of decisions in the initial order concerning the age of the data used to determine whether a wire center is non-impaired, and how to calculate the number of business lines serving a wire center.
- 12 In addition to resolving these disputes, we adopt as a separate document an interpretive statement under RCW 34.05.230 and WAC 480-07-920 interpreting the TRRO. We issue the interpretive statement separately to comply with the requirement in the APA to publish such statements in the Washington State Register. The interpretive statement also identifies those Qwest and Verizon wire centers that meet the FCC's non-impairment criteria, consistent with our interpretation.

---

<sup>3</sup> RCW 34.05.230(1).

<sup>4</sup> RCW 34.05.230(4).

**A. Age of the Data**

- 13 This issue concerns the age of the data used to calculate whether a wire center meets the FCC’s non-impairment criteria. Specifically, the Joint CLECs and Qwest dispute whether wire center designations should be based on the number of collocators and business lines available as of the date the FCC issued the TRRO – March 2005, or the most currently available data.
- 14 In the TRRO, the FCC classified ILEC wire centers into three “tiers,” with Tier 1 wire centers the most competitive, “based on indicia of the potential revenues and suitability for competitive transport deployment.”<sup>5</sup> The criteria for Tier 1, 2 and 3 wire center designation are based on the number of fiber-based collocators in a wire center and the number of business lines entering and leaving a wire center.<sup>6</sup> 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 at TELRIC<sup>7</sup> prices.<sup>8</sup>
- 15 The FCC chose business line counts as one of the wire center criteria, as they “are an objective set of data that incumbent LECs already have created for other regulatory purposes,” specifically identifying ARMIS 43-08 data.<sup>9</sup> Each year on April 1, ILECs file annual network, financial and service quality data with the FCC’s Automated

---

<sup>5</sup> TRRO, ¶ 111.

<sup>6</sup> Wire centers designated as Tier 1 have four or more fiber-based collocations, or 38,000 or more business lines. *Id.*, ¶¶ 111-12. Tier 2 wire centers have three or more fiber-based collocations or 24,000 or more business lines. *Id.*, ¶ 118. *See also* ¶¶ 126-32; ¶¶ 174-81.

<sup>7</sup> TELRIC refers to Total Element Long Run Incremental Cost, a methodology based on forward-looking long run economic cost, which the FCC adopted for pricing unbundled network elements provided under Section 251. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carrier and Commercial Mobil Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98, 95-185, FCC 96-325, ¶ 672 (August. 8, 1996).

<sup>8</sup> *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.

<sup>9</sup> TRRO, ¶ 105.

Reporting Management Information System (ARMIS). The number of access lines in service is one type of data ILECs provide annually for FCC Report 43-08 in the ARMIS Operating Data Report. This data is referred to as ARMIS 43-08 data.

- 16 After the FCC issued the TRRO, Verizon and Qwest submitted to the FCC lists of wire centers satisfying the TRRO's non-impairment criteria using the ARMIS 43-08 data most recently filed with the FCC, reflecting data collected through December 2003. In this proceeding, Qwest and Verizon likewise provided ARMIS 43-08 data showing the number of access lines in wire centers as of December 2003.
- 17 The initial order, Order 03, found that December 2003 data – the data available at the time the FCC issued the TRRO – was appropriate for evaluating Qwest and Verizon's initial designations of non-impaired wire centers.<sup>10</sup> The order found that December 2003 data was the most recent data on file at the time the FCC entered the TRRO, the FCC relied on that data in establishing its classification of wire centers, and the ILECs used this data in filing their initial lists of non-impaired wire centers with the FCC.<sup>11</sup> Noting that the Joint CLECs concede that certain wire centers meet the non-impairment criteria using December 2003 data, the order finds it would be inconsistent to apply updated data when designating the wire centers in dispute.<sup>12</sup> The order requires Qwest and Verizon to use updated ARMIS 43-08 data when seeking to designate a new wire center as non-impaired.<sup>13</sup>
- 18 The Joint CLECs claim the initial order errs in requiring Qwest and Verizon to use 2003 data, rather than 2004 or more current business line data. Qwest supports using December 2003 data as consistent with the data the FCC relied on in establishing the wire center criteria in the TRRO, and data Qwest used in filing its initial list with the FCC. After reviewing the parties' arguments, we grant the Joint CLECs' petition for administrative review and reverse the decision in the initial order on this issue.

---

<sup>10</sup> Order 03, ¶ 23.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, ¶ 24.

