

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation)
Concerning the Status of Competition and) DOCKET NO. UT-053025
Impact of the FCC’s Triennial Review)
Remand Order on the Competitive) JOINT CLEC PETITION FOR
Telecommunications Environment in) CLARIFICATION, REHEARING
Washington State.) AND/OR RECONSIDERATION OF
) ORDER 04
)
)
)

1. Pursuant to RCW 34.05.470 & 80.04.200 and WAC 480-07-835, 480-07-850 & 480-07-870, Covad Communications Company, Eschelon Telecom of Washington, Inc., Integra Telecom of Washington, Inc., McLeodUSA Telecommunications Services, Inc., and XO Communications Services, Inc. (collectively “Joint CLECs”) submit the following Petition for clarification, rehearing, and/or reconsideration of Order 04, Order Adopting Interpretive Statement; Granting Joint CLECs’ Petition for Review; Granting in Part and Denying in Part Qwest’s Petition for Review (“Order”). The Joint CLECs specifically request that the Commission modify its Order to require Qwest Corporation (“Qwest”) and Verizon Northwest Inc. (“Verizon”) to provide and rely on 2004 data for *all* wire centers that have been designated as “nonimpaired” based on business line counts and that three of Qwest’s wire center designations be made effective as of July 8, 2005 – the date that Qwest designated them – not March 11, 2005.¹

¹ Covad does not join the portions of this Petition that are specific to Verizon.

DISCUSSION

A. Qwest and Verizon Should be Required to Provide 2004 Business Line Count Data For All Wire Centers Designated as Nonimpaired Based on Business Line Counts.

2. The Order correctly concludes that wire center “designation decisions should be based on the most recent data available,”² and requires that “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.”³ The Order limits this requirement to these three wire centers based on its finding that these are the only wire centers in dispute.⁴ The Order, however, misinterprets the Joint CLECs’ prior comments in arriving at this finding and should be modified consistent with the Joint CLECs’ claims.
3. The Triennial Review Remand Order (“TRRO”) authorizes incumbent local exchange carriers (“ILECs”) to designate wire centers as nonimpaired for high capacity transport unbundled network elements (“UNEs”) – i.e., Tier 1 or Tier 2 – based on the number of fiber based collocators *or* the number of business lines, while permitting nonimpairment designations for high capacity UNE loops based on the number of fiber-based collocators *and* the number of business lines. Qwest and Verizon designated some wire centers as Tier 1 or Tier 2 based on the number of fiber-based collocators and some wire centers based on business line counts. Only Qwest designated a wire center as Tier 1 and nonimpaired for high capacity loops – the Seattle Main/Mutual wire center.

² Order ¶ 21.

³ *Id.* ¶ 24.

⁴ *Id.* ¶ 22.

4. The Joint CLECs have consistently maintained that in making *all* wire center nonimpairment designations – whether based on the number of fiber-based collocators or business line counts – Qwest and Verizon should rely on information that is current as of the date of the designation. For the most part, Qwest and Verizon provided such information on the fiber-based collocators in the wire centers they designated as nonimpaired based on the number of fiber-based collocators. The Joint CLECs ultimately took issue with the ILECs’ collocation data and corresponding nonimpairment designations for these wire centers only for the Qwest Olympia Whitehall wire center (which the Order requires Qwest to update) and the Verizon Redmond wire center (which the Order concludes is properly designated as Tier 1, a conclusion on which the Joint CLECs do not seek reconsideration).
5. Qwest and Verizon also designated wire centers based in whole or in part on the number of business lines served out of those wire centers – the Seattle Main/Mutual, Kent O’Brien, and Seattle Cherry wire centers for Qwest and Verizon’s Bothell wire center. Neither Qwest nor Verizon, however, provided ARMIS 43-08 business line count data from calendar year 2004 (the date closest to the March 11, 2005 effective date of the TRRO) to support those designations but relied on 2003 data instead.
6. The Joint CLECs have consistently challenged all four of those wire center designations based on the vintage of the business line count data. The Joint CLECs’ initial exceptions to the Qwest and Verizon data advocated that “the Commission should require Qwest and Verizon to provide business line counts consistent with ARMIS requirements as of March 11, 2005, or as close to that date as possible, at least *in those wire centers in which Qwest and Verizon are relying on business line counts to*

demonstrate nonimpairment.”⁵ The Joint CLECs in their final exceptions expanded on their concerns and stated definitively that they “*cannot agree with Verizon’s wire center designations, Qwest’s wire center designations based on line count data, or some of Qwest’s designations based on the number of fiber-based collocators.*”⁶ Finally in their Comments on Wire Center Designations, the Joint CLECs specifically identified the wire centers they continued to challenge based on the vintage of the business line count data:

The Joint CLECs continue to take issue with some of the Initial Order’s conclusions on the proper calculation of “business lines” pursuant to the TRRO but will address those issues in a petition for administrative review of that decision. *The ultimate resolution of this issue impacts all wire center designations based in whole or in part on the number of business lines served out of that central office, including the Qwest Seattle Main, Seattle Cherry, and Kent O’Brien wire centers and the Verizon Bothell wire center.*⁷

7. The Order is simply incorrect that “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.”⁸ The portions quoted above from all three sets of Joint CLEC comments on the ILEC wire center data and designations unambiguously demonstrate that the Joint CLECs have

⁵ Joint CLEC Exceptions to Qwest and Verizon Data and Requests for Additional Data ¶ 5 at 2 (March 7, 2006) (emphasis added).

