

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation)
Concerning the Status of Competition) DOCKET NO. UT-053025
and Impact of the FCC’s Triennial)
Review Remand Order on the) QWEST CORPORATION’S ANSWER
Competitive Telecommunications) TO JOINT CLEC PETITION FOR
Environment in Washington State.) RECONSIDERATION OF ORDER 04
_____)
)

I. INTRODUCTION

- 1 Qwest Corporation (“Qwest”) hereby responds to the Joint CLECs’ Petition for clarification, rehearing, and/or reconsideration (“Petition”) 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 and Verizon Northwest Inc. (“Verizon”) to provide and rely on 2004 data for *all* wire centers that have been designated as not impaired based on business line counts and that three of Qwest’s wire center designations be made effective as of July 8, 2005 – not March 11, 2005.
- 2 Qwest opposes the Petition, and reiterates its request, set forth in its own Petition for

Reconsideration, that the Commission adopt the conclusions of the Initial Order, Order 03, with regard to the use of 2003 ARMIS data as the most currently available data at the time the wire center designations were made, and affirm the use of that data. Qwest also asks the Commission to determine that all of Qwest's initial determinations be effective on March 11, 2005, based on 2003 ARMIS data, even if some designations were made later.

A. Qwest's Position is the Only One that is Consistent with the Requirement to Use "the Most Currently Available" Data.

3 The Commission must evaluate Qwest's initial non-impaired wire center designations based on 2003 ARMIS data. No other data can reasonably be evaluated or relied upon in assessing the correctness of Qwest's initial designations, because that is the data that Qwest used and was the most current ARMIS data at the time the initial designations were filed. The Commission's function here is simply to confirm whether the designations were correct as made, not make independent designations.

4 The Order correctly concludes that wire center "designation decisions should be based on the most recent data available,"¹ – however, it is evident that this requirement means one thing to Qwest, another thing to the Commission and yet a third thing to the Joint CLECs. Thus, it appears that there might be agreement that Order 04 should be clarified. However, such clarification should not take the form of requiring 2004 data as requested by the Joint CLECs, nor should it mean that 2005 data should be used – data that simply was not the basis for those initial designations.

5 Joint CLECs correctly note that the Triennial Review Remand Order ("TRRO") authorizes *incumbent local exchange carriers* ("ILECs") to designate wire centers as nonimpaired for

¹ Order ¶ 21.

high capacity transport unbundled network elements. *Petition ¶ 3*. The designation is not the Commission's to make – rather, the Commission should only be evaluating the correctness of Qwest's designation – something that can be done only if it analyzes the same data that Qwest relied upon.

6 Qwest agrees with the Joint CLECs that they have consistently maintained that in making the wire center non-impairment 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. Indeed, Qwest's own Petition for Reconsideration is consistent with the Joint CLECs', in the sense that both parties do not believe that the Commission should split the vintage of the data relied upon for the exact same question. *See, Qwest's October 16, 2006 Petition for Reconsideration ¶¶ 3*. However, as set forth in that Petition, there is only one set of data that was “current” and filed as of the time of designation, and that was the 2003 ARMIS data.

7 In connection with this issue, Qwest believes it is important to note that use of 2005 data, as required by the Order, would in effect redesignate the Kent O'Brien wire center from Tier 1 (based on either 2003 *or* 2004 data) to Tier 2, based on 2005 data. Leaving aside that no party is advocating the use of 2005 data, such a redesignation is clearly prohibited by the FCC, which has clearly held that once a wire center is designated and meets the criteria, it cannot be undesignated. If the Commission had reviewed, or the CLECs had challenged, the designations more closely in time to the actual designations, there can be no question that Kent O'Brien would have been affirmed as a Tier 1 wire center – the Commission's requirement to use 2005 data, which causes Kent O'Brien to be redesignated, is prohibited.

B. The Designation of Three Wire Centers that Qwest Made on July 8, 2005, Should Be Effective as of March 11, 2005.

- 8 Joint CLECs next complain that the effective date for three of Qwest’s wire center designations (Seattle Atwater (Tier 1), Seattle Campus (Tier 1), and Seattle Duwamish (Tier 2)) should be July 8, 2005, not March 11, 2005. They note that neither the Order nor Order 03, Initial Order Requiring Disclosure of Additional Information, addresses this issue and ask the Commission to address this issue either through clarification, rehearing, or reconsideration and adopt the Joint CLECs’ position.
- 9 Qwest disagrees with this request – it is readily apparent that the facts supporting the wire center designations existed as of March 11, 2005, and the designations are appropriate as of that date. Qwest’s designation process was thorough and careful – Qwest took a conservative view of the data, and took care not to “over designate”, designating wire centers only when it felt as though it had reliable data upon which to base the designation. Because the data that supports these three wire centers existed as of March 11, 2005, and because the data supports the designations, the Commission should not in effect punish Qwest for having taken a deliberate approach to this process.
- 10 The injustice of taking a contrary position is evident. If, for instance, Qwest had come out with a very aggressive approach in its initial designations, Qwest could have “over designated” wire centers, and pulled them off the list later if the data turned out to be such that the designation could not be supported. In that case, any and all wire centers validly designated would relate to the March 11, 2005 date, and some wire centers would simply have fallen off the list. If that were the case here, and Atwater, Campus and Duwamish had been placed on the initial “aggressive” list, they would have remained there and no one would question the March 11, 2005 effective date. The CLECs are not harmed in any way by a March 11, 2005 effective date, and Qwest’s designation should be permitted to relate

back to that date.

11 The Utah Commission's conclusion to the contrary is simply not persuasive – though the CLECs received notice of these designations somewhat later, they were not hindered in their ability to challenge those designations or to evaluate the data upon which they were based, nor have they shown that they would be prejudiced in any way by inclusion of these wire centers on the initial list, as of the initial effective date.

12 The Commission, therefore, should clarify 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 March 11, 2005, the initial designation date.

II. CONCLUSION

13 For the foregoing reasons, the Commission should deny the Joint CLECs' Petition to clarify, rehear, or reconsider the Order and should modify the Order as set forth in Qwest's Petition so that the "most currently available data" upon which to base all wire center designations that rely on line counts is 2003 ARMIS data, and to clarify 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 March 11, 2005.

DATED this 13th day of November, 2006.

QWEST

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