<sup>13</sup> *Id.*

19 The FCC identified in the TRRO only the type of data carriers should use in determining whether wire centers meet the non-impairment criteria. The FCC did not mandate or require the use of data from a particular year when applying the criteria to particular wire centers.<sup>14</sup> One indication that the FCC did not dictate the vintage of data is the number and variation of state decisions on the issue to which Qwest and the Joint CLECs refer.<sup>15</sup>

20 We find nothing in the TRRO or FCC rules that precludes this Commission from deciding this issue in the interest of promoting competition in the local telecommunications market, pursuant to state law.<sup>16</sup> This Commission has authority under state law<sup>17</sup> to take actions “permitted or contemplated for a state commission under the federal telecommunications act of 1996” (the Act)<sup>18</sup> and authority (which the FCC expressly recognizes) to resolve disputes over whether certain wire centers

---

<sup>14</sup> While the FCC based its analysis on December 2003 data and relied on the December 2004 Report Definition for ARMIS 43-08 data, the FCC did not require the use of December 2003 or 2004 ARMIS data, or data from any other particular year. TRRO, ¶ 105 n.303.

<sup>15</sup> See *In the Matter, on the Commission’s own motion, to commence a collaborative proceeding to monitor and facilitate implementation of Accessible Letters issued by SBC MICHIGAN and VERIZON*, Case No. U-14447, Order at 5 (Sept. 20, 2005); *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 38 (March 1, 2006); *Post-Interconnection Dispute Resolution Proceeding Regarding Wire Center UNE Declassification*, PUC Docket No. 31303, Order Approving Methodology to Determine AT&T Texas Wire Centers which are Non-Impaired, Texas PUC (issued April 7, 2006), at 29; *Application of Pacific Bell Telephone Company, d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996.*, Application 05-07-024, December 06-01-143, Cal. PUC (adopted January 26, 2006), at 10-11; 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*, Ill. Commerce Comm’n., ICC Docket No. 05-0442 (Nov. 2, 2005), at 30; *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, Issue 3, Ind. Utility Reg’y. Comm’n (Jan. 11, 2006), at 15-16.

<sup>16</sup> See RCW 80.36.300(5).

<sup>17</sup> RCW 80.36.610.

<sup>18</sup> P.L. 104-104 (110 Stat. 56) (1996); See also 47 U.S.C. § 251(d)(3).

meet the factual criteria for non-impairment.<sup>19</sup> Given this authority, we may use data more recent than December 2003 data to inform our decision. We find the most recent data more persuasive than the stale information now in the record.

21 Because these designations are permanent<sup>20</sup> and materially affect the development of competition in Washington, we determine that our designation decisions should be based on the most recent data available. In this instance, by applying the FCC's criteria to the most recent data, we ensure that our decisions are based on the best information available reflecting the most recent state of competition between competitive and incumbent carriers at the wire center level. For the same reasons, we shall require the use of the most recent data at the time we resolve future disputes over wire center designations.

22 There remain only three wire centers in dispute. Although the Joint CLECs contest Verizon's designation of its Redmond wire center as a Tier 1 wire center, we find that Verizon's response to the Joint CLECs' May 5 comments clarifies that the wire center is properly designated a Tier 1 wire center. While asserting that they seek more current data for all of Qwest's wire centers, the Joint CLECs concede in their March 21, 2006 and May 5, 2006 comments that they dispute only Qwest's non-impairment designations of the Kent O'Brien, Olympia Whitehall and Seattle Cherry wire centers.<sup>21</sup> Given the Joint CLECs' concession, we accept Qwest's wire center designations for the other wire centers at issue, but will evaluate the non-impairment designations for the Kent O'Brien, Olympia Whitehall and Seattle Cherry wire centers after receiving the updated data.

23 Contrary to the finding in the initial order, we do not find it inconsistent to apply data from a different year to different wire centers to arrive at the appropriate wire center designation. Where, in this case, the Joint CLECs have accepted Qwest's wire center

---

<sup>19</sup> TRRO, ¶¶ 100, 234.

<sup>20</sup> Once a wire center meets the non-impairment criteria, the wire center cannot later be reclassified to a lower tier or found to be impaired. See 47 C.F.R. §§ 51.319 (a) (4) and (5), (e) (3) (i) and (ii).

<sup>21</sup> Joint CLEC Final Exceptions and Objections, ¶ 1 n.2 (Mar.21, 2006); Joint CLEC Comments on Wire Center Designations, ¶ 3 (May 5, 2006).



designation for certain wire centers based on the December 2003 data, our inquiry is finished.

- 24 Qwest must resubmit for the Kent O'Brien, Olympia Whitehall and Seattle Cherry wire centers the most recent data filed with the FCC or available to the Company identifying the number of fiber-based collocators and business lines, consistent with the decisions in this Order and Order 03. After reviewing the data, we will evaluate the proper tier designation for these wire centers and modify the list of non-impaired wire centers, if necessary, in our interpretive statement issued in this docket.