⁶ Joint CLEC Final Exceptions and Objections to Qwest and Verizon Wire Center Nonimpairment Designations ¶¶ 1 & 2-6 (March 21, 2006) (emphasis added); *see id.* ¶ 1, n.2 at 2 (listing wire center nonimpairment designations that the Joint CLECs did not dispute, all of which were based on the number of fiber-based collocators, included Seattle Main only as “Tier 1, awaiting accurate line count data for loops,” did not include Seattle Cherry or Kent O’Brien, and did not include any Verizon wire centers).

⁷ Joint CLEC Comments on Wire Center Designations ¶ 2 (May 5, 2006) (emphasis added).

⁸ *Id.* ¶ 22.

consistently challenged Qwest's designation of its Seattle Main/Mutual (high capacity loops), Kent O'Brien (Tier 1), and Seattle Cherry (Tier 2) wire centers and Verizon's designation of its Bothell wire center (Tier 2) based on business line counts in those wire centers, as well as disputing Qwest's Olympia Whitehall wire center as Tier 1 (rather than Tier 2) based on the number of fiber-based collocators.

8. The Commission, therefore, should revise paragraph 22 of the Order to accurately reflect the Joint CLECs' position and should revise paragraphs 24 and 63 to require Qwest *and Verizon* to provide updated business line count or fiber-based collocator data, as applicable, for Qwest's Seattle Main/Mutual, Kent O'Brien, Seattle Cherry, and Olympia Whitehall wire centers and Verizon's Bothell wire center. The Commission should also remove paragraph 23 from the Order because by requiring updated data for these wire centers, the Commission will be applying contemporaneous data for all ILEC wire center designations, rather than relying on different vintage data for certain wire centers.

B. The Designation of Three Wire Centers that Qwest Made on July 8, 2005, Should Be Effective as of that Date, Not March 11, 2005.

9. Qwest did not designate three of its wire centers as nonimpaired – Seattle Atwater (Tier 1), Seattle Campus (Tier 1), and Seattle Duwamish (Tier 2) – until July 8, 2005. The Joint CLECs noted this fact in their March 21, 2006 comments, conceded that these designations were accurate only as of the designation date, and advocated that the applicable transition rates and time period began on July 8, 2005, not the March 11, 2005 effective date of Qwest's other initial wire center designations that Qwest provided to the

FCC's Wireline Competition Bureau in February 2005.⁹ Neither the Order nor Order 03, Initial Order Requiring Disclosure of Additional Information, addresses this issue. The Commission, therefore, should address this issue either through clarification, rehearing, or reconsideration, and should revise the Order to adopt the Joint CLECs' position.

10. Qwest has offered no explanation, much less justification, for requiring CLECs to begin the transition period and pay higher transition rates beginning on March 11, 2005 for wire centers that Qwest did not even identify as nonimpaired until July 8, 2005. In Utah where this was also an issue, Qwest contended that because the *facts* supporting the wire center designations existed as of March 11, 2005, Qwest's delay in providing CLECs *notice* of these facts was immaterial. The Utah Commission rejected Qwest's position and agreed with the Joint CLECs that the wire center designation was effective – and the transition period began – on the date CLECs were notified of the designation:

We concur and conclude the effective date of non-impairment for the Salt Lake City West and Salt Lake City South wire centers is July 8, 2005. Qwest's updated non-impairment list changing the status of these two wire centers from Tier 2 to Tier 1 was not filed until July 8, 2005. This is the date on which CLECs were effectively given notice that Qwest believed these two wire centers qualified for Tier 1 status. It makes no difference that Qwest now claims these wire centers qualified for Tier 1 status on March 11, 2005. The simple fact is on March 11, 2005, Qwest listed these wire centers as Tier 2 facilities, a designation that Qwest did not change until July 8, 2005. Our decision announced herein properly ensures that Qwest's charges for DS1 and DS3 transport and loops will be based on Qwest's non-impairment list as filed, not on Qwest's view of how that list might have been filed.¹⁰

⁹ Joint CLEC Final Exceptions and Objections to Qwest and Verizon Wire Center Nonimpairment Designations ¶ 1, n.2 at 2.

¹⁰ *In re Investigation into Qwest Wire Center Data*, Utah PSC Docket No. 06-049-40, Report and Order at 22-23 (Sept. 11, 2006) (a copy of which is available at <http://www.psc.utah.gov/telecom/06orders/Sep/0604940RO.pdf>).

11. The Commission, therefore, should revise the Order to address this issue and to state that Qwest's designations of its Seattle Atwater (Tier 1), Seattle Campus (Tier 1), and Seattle Duwamish (Tier 2) wire centers are effective and the applicable transition period began on July 8, 2005, the date on which Qwest notified CLECs and the FCC of these designations.

CONCLUSION

12. For the foregoing reasons, the Commission should clarify, rehear, or reconsider the Order and should modify the Order (1) to require Qwest and Verizon to provide updated business line count or fiber-based collocator data, as applicable, for Qwest's Seattle Main/Mutual, Kent O'Brien, Seattle Cherry, and Olympia Whitehall wire centers and Verizon's Bothell wire center; and (2) to state that Qwest's designations of its Seattle Atwater (Tier 1), Seattle Campus (Tier 1), and Seattle Duwamish (Tier 2) wire centers are effective and the applicable transition period began on July 8, 2005.

DATED this 13th day of October, 2006.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Covad Communications
Company, Eschelon Telecom of
Washington, Inc., Integra Telecom of
Washington, Inc., McLeodUSA
Telecommunications Services, Inc., and XO
Communications Services, Inc.

By _____
Gregory J. Kopta
WSBA No. 20519