

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Investigation)	DOCKET NO. UT-053025
Concerning the Status of Competition and)	
Impact of the FCC's Triennial Review)	VERIZON NORTHWEST INC.'S
Remand Order on the Competitive)	RESPONSE TO QWEST'S
Telecommunications Environment in)	PETITION FOR
Washington State.)	RECONSIDERATION
)	OF ORDER NO. 04.
)	

Verizon Northwest Inc. (“Verizon”) responds to – and supports – Qwest’s Petition for Reconsideration (“Petition”) of Order No. 04. Qwest argues correctly that the Commission’s rejection of the Administrative Law Judge’s well-reasoned decision in the Initial Order on the timing of data used to make the original non-impairment designations was flawed and should be reversed.

1. *The Relevant Time Period for the Initial Non-Impairment Designations is When Those Designations Were Made.*

Among other problems Qwest raised, the Commission’s ruling violates the FCC’s prohibition on reclassification of wire centers from non-impaired to impaired status.¹ The Initial Order was cognizant of that problem; that is one reason it found that it was “reasonable” for Verizon and Qwest to utilize 2003 ARMIS data to support the designation of the initial list of non-impaired wire centers as “[i]t was the most recent data on file with the FCC at the time it entered the TRRO” and because “[t]he FCC used this data in establishing the wire center tiers.” Order No. 03 at 8. Moreover, as noted in the Initial Order, “[a]pplying data from different time periods to determine the initial list

¹ See, e.g., 47 C.F.R. § 51.319(e)(3)(i).

of non-impaired wire centers ... would be inconsistent.” Order No. 03 Conclusion of Law (3). By reversing this logical conclusion in Order No. 04, the Commission rewards CLEC delay in seeking to address this issue, and essentially postpones the effective date of the *TRRO*² for purposes of identifying non-impaired wire centers by more than a full year. See Verizon Response to Joint CLEC Exceptions to Qwest and Verizon Data and Requests for Additional Data (March 17, 2006) at 3-4. The relevant data to be examined with regard to the original list of non-impaired wire centers filed to implement the *TRRO* (which became effective on March 11, 2005) is the publicly filed ARMIS data that was available when the original list was identified and submitted to the FCC.

If the FCC had intended to give CLECs a right to make a tardy challenge to ILECs’ wire center designations, it would not have imposed a mandatory 12-month period for CLECs to replace their high-capacity loop and transport UNEs out of offices on the ILECs’ original non-impaired lists.³ The FCC did not intend to give the CLECs the right to delay or reverse implementation of the *TRRO* by strategic timing of wire center challenges even years after designations were made.

Qwest’s Petition notes accurately that Order No. 04 could have the effect of stripping a wire center of non-impairment status, a designation that the *TRRO* makes clear (and the Commission recognizes) may not later be downgraded. Petition at 2-3. By focusing on the wrong time period, Order No. 04 could dismantle the ratcheting operation of the wire center classifications mandated by the *TRRO* (in which a wire center’s

² Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶¶ 142-43, 166-67, 195-96 (2005) (“*TRRO*”).

³ *TRRO* ¶¶ 142-43, 166-67, 195-96.

meeting of a non-impairment threshold is “not subject to later reclassification” to an impaired status),⁴ for the initial set of wire center designations.

In other words, the Commission’s erroneous reversal of the Initial Order in this regard could allow the Joint CLECs to obtain what amounts to a reclassification of wire centers that were previously identified as non-impaired based on data that was current at the time of the previous identification. The Commission fails to address this point in Order No. 04, in which it appears to justify the reversal by stating that it should rely on “the best information available reflecting the most recent state of competition between competitive and incumbent carriers at the wire center level” (Order No. 04 at 8). Verizon agrees that the most recently available publicly filed ARMIS data should be used whenever wire center classifications *are made* (including classifications made in the future) but, in the case of the *initial* classifications, those classifications *were made* as of the March 11, 2005 effective date of the TRRO.

2. *The Commission’s Justifications for Violating the TRRO are Invalid, and Invite Administrative Uncertainty.*

In adopting impairment criteria based on business lines and collocator counts, the FCC emphasized that these proxies were not intended to be “error-proof” measures of competition, or even measures of actual competition. They are, instead, intended to indicate the *potential* for competitors to deploy their own facilities. *See, e.g., TRRO*, ¶¶ 66, 68, 82, 87, 90, 93, 108. By prohibiting reclassification of impaired offices, the FCC recognized that while conditions in an office may change, it is still considered “suitable for self-deployment” if it had met the non-impairment criteria in the past. *See id.* ¶ 167.

⁴ *See, e.g.,* 47 C.F.R. § 51.319(e)(3)(i) (“Once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 wire center.”).

Requiring an ILEC to produce the “most recent data available” (Order No. 04, ¶ 21) at any time other than when the non-impairment determination is made is contrary to the FCC’s deliberate policy choice *not* to try to precisely measure “actual deployment and actual wholesale availability” at a particular point in time. *See TRRO*, ¶ 122. Indeed, this Commission openly admits that its decision rests on its own view of how best to “promot[e] competition in the local telecommunications market, pursuant to state law.” Order No. 04, ¶ 20. But this Commission may not take action to promote competition that is inconsistent with federal law. That is exactly what it has done here, by manipulating the FCC’s impairment test to allow it to classify a wire center as impaired, even if it indisputably met the non-impairment criteria when the original wire center list was filed with the FCC.

The Commission’s approach also violates the FCC’s express objective of providing “an easily implemented and reasonable bright-line rule to guide the industry.” *TRRO*, ¶ 169. As Qwest correctly points out, the Commission’s decision leaves open the question of whether the “most recent data” are the data at the time the designation is challenged, the time the Commission decides to hear the challenge, the moment the Commission resolves the challenge, or perhaps some other point. Petition at 4. This is precisely the kind of administrative confusion and invitation to litigation the FCC sought to avoid by refusing to allow reclassification of non-impaired wire centers.

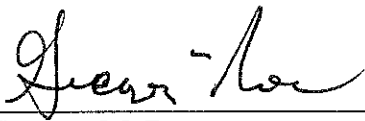
The Commission cannot circumvent this FCC prohibition by giving CLECs the discretion to decide what vintage data will be used to verify ILEC wire center designations, as Order No. 04 purports to do. Consistent with FCC rules, the Commission must hold that the Order’s requirement to use “the most recent available

FCC data” means the most recent data as of the date the relevant wire center designations were made.

In sum, the Commission should grant Qwest’s petition for reconsideration and reinstate the findings in the Initial Order regarding the appropriateness of Qwest and Verizon’s use of 2003 ARMIS data in their *initial* list of non-impaired wire center designations.

Respectfully submitted on November 13, 2006.

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