### **B. Method of Calculating Business Lines**

- 25 This issue concerns the FCC's definition of business lines and whether Qwest must include the actual circuits in use or the total capacity of circuits when calculating the number of business lines serving a wire center. The initial order found that Qwest must include actual business lines in use for switched access services, i.e., business lines reported in its ARMIS 43-08 data and UNE-P circuits, but must include the total capacity, not the actual circuits in use, when calculating UNE loops.<sup>22</sup> The initial order also determined that Qwest's method of counting UNE-P lines was appropriate.<sup>23</sup>
- 26 Qwest requests the Commission reverse the initial order's conclusion of law on this issue. Qwest asserts that the FCC's rule defining business lines requires it to calculate the total capacity of its business lines, regardless of whether the lines are Qwest's lines or leased to a CLEC. Qwest also asserts that the initial order creates an inconsistency by requiring the Company to use only actual circuits in use for UNE-P lines, at the same time approving Qwest's method of counting the total capacity of UNE-P lines, less residential listings. The Joint CLECs interpret the definition differently, and assert that Qwest's method would artificially inflate its calculation of business lines serving wire centers.

---

<sup>22</sup> Order 03, ¶¶ 34-35, 81.

<sup>23</sup> *Id.*, ¶¶ 42, 82.

27 The last sentence of the FCC's definition of business lines includes three requirements for tallying business lines. The interpretation of these three requirements drives the dispute between the parties. The FCC 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 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."*<sup>24</sup>

28 In explaining its method of calculating business lines, 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.<sup>25</sup>

---

<sup>24</sup> 47 C.F.R. § 51.5 (Emphasis added).

<sup>25</sup> TRRO, ¶ 105 (Emphasis added).

- 29 We are persuaded that the initial order correctly determines that the FCC’s rule and the FCC’s discussion of the issue in the TRRO must be read together to arrive at the method for calculating business lines. We uphold the initial order’s decision that counting actual lines in use best reflects the FCC’s intent in the TRRO and its definition of business lines. However, we modify paragraphs 34 and 35, and the conclusion of law in paragraph 81 of the initial order to reflect that Qwest may use the total capacity of UNE-P lines, less residential UNE-P listings, when calculating the number of business lines serving a wire center.
- 30 The FCC’s rule is internally inconsistent and must be reconciled with the FCC’s discussion in the TRRO. The first sentence of the rule provides: “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 competitive LEC that leases the line from the incumbent LEC.”<sup>26</sup> While the first requirement in the last sentence of the definition provides that carriers should only count business lines connecting end-user customers, i.e., actual circuits in use, the third requirement provides that carriers should include the capacity of the circuit when counting business lines. By relying solely on the last requirement in the definition, Qwest ignores the other conditions in the definition and the FCC’s explanation in the TRRO.
- 31 We uphold the initial order’s finding that 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 applied in the switched access lines ILECs report to the FCC in ARMIS 43-08 data.<sup>27</sup> The third requirement, that digital access lines be counted by voice-grade equivalents, should apply when ILECs count the number of business UNE-P lines and UNE loops served

---

<sup>26</sup> 47 C.F.R. § 51.5 (Emphasis added).

<sup>27</sup> See *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 41-42 (Mar. 1, 2006) [Hereinafter “North Carolina Order”]

by a wire center. Like the number of business lines served “entirely over competitive loop facilities in particular wire centers,” the number of UNE-P lines and UNE loops in service “is extremely difficult to obtain and verify,” as only CLECs can identify which lines serve business or residential customers. Thus, Qwest should include the total capacity, not actual circuits in use, when calculating UNE-P business line and UNE loops, but not when calculating ILEC-owned switched access business lines. Qwest’s method for counting UNE-P business lines is consistent with methods it has used in other proceedings before the Commission.<sup>28</sup>

32 The FCC relies on state commissions to resolve disputes over whether certain wire centers meet the factual criteria for non-impairment.<sup>29</sup> As with the issue of the age of the data, the FCC’s decision and rules are susceptible to more than one interpretation. In fact, other states have interpreted the method for calculating business lines in different ways.<sup>30</sup> While we modify the initial order’s conclusions concerning treatment of UNE-P business lines, we find the initial order fairly and consistently interprets the TRRO and FCC rules. We deny in part and grant in part Qwest’s petition for administrative review on this issue.

### C. Interpretive Statement

33 The Commission may issue interpretive statements “to advise the public of its current opinions.” RCW 34.05.320; *see also* RCW 34.05.010(8); WAC 480-07-920. The Commission is authorized under RCW 80.36.610 to take all actions, conduct

---

<sup>28</sup> *See* Order 03, ¶ 39, citing Dockets UT-003022 and UT-003040 (Qwest’s Section 271 proceeding) and Dockets UT-000883 and UT-030614 (Qwest’s competitive classification proceedings).

<sup>29</sup> TRRO, ¶¶ 100, 234.

<sup>30</sup> North Carolina Order at 67; *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*”].

proceedings and enter orders contemplated for a state commission under the Act. Under Section 251(d)(3) of the Act, state commissions may enforce regulations, orders or policies in implementing Section 251 if doing so:

- (A) establishes access and interconnection obligations of local exchange carriers;
- (B) is consistent with the requirements of this section; and
- (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

34 Issuing a statement interpreting the FCC's orders and rules governing wire center designations in a manner consistent with state policy is consistent with state commission authority under Section 251(d)(3). Our decision interprets the requirements for access and interconnection obligations for high capacity loops and transport for local exchange carriers, is consistent with FCC orders and rules, and does not substantially prevent implementation of Section 251 or its purposes.

35 We find the use of an interpretive statement appropriate to reflect our interpretations of the FCC's decisions in the TRRO and FCC rules concerning non-impairment criteria for wire centers. By this Order, we issue a separate interpretive statement incorporating the interpretations in Order 03 and this Order of the TRRO and FCC rules concerning non-impairment criteria for wire centers, and identifying a list of Qwest and Verizon wire centers that meet our interpretation of the FCC's non-impairment criteria. The interpretive statement is attached to this Order as Appendix 1.

### **FINDINGS OF FACT**

36 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:

- 37 (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.
- 38 (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.
- 39 (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.
- 40 (4) The FCC's Triennial Review Remand Order finds competitive local exchange carriers are not impaired under Section 251 of the Act without access to high capacity loops and transport, if the wire centers serving the loops and transport meet certain criteria.
- 41 (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.
- 42 (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.

- 43 (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.
- 44 (8) Qwest and Verizon submitted to the Commission data based on ARMIS 43-08 data reported to the FCC, reflecting 2003 annual data.
- 45 (9) 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.
- 46 (10) 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.
- 47 (11) Consistent with methods Qwest has used in other Commission proceedings, 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.

### **CONCLUSIONS OF LAW**

- 48 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:
- 49 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 50 (2) The FCC identified in the TRRO only the type of data carriers should use in determining whether wire centers meet the non-impairment criteria. The FCC

did not mandate or require the use of data from a particular year when applying the criteria to particular wire centers.

- 51 (3) In paragraphs 100 and 234 of the TRRO, the FCC recognized state commission authority to resolve disputes over whether certain wire centers meet the factual criteria for non-impairment.
- 52 (4) Requiring carriers to use the most recent data at the time the Commission resolves disputes over wire center designations will ensure that the designation reflects the most recent state of competition between competitive and incumbent carriers at the wire center level.
- 53 (5) The requirements in the FCC's rule defining "business lines" 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-P business lines and UNE loops. Applying all three requirements to ILEC-owned access lines or to leased lines would render the rule internally inconsistent, and inconsistent with the FCC's statements in the TRRO.
- 54 (6) 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.
- 55 (7) 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 business UNE-P lines and 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 business UNE-P lines and UNE loops in service "is extremely difficult to obtain and verify," as only CLECs can identify which lines serve business or residential customers. *See TRRO, ¶ 105.*
- 56 (8) 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, but should include the total capacity of circuits, not actual circuits in use, when calculating business UNE-P lines and UNE loops.

- 57 (9) 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.
- 58 (10) The Commission may issue interpretive statements “to advise the public of its current opinions.” *RCW 34.05.320*.
- 59 (11) Issuing a statement interpreting the FCC’s Triennial Review Remand Order and accompanying FCC rules concerning non-impairment criteria for wire centers is appropriate and authorized by state and federal law.

**ORDER**

60 **THE COMMISSION ORDERS:**

- 61 (1) The Joint CLECs’ Petition for Administrative Review of Order 03 is granted.
- 62 (2) Qwest Corporation’s Petition for Administrative Review of Order 03 is denied in part and granted in part.
- 63 (3) Qwest Corporation must provide to the Commission and interested persons by Wednesday, October 18, 2006 the most recently filed ARMIS 43-08 data and currently available business line data and number of fiber-based collocators to support the designation of the following wire centers as non-impaired: Kent O’Brien, Olympia Whitehall and Seattle Cherry.
- 64 (4) The Commission issues the interpretive statement concerning non-impairment criteria for wire centers under the Federal Communications Commission’s Triennial Review Remand Order attached as Appendix 1 to this Order and by this reference included herein.
- 65 (5) The Commission retains jurisdiction to effectuate the terms of this order.

Dated at Olympia, Washington, and effective October 5, 2006.

**WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

**MARK H. SIDRAN, Chairman**

**PATRICK J. OSHIE, Commissioner**

**PHILIP B. JONES, Commissioner**

**NOTICE TO THE PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.**